



# SORELL COUNCIL PUBLIC OPEN SPACE POLICY

TITLE	PUBLIC OPEN SPACE POLICY
RESPONSIBLE PERSON	MANAGER PLANNING
APPROVED BY COUNCIL	17 SEP 2019
RESOLUTION NO	125/2019
AMENDED ON	3 MAY 2023
RESOLUTION NO	21/2023 (SPA)
REVIEW DATE	3 MAY 2026

## 1. POLICY AIM

- 1.1. To provide guidance on Council's decisions regarding the provision of a diverse, integrated and sustainable open space network. This network will provide for a range of active and passive sport and recreational opportunities, as well as protect and enhance natural and cultural values, through accessible, safe, and well-designed open spaces and supported by high quality facilities and amenities.

## 2. POLICY BASIS

- 2.1. This policy gives recognition of the Council's powers and obligations in respect to Public Open Space (POS) applicable to the subdivision of land under the provisions of the *Local Government (Buildings and Miscellaneous Provisions) Act 1993* (LGBMP). These provisions enable the Council to:
  - (a) require a subdivider to provide to Council up to 5% of the land (for example as a park or reserve) being subdivided as POS; or
  - (b) require POS in excess of the 5% contribution as a part of any subdivision proposal subject to appropriate compensation to the owner; or
  - (c) require a subdivider to provide up to 5% cash in lieu contribution of the *improved* value of the land being subdivided (less any area provided as POS where applicable); or
  - (d) refuse a subdivision if it is of the opinion that the proposal should be altered to include (or omit) POS.

## 3. OBJECTIVES

- 3.1. The objectives of this Policy are to:
  - (a) provide a consistent approach to the taking of land as POS by the Council, or alternatively the payment of cash in lieu of POS;
  - (b) articulate the basis and justification upon which the Council draws its requirements to take POS, or a cash contribution in lieu of it, in any and specific subdivision developments;
  - (c) guide and inform the acquisition of POS having regard to supply, demand, location and suitability of existing POS and to ensure new areas are safe, accessible and fit for purpose;
  - (d) guide when to take a cash contribution in lieu of POS, and the use of accumulated contributions;
  - (e) guide the nature and standard of improvements to POS required to be completed prior to transfer of the land to the Council; and
  - (f) assist agencies, community groups, clubs, developers and residents to understand Council's POS policy

## 4. SUBDIVISION CONSIDERATIONS

- 4.1. The contribution of POS, either as land or as cash in lieu, occurs most commonly at the approval of a subdivision.
- 4.2. In general, the creation of new lots increases the need for POS. The extent to which the new lots increase the need for POS will determine whether POS is required by Council and the amount of POS required.
- 4.3. The following considerations will guide the exercise of the discretion to impose a requirement that POS be provided and the amount of POS required:
  - (a) Sufficient POS land is to be secured through the subdivision process to provide social and passive recreational opportunities and facilitate multiuser connectivity through land within the community.
  - (b) At the local level, new areas of open space should be secured in developing urban areas to serve the future population.
  - (c) In established areas, priority should be towards improving the connectivity to and between existing POS and improving the quality of related facilities and amenities.
  - (d) Where there is no clear benefit in acquiring new land areas of POS, or POS less than 5% of the area of new lots, a cash contribution will be required<sup>1</sup>. Accumulated monies will be used for related new or renewed facilities and amenities, including paths and connectivity, and any acquisition of land for these purposes, within the local area in accordance with priorities established by Council's asset management plan. Monies will not be used for asset maintenance purposes.
  - (e) In areas where POS has been previously acquired or has been identified as being required in the future, subdivisions benefiting from that POS ought to contribute financially towards its acquisition and subsequent development.
  - (f) POS to be transferred to Council must be developed to an appropriate standard prior to transfer. In order to achieve this principle, applicable subdivision permits may include conditions relating, but not limited to, landscaping, playground equipment, shelters and seating, weed management, fencing, vehicular accesses and/or installation of vehicle barriers, installation of services and lighting and construction of paths.
  - (g) Any developed areas of POS must meet the relevant Australian Standards with an agreement between the developer and Council to have a 12 month defect period which is the responsibility of the developer upon transfer to Council.

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<sup>1</sup> Note that the percentage to which a POS contribution should be made is to be determined through consideration of Section 5.

4.4. Land to be provided to Council for the purposes of POS is to be transferred at the time of the sealing of the final plan by Council. If a permit provides for staged development, POS as land must be transferred as part of the first stage, unless otherwise determined by the General Manager of Council. Where land is to be dedicated, the final plan of subdivision must be accompanied by a Memorandum of Transfer to the Council. This transfer is to be executed by the vendor, identifying the land to be transferred and accompanied by the required Lands Titles Office and stamp duty fees and charges.

4.5. Land used for the following purposes shall not be transferred to Council as POS:

- (a) stormwater detention basins or drainage swales and natural water courses that would otherwise form part of the overall drainage infrastructure within the subdivided area;
- (b) above ground infrastructure such as utility stations;
- (c) below ground infrastructure that would limit the use of the land above it and/or would limit landscaping treatments;
- (d) pedestrian access ways;
- (e) inaccessible coastal areas; and
- (f) land burdened by easements or rights of way.

4.6. Where land is required for any of the purposes identified above at 4.5, it should be provided to the relevant authority for the intended purpose as necessary and will not be accepted by Council as POS.

4.7. Where land for the purposes identified at 4.5 is attempted to be transferred to Council, an additional contribution must be provided being either additional land for POS, or alternatively a cash contribution to the percentage equivalent of the outstanding land contribution or a cash contribution provided in lieu of it.

4.8. Consultation with the Crown is necessary in circumstances when POS in the form of littoral and riparian reserves is proposed to be transferred to it. The LGBMP Act provides that such land can be transferred to the Crown.

## **5. ASSESSMENT OF PUBLIC OPEN SPACE LAND**

5.1. The provision of POS needs to be considered in the context of the neighbourhood, local and municipal recreational needs.

5.2. Land may be taken for the purposes of POS provided that:

- (a) a Council policy specifically identifies it as being required; or
- (b) securing the land would be consistent with one or more the following

principles:

- (i) it would further the objectives of any adopted Council policy;
  - (ii) the land is the best location for POS in the wider area where the subdivision is located and there is low likelihood of alternative sites;
  - (iii) the land is convenient, accessible and fit for purpose (i.e. useable and not overly constrained by topography, shape, natural hazards or infrastructure) and does not duplicate nearby POS;
  - (iv) the land would provide or improve accessibility through the site or surrounding area;
  - (v) the land would provide or improve connectivity to and between existing POS;
  - (vi) the land would provide or improve connectivity to and between existing and prospective POS environments/requirements/plans;
  - (vii) the land would enhance the general amenity and urban character of the area; and
  - (viii) securing the land would protect areas of locally significant natural/environmental or cultural value.
- (c) the land can be developed and maintained within Council's resources having regard to Council's asset management plan;
- (d) the size, shape and location of land is consistent with established Crime Prevention through Environmental Design (CPTED) Principles;
- (e) the land is not unreasonably constrained by land hazards; and
- (f) an assessment is undertaken by Council in relation to the need for POS in accordance with the following considerations:
- (i) the existing provision of POS in the vicinity of the subject area;
  - (ii) the demand for land created by the subdivision;
  - (iii) whether the land is conveniently located to service existing or future users;
  - (iv) the biodiversity value, extent and condition of existing vegetation/habitat;
  - (v) whether the land is fit for propose in terms of size, shape, topography, gradient, infrastructure, conservation covenants or other encumbrances;
  - (vi) the extent to which the land contributes to Council's ability to support a diversity of recreational activities;
  - (vii) the best location for POS in the wider area where the subdivision is located and the likelihood of alternative sites;
  - (viii) the land's vulnerability to natural hazards; and
  - (ix) anticipated service life/longevity due to sea level rise.

## **6. ASSESSMENT FOR CASH IN LIEU OF PUBLIC OPEN SPACE LAND**

- 6.1. Where it is determined that land should not be taken as a POS contribution through part 5 of this Policy, a cash contribution must be considered.
- 6.2. This cash in lieu contribution should be made in compliance with the following assessment criteria:

- (a) the land is located in one of the following zones:
  - (i) General Residential Zone;
  - (ii) Low Density Residential Zone;
  - (iii) Rural Living Zone;
  - (iv) Village Zone;
  - (v) Local Business Zone; or
  - (vi) General Business Zone; or
- (b) a cash contribution in lieu of POS may be required in all other zones when:
  - (i) other land within the estate/suburb has been zoned in the Planning Scheme as being required for POS; or
  - (ii) other land within the estate/suburb has been identified in any Council policy as being required for POS.

6.3. In recognising the objectives and principles of this policy, a cash contribution in lieu of POS (or part thereof) not exceeding 5% of the *improved* value of the area being subdivided shall be required as part of any subdivision in the following circumstances:

- (a) the subdivision proposal does not provide any POS; or
- (b) less than 5% of the total area being subdivided is proposed as POS; or
- (c) the proposed POS land (or part thereof) is not acceptable to Council; or
- (d) it is not desirable to secure POS land from the subject land.

If a valuation is undertaken prior to the construction or completion of all infrastructure required by the subdivision permit, the valuation must be derived on the basis that all subdivision works are complete.

6.4. In determining the percentage of a cash in lieu contribution, the following criteria must be considered:

- (a) the existing provision of POS in the vicinity of the subject area;
- (b) any planned provision of POS in the vicinity of the subject area as identified in the Open Space Strategy, the long-term financial plan, any relevant Council resolution or required by a valid subdivision permit;
- (c) the extent to which the newly created lots will impact upon demand for POS; and
- (d) the size of the newly created lots and the extent to which the lots can provide for their own recreational opportunities.

## **7. POS VALUATIONS AND PAYMENT OF POS CONTRIBUTIONS**

- 7.1. The valuation used to determine the cash in lieu contribution amount is taken as at the date of lodgement of the Final Plan of subdivision.
- 7.2. It is a requirement of this policy that:
- (a) valuations are to be provided through a valuation report undertaken by an independent registered valuer at the subdividers cost and provided to Council;
  - (b) upon the lodgement of the final plan for sealing by Council, the subdivider is to provide the abovementioned valuation report;
  - (c) the date to which the valuation is to be done must be within 3 months of the date of lodgement of the final plan;
  - (d) payment of the POS contribution by the subdivider will constitute deemed agreement by the subdivider of the valuer's assessment and the calculation of the POS contribution (unless the contrary is indicated);
  - (e) cash contributions in lieu of POS are to be paid prior to the sealing of the Final Plan of Subdivision; and
  - (f) in the case of staged subdivisions, POS contributions are to be paid and be received prior to the sealing of the first stage. Alternatively, a separate valuation must be obtained from an independent valuer of each respective stage at the subdividers cost.

**Robert Higgins**  
**GENERAL MANAGER**