
Public Open Space Contribution Policy

1. POLICY STATEMENTS

- 1.1 Kingborough Council is committed to providing suitable areas of public open space for community use. Such open space should aim to increase public access to spaces that, encourage healthy lifestyles, create linkages between different activity nodes.
- 1.2 The purpose of this policy is to facilitate a strategic approach to the provision and development of a contemporary and well-planned open space network in Kingborough that meets community expectations.
- 1.3 The policy provides guidance to determine the conditions under which a public open space land contribution will be sought by Kingborough Council and when a cash in lieu contribution can be required. It also specifies how funds gathered from public open space cash in lieu contributions are to be held and used.

2. DEFINITIONS

- 2.1 **Public Open Space** is defined by the *Local Government (Building and Miscellaneous Provisions) Act 1993* as ‘space for public recreation or public gardens or for similar purposes’.
- 2.2 **Improvement** is defined by the Act as ‘...landscaping, fencing and provision of playground equipment, walking paths, car parking, access and toilet facilities’.
- 2.3 **Planning Scheme** – *Kingborough Interim Planning Scheme 2015* or any subsequent planning scheme.
- 2.4 **Contribution** means a public open space contribution, being a contribution paid by a developer as part of a subdivision. A contribution can include land or cash in lieu.

3. OBJECTIVE

- 3.1 To ensure that adequate provision is made for public open space that enables high quality recreation outcomes that meet the needs of Kingborough’s growing population in a manner that provides:
 - enhanced scenic amenity and sense of place;
 - opportunities for residents and visitors to connect and engage with others (i.e. building social capital);
 - environmental management;
 - provision of recreational utility;
 - the encouragement of healthy lifestyle choices;
 - childhood development through quality, age-appropriate play opportunities;
 - the provision of informal and formal sporting opportunities;
 - alternative and active transport options; and
 - economic development.
- 3.2 To ensure that developers contribute to the provision of public open space commensurate with the scale and type of their development.

- 3.3 To provide clarity around the circumstances under which Council will require a land contribution for public open space from a development and when a cash in lieu contribution will be required.
- 3.4 To provide clear guidelines to developers to understand the public open space contribution rationale and process.
- 3.5 To provide consistency and equity in the assessment and application of conditions for public open space contributions.
- 3.6 To ensure that the provisions of the Local Government (Building and Miscellaneous Provisions) Act 1993 (“the Act”) are appropriately implemented with respect to the public open space being provided as part of the land subdivision process.

4. SCOPE

- 4.1 This policy applies to applications for subdivision in Kingborough, where new lots are created.
- 4.2 To clarify, the above-mentioned requirement does not apply to boundary adjustments where no new lots are created or subdivision for the development of public utilities.
- 4.3 Council has a head of power to acquire public open space land or cash in lieu from subdivisions, under the *Local Government (Building and Miscellaneous Provisions) Act 1993* and also under the *Kingborough Interim Planning Scheme 2015*.
- 4.4 This head of power to acquire public open space land or cash in lieu from subdivisions will continue to exist under the Tasmanian Planning Scheme when it comes into force for Kingborough.
- 4.5 This policy shall be applied in accordance with the strategic outcomes sought in the *Kingborough Open Space Strategy 2019* (or subsequent versions).

5. PROCEDURE (POLICY DETAIL)

- 5.1 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.

This requirement applies regardless of zoning. A credit may be applied where a proposed lot(s) in a subdivision will not create additional demand for public open space.

- 5.2 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 objectives of this policy and the public open space dedication guidelines provided in section 6. If the development is not able to provide a public open space component of substantial community benefit and accordance with the guidelines, then cash-in-lieu will be required.
- 5.3 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 *Local Government (Building and Miscellaneous Provisions) Act 1993*.

- 5.4 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 in accordance with 5.7(b) below.
- 5.5 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 the *Local Government (Building and Miscellaneous Provisions) Act 1993* and including the following:
- The valuation is to be based on the whole area in the plan of subdivision, regardless of zoning and/or previous subdivisions;
 - The valuation is to relate to the unimproved value of the land at the date of lodgement of the proposal plan, or, if the date of payment of the contribution is more than 2 years after the date of the permit being issued, the unimproved value not more than 6 months prior to the payment;
 - The valuation is to take into account the potential of the land for subdivision;
 - The valuation is to take into account the risk of not obtaining a permit for subdivision as proposed (for example if the number of lots are reduced as part of the assessment process or by conditions of consent)
- 5.6 If Council doubts that the valuation provided by the developer properly reflects the true value of the land, Council reserves the right to 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*.
- 5.7 The officer's report supporting the decision making of a subdivision application must include a section as to how the relevant parts of the Act and this Policy are applied.
- 5.8 All money received by way of contribution shall be reserved by Council in a separate account. 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 *Local Government (Building and Miscellaneous Provisions) Act 1993* and have regard to the *Kingborough Open Space Strategy 2019* (or subsequent version) or any other public open project endorsed by Council. Expenditure will be subject to a report to Council for consideration.

6. PUBLIC OPEN SPACE DEDICATION GUIDELINES

- 6.1 In determining the size and location of a land contribution for public open space there must be a demonstrable community benefit that will support active or passive recreation outcomes.
- 6.2 In addition to 6.1, a public open space land contribution will only be considered where one or more of the following apply:
- The land is identified in the *Kingborough Open Space Strategy 2019* (or subsequent versions);
 - The land adjoins or is nearby an existing public open space managed by Kingborough Council or another authority;
 - The land provides or improves connectivity (e.g. for pedestrians and cyclists) to other existing or prospective open space areas or public destinations;
 - The land provides or improves permeability through the site or surrounding area;
 - The land provides for a riparian reserve or habitat corridor;

- The land enhances the general amenity and urban character of the area;
- The land has special values (for example native flora, fauna, habitat, geomorphology, water catchment or cultural heritage values);
- The land is strategically located to provide for a specific public facility (for example a playground or sport or recreational facility);
- The land is suitable for the intended public open space purpose;
- The land is not subject to unmanageable hazards; and/or
- The land can be sustainably managed.

6.3 Land uses for the following purposes should not impact on the outcomes sought by 6.1 and 6.2:

- Stormwater drainage swales and natural water courses that would otherwise form part of the drainage within the subdivision; and
- Above or below ground infrastructure that would limit the use of the land or landscaping treatments.

6.4 Land for pedestrian footways or other kinds of ways which are required to be dedicated to Council under section 95 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* will be over and above the public open space requirement of section 116 of the Act and the planning scheme.

7. COMMUNICATION

7.1 The policy will be placed on the Council website.

8. LEGISLATION

The following legislative requirements should be considered in conjunction with this policy:

8.1 *Land Use Planning and Approvals Act 1993*

8.2 *Local Government (Building and Miscellaneous Provisions) Act 1993*

9. RELATED DOCUMENTS

9.1 Kingborough Open Space Strategy 2019, or subsequent version.

9.2 Kingborough Interim Planning Scheme 2015 or subsequent scheme.

9.3 Kingborough Council Strategic Plan 2015-2025.

10. AUDIENCE

10.1 Councillors, Council Officers, developers and general public.