

# Land Division Infrastructure and Open Space Management Policy

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Responsible Manager	Manager City Development Manager Civil Assets
Other key internal stakeholders	Director Community and Cultural Development Director Assets and Environment Manager Parks Manager Recreation and Leisure Services Manager Strategy and Governance
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## 1. PURPOSE

The purpose of this policy is to express Council's position concerning the requirement for new public Infrastructure and open space resulting from new land divisions being considered under the Planning, Development and Infrastructure Act 2016.

Establishing clear guidelines will ensure Council adopts a consistent and equitable approach to its decision making.

## 2. POLICY

The following policy position relates specifically to considerations regarding the acquisition of Open Space as part of land division process, together with decisions made in relation to the provision of prescribed infrastructure under regulations 81 to 90 of the Regulations.

### 2.1 Open Space Contributions

The Act provides that Council may acquire Open Space, a financial contribution in lieu of Open Space, or a combination of Open Space and a financial contribution, where a division of land into more than 20 Torrens Title allotments is proposed.

It is important to note that a decision to acquire Open Space or to request a financial contribution is a matter for the discretion of Council. More specifically, despite its entitlement to open space, or a combination thereof, Council may choose to dispense with the request for open space or a financial contribution.

It is recognised that Open Space is integral to the character of the City of Tea Tree Gully and the quality of lifestyle experienced by the community. Open Space has substantial social, cultural, environmental and economic value and contributes to the health and well-being of all age groups. It supports physical activity, recreation, relaxation, social interaction and a sense of well-being. Open Space also enhances urban development which can be far removed from the natural environment through the provision of natural spaces for trees, and habitats for wildlife.

For these reasons, and except where otherwise resolved, Council will always require as part of the land division process, appropriate Open Space, a financial contribution to maintain Open Space, or a combination of both of the above options, in accordance with the guidelines below.

### 2.2 The Concept of Acquiring Open Space

As a first priority, Council will seek to ensure that Open Space is supplied for residents of the new estate. This will mean that where appropriate, a portion of land forming part of the plan of division will desirably be set aside as a reserve.

In principle, support for the Open Space will be subject to adherence with the strategic directions contained within the following Council documents:

- a. Planning and Design Code
- b. Strategic Plan 2011-2015
- c. Open Space Strategy
- d. City Masterplan
- e. Playspace Guide

- f. Or agreed masterplan for the site.

Where the Development Plan incorporates concept plans, objectives or principles relating to the provision and location of Open Space, the Open Space must be provided in accordance such requirements, notwithstanding any other provisions contained within this policy.

If the Development Plan is silent on the requirement for open space, the open space will need to satisfy the requirements listed below.

## 2.3 The Characteristics of the Open Space to be vested in Council

Subject to the requirements of Council's Development Plan, Council will seek to obtain open space which meets one or more of the following requirements:

1. The Open Space is selected for its environmental benefit either in its current form or future opportunities. For example the Open Space has biodiversity value which Council seeks to preserve, or the Open Space contains trees with environmental benefit or amenity value (whether regulated or not) and which may otherwise be under threat of removal if not located on land vested in Council
2. The Open Space is to accommodate (either now or in the future) Council infrastructure. For example the open space may be strategically located to accommodate a future wetland
3. The Open Space will provide for either active or passive recreation and will be of direct benefit to future occupants of allotments forming part of the land division
4. The Open Space will provide amenity value and will be of direct benefit to future occupants of allotments forming part of the plan of division
5. The Open Space will be developed by the developer to provide community recreational facilities that comply with Council's Open Space Policy and suitable to the local amenity.

## 2.4 Money to be paid to Council in Lieu of Open Space

Although an important asset, the acquisition of Open Space will inevitably come at a cost to Council. Such costs will vary depending on the specific characteristics of the Open Space. It is therefore essential that the benefits to the local community of having access to additional Open Space outweigh the financial burden associated with the ongoing maintenance of such Open Space.

Subject to the Council's Development Plan, where the Open Space does not satisfy the above-mentioned requirements, Council will require that the mandated financial contribution in lieu of the Open Space will be paid to Council. This financial contribution will be prescribed in the Planning, Development and Infrastructure Fees, Charges and Contributions Regulations 2019.

The Council is legally obliged under the Act to deposit money received in place of Open Space into a designated fund established solely for this purpose and known as an Open Space Fund.

Council will, in the first instance, seek to expend any funds on acquiring, maintaining or developing Open Space in close proximity to the land division and will be developed in accordance with Council's Open Space Policy. This will ensure that where possible, local residents receive a direct benefit from the financial contributions received by Council through the land division process.

Where this is not reasonably possible, the funds will be used to develop open space as near as reasonably practicable to the development land subject to compliance with Council's Open Space Policy and the relevant legislation.

Where a combination of Open Space and a financial contribution is received, any financial contribution will be spent developing the Open Space acquired as part of the land division process.

## 2.5 Land to be gifted to Council

A developer or land owner may propose to gift land to Council. This may occur as part of a development application or alternatively by way of separate agreement with Council.

Negotiations with developers and land owners concerning the gifting of land may be triggered through the development application process for a land division proposing less than 20 allotments or a development which involves the construction of new buildings only.

In the case of a plan of division for the creation of more than 20 allotments, the gifting of land may also arise where a developer proposes to a level of Open Space, which exceeds the minimum amount referred to in the Regulations.

Although the vesting of such land can be of benefit to Council (e.g. in instances when Council wishes to acquire major creeks for pedestrian linkages or environmental purposes) the gifting of such land may also come at a cost to Council (e.g. ongoing maintenance costs).

A proposal to gift land to Council will only be accepted where the land can satisfy one or more of the desirable open space characteristics listed within this Policy (refer to 'The Characteristics of the Open Space to be Vested in Council').

A decision to accept any land gifted to Council may only be made by a decision of the Council.

## 2.6 Infrastructure Requirements for new land divisions

A Torrens Title land division may be required to satisfy the prescribed requirements under regulations 81 to 90 of the Regulations. These prescribed requirements relate to the provision of Infrastructure. This Infrastructure is to be installed to the satisfaction of Council and prior to Land Division Clearance.

Subject to Council approval, a developer may also enter into formal agreements with Council to bond particular infrastructure. This allows the developer to receive Land Division Clearance prior to completing certain works.

In relation to road verge development, the following guidelines have been established having regard to the following:

1. The need to minimise ongoing costs associate with road verge maintenance whilst still generating pleasant streetscapes with a high level of amenity
2. The tendency for land owners to modify road verges at a later date when landscaping front yards.

The concept of creating public Roadways for new land divisions is generally supported by Council in instances where the creation of the public Road satisfies the following criteria:

1. The creation of a public Road is consistent with the objectives and principles contained within Council's Development Plan
2. Roads, water tables (kerbs and gutters), culverts and drains are designed and constructed in accordance with relevant Australian Standards and recognised engineering practice and in accordance with the minimum specifications contained within regulations 81 to 90
3. A footpath will be constructed on at least one side of a Road, unless varied by Council, in accordance with the principles contained in Council's Footpath Construction Strategy
4. The location and alignment of the footpath on either or both sides of the Road will provide sufficient space for the planting of street trees. Even in the absence of a footpath on a particular side of the Road, Council will take into account in its planning, possible future expansions of the footpath to that side of the Road. The selection of such trees will be to Council's satisfaction and will form part of the prescribed requirements for Land Division Clearance
5. Except where otherwise negotiated or mentioned within this Policy, verges will contain no tripping hazards, and water sensitive urban design principles will be considered wherever possible and will incorporate ornamental gravels or dolomite to the reasonable satisfaction of Council.
6. Road verges for main entryways/thoroughfares of new estates will be developed to a higher standard and may incorporate landscaping and street tree planting to the reasonable satisfaction of Council
7. Road verge enhancements (e.g. additional landscaping etc.) exceeding the requirements described above will be considered on a case by case basis, having regard to future maintenance requirements and the need to minimise tripping hazards
8. Lighting for Roads and public spaces will be designed and installed in accordance with Australian Standards. Except where otherwise determined by Council the public lighting installation will be from the SA Power Networks standard range of SA Power Networks luminaries and columns.

## 2.7 Decisions to accept open space, roads and infrastructure

The decision to accept open space, Roads and infrastructure will be made in accordance with the requirements of Attachment 1 forming part of this Policy.

When a decision is made under delegation to accept an Open Space in accordance with this Policy, and an Information Report will be submitted to Council

### 3. DEFINITIONS

For the purposes of this policy the following definitions apply:

#### Act

Refers to the Planning, Development and Infrastructure Act 2016

#### Infrastructure

For the purposes of this policy, Infrastructure refers to any works specified under regulation 81 to 85 and section 198 of the Act. Such Infrastructure includes:

- a. Roads
- b. Footpaths
- c. Water-tables
- d. Kerbing
- e. Culverts
- f. Drains
- g. Open space
- h. Landscaping within road verges.

#### State Commission Assessment Panel

State government planning authority.

#### Land Division Clearance

Refers to Council's notification to the Development Assessment Commission that Council's conditions in relation to the installation of infrastructure and the development of land, have been satisfied. A Land Division Clearance from Council is required before a certificate under section 102 (1) (v) of the Act can be issued. This certificate is required before the plan of division can be deposited with the Lands Titles Office and confirms that Council's requirements have been satisfied.

#### Open Space

Refers to land that has been reserved for the purpose of formal and informal sport and recreation, the preservation of natural environments (such as creeks and waterways) and environmentally valuable sites, the provision of green space and urban stormwater management.

#### Road and Roadway

Means a public or private street, road or thoroughfare to which public access is available on a continuous or substantially continuous basis to vehicles or pedestrians or both and includes –

- a. A bridge, viaduct or subway; or
- b. An alley, laneway or walkway
- c. A road reserve and all associated infrastructure contained within this reserve.

#### Regulations

Refers to the

[Planning, Development and Infrastructure Regulations 2017](#)

[Torrens Title Land Division](#)

Torrens title land division is the division of land into at least two allotments, which are held independently of one another. There are generally no shared facilities.

## 4. LEGISLATIVE FRAMEWORK AND OTHER REFERENCES

Although there is no legislative requirement for Council to have a policy relating to this matter, the following legislation is relevant to this Policy.

### [Planning , Development and Infrastructure Act 2016 and Planning, Development and Infrastructure Regulations 2017](#)

The division of land may only occur if first approved under this Act.

In addition to performing an assessment of a land division against the relevant provisions of Planning and Design Code, the division of land must satisfy particular conditions as stipulated within this Act.

In the case of a plan of division involving the creation of Torrens Title allotments, these conditions are listed within section 102(1)(c) of this Act.

In the case of a community or strata plan, these conditions are listed under section 102(1)(d) of this Act.

*According to sections 102(1)(c)(iv) and 102(1)(d (iv) of this Act, where a land division proposes to vest land in the Council's ownership, the Council must consent to this occurring. If the Council does not consent to land being vested in its ownership, then the related land division application may be refused.*

*The considerations which the Council will have regard to in deciding whether to accept vesting of land in its ownership are contained within this policy.*

Further, a plan of division involving the creation of Torrens Titled allotments must meet particular prescribed requirements, as specifically identified under regulations 81 to 90 of the Regulations (See section 102(1)(c)(v) and 138 (1) of the Act and regulation 86 of the Regulations).

These prescribed requirements relate to the following:

- a. Width of Roads and thoroughfares
- b. Road widening
- c. Requirements as to the forming of Roads
- d. Construction of Roads, bridges, drains and services

Many of the requirements for Infrastructure prescribed by regulations 81 to 90 of the Regulations are at the discretion of the Council and will be assessed on a case-by-case basis. It may be the case that some Infrastructure which is essential for some forms of land division and may not be required for others.

For example, a formalised Road constructed to a minimum grade/standard may be essential where new allotments of land are proposed which do not have a frontage to an existing public Road but not where the allotments will utilise an existing public Road. Likewise, street trees are not generally essential Infrastructure, but may be proposed to be planted by an applicant to add visual appeal to the proposed allotments.

Section 198 of this Act states that where an application for a plan of division of land into more than 20 Torrens Title allotments occurs within the area of Council, and one or more of those allotments are less than one hectare in area, the Council may require:

- a. Up to 12.5 percent of the relevant area transferred into Council ownership and developed as open space
- b. Instead of providing open space, the applicant make the monetary contribution in accordance with Regulations in accordance with the requirements of this section
- c. A combination of a financial contribution (in lieu of the full entitlement of open space contribution) and open space be provided.

As required by section 198(11)(a) of this Act, money received by Council must be paid into a special fund established for the specific purpose of receipting open space financial contributions. Such contributions must only be used for the purpose of acquiring or developing land as Open Space. Council will, in accordance with its legal obligations, ensure that the fund is maintained solely for this purpose.

#### Local Government Act 1999

According to section 193(4) of the Local Government Act all land which is acquired by the Council becomes community land unless the Council resolves to exclude it from classification as such before it is acquired.

It is Council's policy that land intended to be vested in Council as reserve will not be excluded from classification as community land unless extenuating circumstances exist.

Council is able to acquire/receive land in many different ways, i.e., by agreement (section 190 of the Local Government Act); compulsorily (section 191 of this Act); by accepting a vesting (sections 102(1)(c)(iv) , 102(1)(d)(iiv) and 198(1)(c) of the Planning , Development and Infrastructure Act ).

Each mechanism to acquire/receive land operates independently of one another in that they are separate ways in which the Council may become the legal owner of land. Therefore, where the Council acquires land under one section (i.e., under section 198 of the Planning , Infrastructure and Development Act 2016), it does not also need to consider, or act in accordance with, other sections (i.e., sections 190 or 191 of the Local Government Act).

As this Policy relates specifically to the land received through a land division process, section 190 and 191 of this Act does not apply in this instance.

#### The Planning and Design Code

The Commission will be responsible for preparing and maintaining the Planning and Design Code.

In determining whether to require open space as part of a plan of division or whether to accept a financial contribution or a combination of both, section 198 of the Act states that the Council must have regard to any relevant provision of the Planning and Design Code that designates any land as open space and, in the case of a council, must not take any action that is at variance with the Planning and Design Code. Therefore, if the Planning and Design Code identifies a particular area of land to be set aside as Open Space, the Open Space must be obtained as part of a plan of division .



## 4.1 Other references

Council's documents including:

- a. Strategic Plan
- b. Tree Management Policy
- c. Open Space Policy
- d. City Masterplan
- e. Signage and Entrance Statement Policy
- f. Fees and Charges Register
- g. Footpath Construction Strategy
- h. Delegations Register
- i. Playspace Guide.

External documents including:

- a. Relevant Australian Standards.

## 5. STRATEGIC PLAN/POLICY

### 5.1 Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
<b>Community</b>	
<i>People feel a sense of belonging, inclusion and connection with the City and the community</i>	Council provides open space which is accessible to the wider community.
<b>Environment</b>	
<i>Environmentally valuable places and sites that are flourishing and well cared for</i>	Council determines the suitability of new public open space for the community.
<b>Places</b>	
<i>Streets, paths, open spaces and parks are appealing, safe and accessible</i>	The Planning and Design Code, the Act and Regulations outlines the infrastructure and open space requirements for a land division over 20 allotments.
<i>Infrastructure and community facilities are fit for purpose, constructed using sustainable practices and well maintained</i>	Technical advice is provided by Civil Assets on determining the minimum design standards.
<b>Leadership</b>	
<i>Decision making is informed, based on evidence and is consistent</i>	All development is assessed against the requirements of the Planning and Design Code, the Act and Regulations.

DEVELOPMENT SCENARIO	DECISION	CONDITIONS
Land to be gifted to Council through the development application process.	Council delegate	Nil
A development application involving the installation of service infrastructure within an existing Council reserve.	Council delegate	Nil
A development application involving the installation of service infrastructure within an area of land proposed as part of a plan of division, and to be maintained by Council.	Council delegate	The infrastructure does not traverse through existing Council land.
A development application which includes the creation of a strip of land titled (reserve) less than 0.50 metres in width to prevent legal access from a land division to a public road	Council delegate	Council will also include this as a condition of the development approval.
Creation of open space to be vested in Council and proposed as part of a plan of division.	Council delegate	Nil
In relation to a land division application, the decision to pay into Council's open space fund in lieu of providing Open Space, or a decision to provide a combination of Open Space and money.	Council delegate	Nil
In relation to a land division application, the decision to accept the creation of public roads.	Council delegate	Nil

Attachment 1

## 6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.