

**5.3 CASH-IN-LIEU OF PUBLIC OPEN SPACE**

**Attachments:** Nil

**RECOMMENDATION:**

**That Council RESOLVES to implement the Western Australian Planning Commission Development Control Policy 2.3 – Public Open Space in Residential Areas from 1 July 2023.**

**PURPOSE OF REPORT:**

For Council to consider implementing the Western Australian Planning Commissions Development Control Policy 2.3 – Public Open Space in Residential Areas.

**BACKGROUND:**Planning Framework Overview

The [Planning and Development Act 2005](#) (Act) identifies that certain land can be required to be vested in the Crown for parks, recreation grounds or open space generally (POS) or paid as cash-in-lieu of POS. This is to occur as part of a subdivision application. The Western Australian Planning Commission (WAPC) [Development Control Policy 2.3 – Public Open Space in Residential Areas](#) (DC 2.3) states that:

The Commission's normal requirement in residential areas is that, where practicable, 10 percent of the gross subdivisible area be given up free of cost by the subdivider and vested in the Crown ... as a Reserve for Recreation. In determining the gross subdivisible area the Commission deducts any land which is surveyed for schools, major regional roads, public utility sites, municipal use sites, or, at its discretion, any other non-residential use site.

The 10 percent requirement is derived from the recommendations contained in the Stephenson-Hepburn Plan. That report states that for most areas a standard of 3.36 hectares per 1,000 population (or 30 persons per hectare) (excluding school playing fields) is recommended as sufficient provision for public open space. In 2018, the City had 3.37 hectares per 1,000 population (Public Open Space Strategy, 2018).

The WAPC may impose an open space condition with a footnote seeking the provision of a cash-in-lieu equivalent of the public open space, where:

- the local government has requested the condition and identified an existing or potential deficiency of public open space;
- the local government has an adopted strategy to provide open space by land acquisition in the locality of the subdivision; and
- the otherwise required 10 percent area of open space would yield an area of unsuitable size/s and dimension/s to be of practicable use.

This condition can be imposed in Vincent through the proposed cash-in-lieu of POS management practice and existing City Public Open Space Strategy 2018 (POS Strategy).

The WAPC may require an open space contribution of a lesser amount than 10 percent if there is existing public open space within the locality. The WAPC will seek the advice of the local government in these instances.

Perth and Peel @ 3.5 million

The WAPC estimate that based on current trends, more than 3.5 million people will live in Perth and Peel by 2050. Urban sprawl is not sustainable and infill development will place increasing pressure on WA's resources, social and physical infrastructure and natural environment.

An additional 800,000 new homes are required to accommodate this projected population growth. Approximately 213,130 of new infill dwellings are expected to be delivered in Perth's Central Sub-Region, and 11,490 in the City of Vincent.

Town Planning Scheme No. 1 and Local Planning Scheme No. 2

The City's Town Planning Scheme No. 1 (TPS1) was gazetted in 1994 and the Local Planning Scheme No. 2 (LPS2) was gazetted in 2018.

The LPS2 considered the density targets set by the WAPC's Directions 2031 (now Perth and Peel @ 3.5 million). To protect the low-to-medium density areas within Vincent, rezoning and upcoding of land occurred within town centres and along activity corridors.

Some examples are as follows:

Location	TPS1 zoning	LPS2 zoning
Scarborough Beach Road (Brady St to The Boulevard)	Residential R60 Small area zoned Local Centre and Commercial	Mixed Use R80 Local Centre and Commercial zones as existing
Scarborough Beach Road (The Boulevard to Oxford Street)	Commercial and District Centre	District Centre
Oxford St (Salisbury St to Bourke St)	Residential R60	Residential R100
Scarborough Beach Road (Oxford St to Loftus St)	Residential R60	Residential R80
Leederville Town Centre	Commercial, Residential-commercial R80, District Centre	Regional Centre and a small portion of Residential R80
Newcastle Street (Loftus St to Charles St)	Residential R80	Mixed use R160

These locations can accommodate higher density residential development. This will place greater pressure on the existing POS throughout the City.

Current Application of Cash-in-Lieu of POS in Vincent

On 8 February 2022 at its Ordinary Meeting, Council provided its support for the Leederville Precinct Structure Plan (LPSP) to be considered by the WAPC.

Clause 5.1.12 Public Open Space states:

- a. Pursuant to s.153(1)(b) of the *Planning and Development Act 2005*, all subdivision of land that creates three or more lots must be subject to a condition requiring that the owner of the land provide 10 percent of the site area, or make a payment equal to 10% of the value of that land to the local government.
- b. Sub-clause 'a' applies to all subdivision types including strata, survey strata, freehold, and community title. If a portion of land is subject to multiple eligible subdivisions, that portion of land will only be required to contribute once.

The City included this clause as the LPSP will increase the density of the area thereby increasing pressure on the existing POS.

Following the adoption of the LPSP by Council, Administration has commenced recommending to the WAPC that cash-in-lieu of POS valued at 10 percent of the land value be provided by all subdivisions creating three or more lots, including built strata subdivisions (new subdivided apartment buildings). Only one such subdivision has been approved. In that case the WAPC applied the cash-in-lieu of POS requirement, but instead of 10% of the land value they required it to be 4.02 percent of the value of the land. The WAPC's methodology was based on the shortfall of POS in the immediate vicinity of the site, being 4.02 percent.

As there has previously not been a Council adopted position, the City has not recommended that cash-in-lieu of POS be applied to any subdivision applications outside of the LPSP. However, the City would commence recommending that cash-in-lieu of POS be applied to all applicable subdivision applications from 1 July 2023 if approved by Council.

Department of Planning, Lands and Heritage (DPLH) Advice

Administration met with officers from the DPLH to discuss application of DC 2.3.

The DPLH encouraged the City and other local governments to recommend a condition for cash-in-lieu of POS on subdivisions that are proposed in areas that have a shortfall in POS. The DPLH recognises the pressure increased density, particularly from built strata development, is having on the individual parks and reserves.

**DETAILS:**

The City's recommendation to the WAPC will be based on DC 2.3 and will consider the amount of existing POS within the locality, the quality and function of the POS, and whether a cash-in-lieu of POS contribution has previously been made. Whilst the City can recommend up to 10% of the land value be made as a cash-in-lieu contribution due to the ongoing pressures development places on existing POS, the WAPC will undertake an independent assessment on each application and will determine the contribution amount. The City will continue to liaise with the WAPC to understand their exact calculations for requiring cash-in-lieu of POS contributions.

Using DC 2.3 and [Position Statement: Expenditure of Cash-in-Lieu of Public Open Space \(2020\)](#), the City has developed a management practice to guide the process for requiring and acquiring cash-in-lieu of public open space.

The general process is summarised as follows:

1. Identify the need for cash-in-lieu of POS through assessment of a development application.  
  
Any development proposing five or more lots, including green title, survey strata and built strata applications would be required to pay cash-in-lieu of POS.
2. Undertake an assessment to identify the need for POS within the locality.  
  
Points of consideration would directly relate to '2.5 Public Open Space Gaps Analysis' within the City's POS Strategy and include, but not be limited to, amount, quality, distribution (e.g. passive versus active), access to, and existing facilities of the POS provision.
3. Advise the applicant as part of the development assessment phase that cash-in-lieu of POS would be required in line with DC 2.3. The correspondence would identify the general process to confirm the amount payable and when payment would be required. An advice note would also be included on the determination notice.
4. Subdivision application lodged.
  - (a) For subdivision applications submitted through the WAPC, the applicable model condition would be imposed on the subdivision application. The applicant would be required to 'clear' the condition by paying the applicable amount.
  - (b) For applications submitted directly to the City (Application for Approval of a Strata Plan or Leasehold (Strata) Plan), the assessing officer would check the conditions and advice notes on the development approval and impose the applicable condition on the application.

When applying for final endorsement, an application to the WAPC for Endorsement of a Strata Plan or a Leasehold (Strata) would be submitted to the City. The assessing officer would confirm all conditions had been satisfied, including payment of the cash-in-lieu of POS. Once approval from the City was obtained, the applicant would lodge their application with the WAPC for final endorsement.

5. In accordance with section 155 of the Act and to determine the cash-in-lieu of POS payable, the market value of the land is to be determined by a licensed valuer, at the cost of the landowner. The percentage land that would otherwise be contributed for POS (i.e. 10 percent) would be applied to the value of the land.

Expenditure of cash-in-lieu of POS

The POS Strategy identifies medium term Key Action #6:

Initiate a POS Development and Land Acquisition Reserve Fund.

This has been completed and can be used for the expenditure of cash-in-lieu funds received. The following Tasks are outlined in the POS Strategy to achieve this Key Action:

Implement a program of regular contributions to these reserve funds to ensure the availability of sufficient funding over the long-term.

Investigate the feasibility of attracting developer contributions for community infrastructure (POS) in accordance with State Planning Policy 3.6.

When spending the funds received, the City is required to provide a written request to the Minister for Planning. The City would be required to outline where the funds were received and where they would be expended to demonstrate the POS upgrade would benefit the contributors. This is aligned with section 4.3 of the DC 2.3.

To determine how and where funds should be spent, the City would consider the location in which the funds were received and sections 2.4 (public space audit) and 2.5 (public open space gaps analysis) of the City's POS Strategy. This would ensure the funds spent would benefit the contributor/s and ensure transparent prioritisation of spending on public open spaces.

The expenditure is required to be in line with the POS Strategy and benefit those developments that contributed. The Minister for Planning would make this determination as and when the City applies for expenditure of the funds. Funds can also be used for acquiring land in shortfall areas.

**CONSULTATION/ADVERTISING:**

Requiring developers to pay cash-in-lieu of POS would be in line with the City's Strategic Community Plan 2018 – 2028, the POS Strategy, the Act and DCP 2.3.

A community and stakeholder engagement plan will be developed in accordance with the City's Community and Stakeholder Engagement Policy. The following activities would occur as a minimum:

- Notice published on the City's website;
- Notice posted to the City's social media;
- Notice published in the local newspapers; and
- Letters/emails to proponents engaged with the City on pre-lodgement development applications that would be captured by this requirement.

The engagement plan would seek to inform the community and key stakeholders of the relevant information and invite them to comment on potential issues so that these can be problem solved prior to implementation.

The implementation timeline is long (commencement July 2023) to allow for significant notice and engagement, to inform developers prior to lodgement of a development application, so that this can be considered in their development feasibility.

**LEGAL/POLICY:**

- *Planning and Development Act 2005*
- WAPC Development Control Policy 2.3 – Public Open Space in Residential Areas
- Local Planning Scheme No. 2
- Public Open Space Strategy 2018

**RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to implement the DC 2.3.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

*Enhanced Environment*

*Our parks and reserves are maintained, enhanced and well utilised.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

**PUBLIC HEALTH IMPLICATIONS:**

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

**FINANCIAL/BUDGET IMPLICATIONS:**

The Long Term Financial Plan 2022/23 – 2031/32 (LTFP) highlights the City's challenge with funding all major capital projects and shows insufficient funds to pay for more expensive, multi-generational projects.

There are significant key projects identified within the POS Strategy that would cost upwards of \$30 million. These are not fully captured in the LTFP. Implementing DCP 2.3 is one way of building a reserve to deliver on the POS Strategy.

**COMMENTS:**

Providing access to quality POS through the subdivision process is essential to healthy, liveable communities. Adoption of the City's POS Strategy supports the City's ability to require cash-in-lieu of POS as it identifies shortfalls in POS and its amenities and the gaps that need to be filled through this cash-in-lieu requirement.

Imposing cash-in-lieu of POS in line with the DC 2.3 would benefit the City by improving amenity for its residents and other visitors.

Funds can be spent on assisting with implementing current and future projects. For example:

- Implementation of certain elements of master plans, development plans and landscape plans. (i.e., the Robertson Park Development Plan, Banks Reserve Master Plan and Haynes Street Reserve Development Plan).
- Leederville Skate Park Redevelopment.
- Amenity upgrades (i.e., bench seats, water fountains, shade, landscaping, lighting etc.)
- Play Space upgrades (i.e., playgrounds, basketball courts, skate parks/BMX).