



Brighton Council

POLICY NAME: PUBLIC OPEN SPACE

POLICY No: 6.6

PURPOSE OF POLICY:

The purpose of this policy is to:

- a) Ensure that adequate provision is made for quality public open space in the municipality. Such open space should aim to increase public access, encourage healthy lifestyle practices, create linkages between different activity nodes and conserve important cultural and natural environments.
- b) Establish clear guidelines to assist Council in determining when provision of public open space will be sought and when the payment of a cash in lieu contribution required will be sought, from subdivision applications.
- c) Establish a consistent method of determining the value of cash in lieu contributions when they are required; and
- d) Provide a framework to determine how monies derived from cash in lieu contributions should be held and disposed of within the Municipality.

SCOPE:

This policy applies to all applications to subdivide land that will result in increased development potential in the Brighton Council area.

BACKGROUND:

This policy gives recognition to the Council's powers and responsibilities in relation to public open space under the provisions of the *Local Government (Building and Miscellaneous Provisions) Act 1993* and associated regulations. These provisions enable the Council to:

- a) Require a subdivider of land (irrespective of land-use zoning) to provide to Council up to 5% of the land being subdivided;
- b) Require public open space in excess of the 5% contribution as a part of any subdivision proposal subject to appropriate compensation; or
- c) Require a subdivider to make a contribution of cash in lieu of the provision of land, either in part or whole.

The legislation further provides that Council must keep cash in lieu contributions in trust to be used for the acquisition or improvement of land for public open space for the benefit of inhabitants of the municipal area.

POLICY:**1.0 General Principles**

- 1.1 Either a land contribution or cash in lieu contribution must be taken for the purposes of providing public open space where lots are created that may result in increased development potential, thereby increasing the demand for public open space.
- 1.2 A proposal for subdivision for the purposes of a boundary adjustment or consolidation of land in any Zone where no additional lots are being created shall not be subject to the Policy.
- 1.3 Recommendations for public open space and/or cash in lieu contributions will be supported by:
 - a) an assessment of open space facilities in the locality
 - b) an indication as to how the open space or cash contribution will enhance open space facilities
 - c) appropriate consultation with the subdivider and any other interested parties, and
 - d) consultation with the Crown is compulsory in the case of proposed littoral or riparian reserves

2.0 Assessment for the provision of a land contribution

- 2.1 Areas proposed to be set aside for public open space will be assessed in terms of:
 - a) whether they are conveniently located for use by surrounding residents
 - b) whether they are of a size, shape and gradient suited to their proposed use
 - c) whether they allow for a reasonable level of safety and security for users and adjoining residents
 - d) whether they can be developed and maintained within Council's resources
 - e) whether they complement existing open space facilities
 - f) their ability to support a diversity of recreational activities
 - g) protection of environmental and/or visual values, and
 - h) potential connection to other open spaces and contribution to the recreational trails system throughout the municipality.
- 2.2 In cases where a contribution has previously been taken by Council on a site, a contribution will still be required if the number of lots is increasing.
- 2.3 Land used for the following purposes is not to be transferred to Council for public open space:
 - a) Stormwater drainage swales and natural water courses that would otherwise form part of the drainage within the subdivision
 - b) Above or below ground infrastructure that would limit the use of the land or landscaping treatments, and
 - c) Pedestrian footways or other kinds of ways

- 2.4 Council will work with the subdivider to identify the most appropriate location for the public open space land contribution with Council responsible for the final determination of the location and boundaries of the public open space in the subdivision.
- a) The developer must bear the costs of defining the boundaries of the public open space on the plans.
 - b) Council retains the discretion to acquire less than five percent.
 - c) Consideration of acquiring less than five percent may be supported where the subdivider provides on the public open space capital improvements that increase the utility or quality of the land as public open space.
- 2.5 POS to be transferred to Council through the subdivision process is to 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, weed management, fencing, vehicular accesses and/or installation of vehicle barriers and construction of multiuser paths.
- 2.6 In cases where a land contribution falls deficient of the required 5% land contribution, the difference shall be requested as a cash-in-lieu contribution.

3.0 Assessment for the provision of cash-in-lieu of Public Open Space

- 3.1 As provided by Section 117(2) of the Act, a 5% cash-in-lieu contribution is to be accepted for subdivisions where no land can be provided that provides a strategic benefit to Council's open space network within the following zones:
- a) General Residential, Inner Residential, Low Density Residential, Rural Living, Village, Urban Mixed Use, Local Business, General Business, Light Industrial, and General Industrial (excluding the Brighton Hub).
- 3.2 A contribution of cash in lieu of open space will be required where:
- a) public open space exists within 400 metres walking distance of any lot and there is an opportunity to improve that open space as identified in the Open Space Strategy.
 - b) If the subdivided land is not able to provide a public open space component of substantial community benefit as considered against clause 2.1, or
 - c) it is impracticable to provide public open space as part of the subdivision.

4.0 Procedure

- 4.1 The applicable public open space cash in lieu contribution equates to 5% of the improved land value of the land, where no provision is made for a land contribution.
- 4.2 Where no provision has been made for a land contribution, the subdivider must submit a valuation report at their cost which is undertaken by an independent registered valuer for the purposes of determining the cash in lieu of public open space contribution.
- 4.3 The valuation is to specify the improved value of the whole of the area comprised in the plan as at date of lodgement with the Recorder of Titles on the assumption that the subdivision has been completed, and lots are available for individual sale¹.

¹ Dourias MGH Pty Ltd v Clarence City Council [2025] TASFC 10

The valuation must apply standard market valuation principles and include evidence and justification for the valuation.

- 4.4 The cash-in-lieu of public open space must be in the form of a direct payment made before the sealing of the final plan of survey.
- 4.5 Where land is to be dedicated, this public open space must be transferred to the Brighton Council by Memorandum of Transfer submitted with the Final Plan of Survey and at no cost to Council.

5.0 Utilisation of Public Open Space funds

- 5.1 All monies received will be reconciled at year end against Capital New or Upgrades and distributed accordingly.
- 5.2 The expenditure of cash in lieu funds will be in accordance with any adopted Council strategy or plan that has public open space objectives, or in order to meet any local public open space or recreational needs.
- 5.3 The funds will be used for strategic land acquisition of public open space or capital improvement of public open space facilities or to augment or upgrade active recreation facilities, rather than for operational maintenance of existing infrastructure.

ROLES & RESPONSIBILITIES:

Planning: Ensure that the requirements of this Policy are applied to all relevant subdivisions.

Finance: Ensure compliance with clause 5.

REFERENCES:

Local Government (Building and Miscellaneous Provisions) Act 1993

Brighton Council Strategic Plan 2023-2033

Brighton Municipal Area Recreation Plan 2010

Brighton Structure Plan 2018

Brighton Town Centre Local Area Plan 2012

Open Space Strategy 2025

ADMINISTRATIVE DETAILS:

Policy compiled: October 2012

Policy Adopted: November 2012; 17 June 2025 (OCM); 21 October 2025 (OCM); 17 February 2026 (OCM)

Reviewed: October 2016, April 2017, October 2021; May 2025, October 2025, January 2026

To be reviewed: January 2030

Responsibility: Director Development Services