



# NORTHERN MIDLANDS COUNCIL

## POLICY MANUAL

### PUBLIC OPEN SPACE CONTRIBUTION

**Originated Date:** Adopted 13 December 2004 – Min. No. 406/04 (as Policy 40)

**Amended Date/s:** Amended 15 June 2009 – Min. No. 169/09  
Amended 21 June 2010 – Min. No. 150/10  
Amended 20 February 2012–Min. No. 41/12  
Amended 16 February 2015 – Min. No. 53/15  
Amended 21 October 2019 – Min. No. 352/19  
Amended 19 February 2024 – Min. No. 24/064

**Applicable Legislation:** *Local Government (Building & Miscellaneous Provisions) Act 1993*

**Objective** To establish a consistent approach on the contribution of land for public open space and the calculation of payment instead of the land for public open space, as well as the associated expenditure of those funds.

**Administration:** Community and Development

**Review Cycle/Date:** 4-year review, next review 2028

#### 1.0 DEFINITIONS

Council	refers to the Northern Midlands Council.
Lot	means a block of land created by subdivision of a larger block of which it was part.
Public Open Space	means space for public recreation or public gardens or for similar purposes.
Subdivide	means to divide the surface of a block of land by creating estates or interests giving separate rights of occupation otherwise than by: <ul style="list-style-type: none"><li>a) a lease of a building or of the land belonging to and contiguous to a building between the occupiers of that building; or</li><li>b) a lease of air space around or above a building; or</li><li>c) a lease of a term not exceeding 10 years or for a term not capable of exceeding 10 years; or</li><li>d) the creation of a lot on a strata scheme or a staged development scheme under the Strata Titles Act 1998; or</li><li>e) an order adhering existing parcels of land.</li></ul>
Subdivision	means the act of subdividing or the lot subject to an act of subdividing.
Suitably Qualified Person	means a person who can adequately demonstrate relevant tertiary qualifications (or equivalent) and experience in a recognised field of knowledge, expertise or practice with direct relevance to the matter under consideration.
Valid Final Plan	A final plan lodged in accordance with section 88 of the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> .

#### 2.0 INTRODUCTION AND PURPOSE

The Northern Midlands Council is committed to providing public open space that is fit for purpose and valued by the community. The *Local Government (Building and Miscellaneous Provisions) Act 1993* (the Act) provides for Council to



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require land for Public Open Space or a payment instead of increasing public open space.

In addition to ensuring Council meets the requirements of the Act, this policy will:

- a) Facilitate a strategic approach to the development of a contemporary and well-planned open space network.
- b) Clarify the process of determining whether a land or cash in lieu contribution is required as part of a subdivision development.
- c) Provide criteria for determining suitability of land contributions for public open space.
- d) Provide guidance on how public open space contributions are to be determined and paid.
- e) Provide guidance on how funds obtained through cash in lieu contributions will be utilised.
- f) Ensure developers contribute to the provision of public open space commensurate with the scale and type of their development.

### 3.0 POLICY SCOPE

- 3.1 This policy applies to applications for subdivision in the Northern Midlands, where new lots are created in the following zones: General Residential, Low Density Residential, General Industrial, Light Industrial, Commercial, Local Business, General Business, Rural Living and Village, or otherwise where a subdivision results in an increased demand and/or utilisation of Public Open Space – to be assessed on its merits in accordance with this policy.
- 3.2 This policy does not apply to strata developments, minor boundary adjustments where no additional lots are created, or subdivision for the development of public utilities, as detailed in the Act.
- 3.3 Public Open Space contributions in excess of this policy may be offered by the developer or in all other circumstances as resolved at a General Council meeting.

### 4.0 PROCEDURE TO DETERMINE PUBLIC OPEN SPACE REQUIREMENTS

- 4.1 Council will require a Public Open Space contribution by way of either:
  - a) A maximum of 5% of the area of the land allocated as Public Open Space and transferred to Council's ownership; or
  - b) A cash in lieu contribution that is calculated in accordance with s117(2) of the Act.
- 4.2 A decision as to whether land or cash-in-lieu is provided will be dependent upon whether the proposed subdivision provides an opportunity to obtain land that meets the public open criteria detailed at section 6.0 of this policy. If the development is not able to provide public open space of community benefit and in accordance with the criteria for land contributions, then cash-in-lieu will be required. The preference for land versus cash-in-lieu will be at the discretion of Council, based on:
  - The attributes of the site,
  - The need for public open space provision in the area,
  - Benefit and value to the community,
  - Compliance with this policy; and
  - Any future Public Open Space Strategy or public open space projects endorsed by Council.

The officer's report supporting the decision of a subdivision application must include a section as to how the relevant parts of the Act and this Policy are complied with.

- 4.3 If a subdivision contains land that is of strategic importance in providing for the open space needs of the community and those needs can only be satisfied by requiring public open space to be provided in excess of 5% of the area of the land in the plan of subdivision, Council may require an additional area (more than 5%) to be provided as public open space, subject to the payment of compensation in accordance with s116 of the Act.
- 4.4 Where a subdivision is submitted in the form of a staged development and a cash-in-lieu contribution is required, the public open space contribution may be paid proportionately in each stage, subject to a new valuation if required, in accordance with 4.5 below.



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- 4.5 Where a cash-in-lieu contribution is required, the developer will be required to provide a current valuation of the land calculated in accordance with s117(2) of Act and prepared by a suitably qualified person, having regard to the following:
- The valuation is to be based on the whole area in the plan of subdivision contributing to the increase in demand for Public Open Space, regardless of zoning and/or previous subdivisions, less any area provided for public open space in the final plan and any area created by the final plan of riparian reserve; and
  - The valuation is to be based on the status of the land as at the date of valid lodgement of the final plan, inclusive of any works required to facilitate the subdivision but excluding any improvements in existence at the time of lodgement of the application for subdivision (i.e. existing structural improvements on the land, such as a dwelling/outbuildings); and
  - The valuation must be completed not more than 3 months prior to the date of valid lodgement of the final plan, noting the requirements of part 4.5 (b) above.
- 4.6 If Council doubts that the valuation provided by the developer properly reflects the true value of the land, Council reserves the right to ask for a revised valuation or seek its own valuation advice and, if necessary, refer the matter for determination as a disputed claim for compensation under the Land Acquisition Act 1993.
- 4.7 All money received by way of contribution shall be reserved exclusively for the purposes of Public Open Space acquisition or improvement.
- 4.8 The expenditure of reserved public open space funds must be for the acquisition or improvement of land for public open space in accordance with s117(5) of the Act and have regard to a future Public Open Space Strategy or any public open space projects endorsed by Council. Expenditure will be subject to a report to Council for consideration.

### 5.0 PAYMENT OF PUBLIC OPEN SPACE CONTRIBUTIONS

The payment of contributions, whether land or cash in lieu, are to be made prior to the sealing of the Final Plan of Subdivision. In a staged subdivision, payment shall be made in accordance with part 4.4 of this policy.

### 6.0 CRITERIA FOR LAND CONTRIBUTIONS

The criteria below will guide Council's assessment of proposed land contributions for public open space to ensure any land received is suitable. It will be at Council's discretion as to whether land offered is accepted and adequately meets the criteria for the intended purpose.

In determining the suitability of land for Public Open Space, consideration must be given to the criteria below. While it may not be possible for all Public Open Space to meet each criterion; not meeting a certain criterion may provide justification as to the unsuitability and refusal of certain land being accepted as public open space.

A developer may seek to offer land that is unviable to develop. In most instances, the characteristics that make land unviable to develop will also make that land unsuitable for public use and unsustainable to manage. It is essential that land is not accepted as open space that Council cannot manage in the future and/or does not provide any benefit to the community. Land used for the following purposes is not to be transferred to Council for public open space as part of the 5% allocation:

- Stormwater drainage swales and natural water courses that would otherwise form part of the drainage within the subdivision,
- Land containing above or below ground infrastructure that would limit the use of the land or landscaping treatments, and
- Pedestrian footways or other kinds of ways dedicated under section 95 of the Act.



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### CRITERIA FOR LAND CONTRIBUTIONS

#	CRITERIA	DESCRIPTION
1	Accessibility	The site is of suitable topography to safely allow for a range of users, including people with limited mobility or a disability.
2	Amenity	The site contributes to the character and attractiveness of the area as a place to live, work or visit.
3	Connectivity	The site contributes to the overall connectivity to existing or future open space or community areas. Users may include pedestrians, cyclists or horse riders.
4	Multifunctional – biodiversity/ecological/recreational	Consider the sites existing biodiversity and ecological values and the potential to contribute to the protection or enhancement of these values, and possibilities for co-existence with recreation values.
5	Character/site values	Consider any special natural or man-made values the site has that will enhance the character of the open space area or adjoining land.
6	Strategically identified	The site has been strategically identified to provide for a specific public use or facility (ie. playground, picnic area, reserve) and takes into account the existing provision of Public Open Space in the area or likely future alternatives.
7	Clear of hazards/good condition	The site is suitable for future intended use - clear of hazards/ contamination (or appropriately rehabilitated) or other issues that could cause Council a financial or safety burden.
8	Financially viable to upkeep/Maintenance & management	Council is able to effectively maintain and manage the land, including weed management, in line with its benefit as an open space.
9	Frontage/Location/Linkages & Visibility	The site shall have a minimum 15m road frontage, with preference given to multiple road frontages (to improve access and visibility) unless site constraints make this physically impossible.
10	Services/Easements	Consider the extent of utility services and easements that would affect the development and use of the land as open space, and avoid where possible unless co-location (such as with detention basins) improve the open space outcomes of the site.
11	Size	Consider if additional land is required to meet open space needs or strategic recommendations (note section 4.3 of this policy).
12	Shape	Ensure the shape of the site is suitable to accommodate future improvements and the open space needs of the area.
13	Community benefit	The land is fit for purpose and provides for substantial community benefit and value.