



Department of Planning,  
Lands and Heritage



Rescinded date: 19/12/2025

# Position Statement:

## Expenditure of Cash-in-Lieu of Public Open Space

September 2021

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Published by the  
Western Australian Planning Commission  
Gordon Stephenson House  
140 William Street  
Perth WA 6000

Locked Bag 2506  
Perth WA 6001

Publication date: 30/09/2021  
Operational date: 30/09/2021

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## 1. Policy intent

The intent of this position statement is to ensure that the cash-in-lieu for open space is expended in accordance with the requirements of the *Planning and Development Act 2005*.

## 2. Public open space in Western Australia

Providing access to quality public open space (POS) through the subdivision process, is essential to healthy, liveable communities. The Western Australian Planning Commission's (WAPC) *Liveable Neighbourhoods* (as amended) and *Development Control Policy 2.3 Public Open Space in Residential Areas* state that for residential subdivision, 10 per cent of the gross subdivisible area shall be given up free of cost by the subdivider for POS purposes.

The WAPC's policy is to ensure that the provision of POS allows for a reasonable distribution of land for active and passive recreation. This includes smaller areas of POS within easy walking distance of dwellings, playing fields, playgrounds, bushland and other open spaces where people gather to recreate and socialise.

The WAPC may also require the provision of POS in industrial, commercial and rural subdivisions where there is a need to

provide for passive and active recreation areas and/or protect environmental features as part of the subdivision design.

POS is generally provided through subdivision via vestment as a Crown reserve under section 152 of the *Planning and Development Act 2005* and accepted by a Management Body as a Management Order under section 46 of the *Land Administration Act 1997*, or provided in fee simple. In certain circumstances, providing land for POS is not practical and it may be more appropriate for cash-in-lieu of POS to be given for the following reasons:

- In small subdivisions, the provision of POS may result in a small unusable area of land being set aside
- There may be sufficient POS already available in the locality for current needs and future demand
- POS may have been provided in earlier subdivisions; engineering design following subdivision has resulted in an area identified for POS not being suitable for that purpose, for example, drainage works that are incompatible with the open space function
- POS is planned in another location by way of a local planning scheme or local structure plan

Section 153 of the *Planning and Development Act 2005* allows a landowner to make a cash payment to a local government in lieu of all or part of the POS contribution. The cash-in-lieu sum must

represent the value of the portion of land to be given up. Provision of cash-in-lieu of land must also be agreed by the local government and approved by the WAPC.

If local government and/or the landowner wish to seek cash-in-lieu of POS it is recommended that consultation between the parties occur in the early stages of the planning process. This will allow parties to liaise with the WAPC prior to its formal decision on a subdivision application and applications of conditions for POS.

## 3. Application of this policy

This position statement applies across Western Australia in circumstances where cash-in-lieu of POS has been approved.

This position statement supersedes *Planning Bulletin 21 - Cash-in-Lieu of Public Open Space (1997)*.

## 4. Policy objective

This position statement provides guidance on the requirements for the use of cash-in-lieu funds for POS and encourages the use of cash-in-lieu funds for the provision and betterment of open spaces for the community.

## 5. Policy measures

### 5.1 Determining a cash-in-lieu sum

Section 155 of the *Planning and Development Act 2005* sets out provisions in relation to valuation of land.

The value of cash-in-lieu is determined as a percentage of the market value of the parent lot from which the subdivision occurs. The percentage relates to the equivalent percentage of land that would otherwise be provided as POS.

The local government will, at the expense of the subdivider, seek a valuation of the land from the Valuer General's Office or a licensed valuer.

If either the subdivider or the local government disputes a valuation, the valuation may be varied by agreement between the parties. Section 156 of the *Planning and Development Act 2005* provides for arbitration if the parties dispute the valuation.

### 5.2 Procedures for obtaining approval to provide cash-in-lieu

Where the WAPC requires the provision of POS as a condition of subdivision approval, section 153 of the *Planning and Development Act 2005* allows for the POS to be provided as cash in lieu of setting aside

a portion of land. The WAPC will impose a condition stating the amount of open space that is required or that cash in lieu be provided to the local government in whose district the land is situated.

### 5.3 Management of cash-in-lieu funds

Section 154(1) of the *Planning and Development Act 2005* provides that cash-in-lieu funds received by a local government must be paid into a reserve account established and maintained under section 6.11 of the *Local Government Act 1995*. That is, an account separate from other reserve accounts the local government may administer with the specific purpose of accommodating all cash-in-lieu payments received for POS.

The account should clearly set out the purpose for which the money is held, the landholding from which it was obtained and the date on which it was paid to the local government.

### 5.4 What cash-in-lieu funds can be spent on

Cash-in-lieu funds may be used in the following manner:

- for the purchase of land for parks, recreation grounds or open spaces generally, in the locality in which the subdivision is situated

- for repaying loans raised by the local government for the purchase of such land; or
- with the approval of the Minister for Planning, for the improvement or development of a park, recreation grounds or open spaces generally, in the said locality and managed by the local government.

Where possible, funds should be allocated in accordance with the strategic planning framework, including any adopted Council open space strategy or plans or to meet local public open space or recreational needs.

### 5.5 Where can cash-in-lieu funds be spent?

Further to the information provided in policy measure 5.4 above, cash-in-lieu funds can only be expended within the locality of the newly subdivided lots for which the cash-in-lieu is being provided, and where these local areas are seen to benefit from this expenditure.

In determining what is an appropriate location and distance of POS in the locality of the newly subdivided lots, local governments should consider the size, scale, form and function of the proposed new POS area or improvements to any existing POS. For example lower cost, small-scale improvements to a local POS site should be at a close proximity to the site where the cash-in-lieu funds were

provided. The purchase of new large POS areas or upgrades to existing POS of a larger scale and cost may be further away from the site where the cash-in-lieu funds were provided but will still be of benefit and accessible to occupants of the lots for which cash-in-lieu was contributed.

### 5.6 What can cash-in-lieu funds be used for?

In accordance with policy measure 5.4 above, cash-in-lieu funds can be used for improvement or development of POS which generally seeks to ensure:

- adequate provision for POS which enhances amenity, improves provision and quality of facilities and which benefits residents and users
- provision of POS which provides for a range of passive and active uses, tourism and the protection of natural values (e.g. management of water)

The land must be managed for recreation purposes. Land held in fee simple by the local government should, as a prerequisite, be reserved for public recreation or for civic and community purposes in the local governments local planning scheme. The proposed improvement or development should be for uses to which the public has unrestricted access.

Development Control Policy 2.3 *Public Open Space in Residential Areas* provides basic examples of acceptable expenditure of cash-in-lieu funds under section 4.3.9. Other examples may include proposed development which:

- provides for a range of functions including ecological, cultural and recreational activities
- aligns with adopted strategic planning documents e.g. Public Open Space strategy
- improves access to and functionality of open spaces within the reserve
- promotes the safe use and enjoyment of open spaces
- preserves and enhances ecological systems and biodiversity
- establishes or enhances a community's sense of place.

The use of cash-in-lieu would not normally be acceptable for community halls or indoor recreation centres, enclosed tennis courts, bowling greens for clubs, facilities for private clubs or similar facilities where access by the general public is restricted or generally associated for a fee use

### 5.7 How to request use of cash-in-lieu funds

Requests to the Minister for Planning for the expenditure of cash-in-lieu should be submitted to the WAPC in the first instance.

Documents required to form part of the request:

- a cover letter briefly justifying the request from the local government
- a plan outlining the location and WAPC reference number of the subdivision(s) from which the funds were obtained and the distance to the location of the POS where the funds are proposed to be expended
- the dollar value of funds obtained from the subdivision(s)
- Project or program timing schedule for expenditure
- Project or program expenditure based on a maximum budget allocation.

The WAPC will refer the proposal to the Minister for consideration.

It may be considered appropriate to group multiple cash-in-lieu projects into a single work program request to the Minister for Planning. Work program requests will expedite the expenditure of cash-in-lieu funds for POS across a broader program of works by streamlining the approval process.

In these instances, the information required to accompany the request under policy measure 5.4 can be consolidated into a single schedule and map.

For grouped requests the Minister will only approve the expenditure of cash-in-lieu funds where a maximum monetary

value has been nominated. Detailed project funding will not be required but a broad outline of expenditure across the program with a maximum budget allocation is required to provide clarity on the program of expenditure.

Grouped requests can also be linked to existing POS strategies and work programs as long as the above information is provided.

Grouped requests will require notification to the WAPC within three months of completion of the works, including a signed statement demonstrating details of expenditure from a Certified Public Accountant employed by the local government or an audited statement prior to the publication of the local government annual report.

### 5.8 Expenditure of funds from the sale of reserves

There may be occasions when the local government considers that an existing area of local POS is not in a suitable location, or of an appropriate size, to meet the needs of the community. In such circumstances, local governments may wish to rationalise all or part of the open space and use the funds for other purposes.

The disposal of land set aside as a reserve for public recreation is governed by the *Land Administration Act 1997*.

Proceeds from the sale of public recreation reserves may be used by the local government to acquire other land for POS or spent on capital improvements to existing areas of open space.

The disposal of land set aside as a Crown reserve for public recreation is governed by the *Land Administration Act 1997*.

Proposals for the disposal of any land which has been given up under the Planning and Development Act 2005 will be referred to the WAPC for its consideration. The WAPC will have regard to its policy on the provision of open space and the matters outlined in this position statement prior to any response being provided.