DEPARTMENT OF NATURAL RESOURCES
RESOURCE MANAGEMENT PROGRAM

HANDBOOK OF
LAND PLANNING GUIDELINES

CHAPTER G23

PARKLAND SURRENDERED AT TIME OF SUBDIVISION

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Purpose of this Paper

The paper explains the legislative and policy basis for surrendering land for public purposes when an allotment is subdivided. This is mostly an option when development approval under a planning schemes is being considered, but is also feasible by other mechanisms. The processes for acquiring and disposing of such parkland are outlined. A set of principles and criteria on which staff can base actions is provided.

This paper has been written as a guide for staff of the Department when compiling submissions to or receiving submissions from local governments and for staff of local governments. It is acknowledged that the Guideline may be superseded soon by changes in the statutory planning regime and other guidelines being drafted by the Department of Local Government and Planning.

31 May 2003

PART A – PARKLAND SURRENDER – GENERAL CONSIDERATIONS

1. BACKGROUND

1.1 This paper outlines the current law and policy regarding the surrender of land for public purposes when land is developed; and regarding the disposal of parkland once it is no longer required for public purposes. Surrender can be a condition of approval for reconfiguring a lot (subdivision), a material change of use (MCU), or in some circumstances operational works. Surrender of parkland can also be negotiated by agreement (without necessarily being a condition of development approval) or can be a condition of approval under other legislation, or can be subsidised by a public authority.

1.2 Under the former statutory planning legislation (*Local Government (Planning and Environment) Act 1990*), local governments were empowered to take up to 10% of a property being subdivided as a parkland contribution. In lieu of a land contribution, money or works to an equal value could be contributed for use in acquiring or developing parkland. Even with this statutory provision in place, there was a lack of consistency because there were no State-wide guidelines and many councils sought only modest contributions from developers.

1.3 The passage of the *Integrated Planning Act 1997* (IPA) has meant that this 10% guide has disappeared and councils now have no specific State-endorsed standard of best practice to adopt when negotiating with developers. Parkland contributions must now be in accordance with the infrastructure provisions in the council's planning scheme. The infrastructure requirements in turn must align with their overall goals and plans – a move intended to lead to greater accountability to the community and the State; and to make it more difficult for a local government to impose unfair imposts on developers beyond those impacts and needs attributable to their developments. Under a planning scheme's infrastructure provisions a council can take more than land only: s.5.1.1(1) of IPA refers. However, at all times any exaction upon an applicant for statutory approval must satisfy the test of 'reasonable and relevant'.

1.4 The paper suggests *outcomes* in the *public interest*, and explains only *some* of the methods of achieving them.

2. JUSTIFICATION FOR NR&M INVOLVEMENT

2.1 Under some circumstances, it is appropriate for NR&M to make recommendations concerning parkland contributions, even though land being subdivided under IPA is not now surrendered as State land (see 3.5). There are several reasons to support a continued involvement, including:

- the Department has a portfolio role of providing advice on best practice in the management and administration of public land;

- the Department has a duty to protect and enhance the existing State parkland estate by protecting corridors and linkages and this is a State interest. (The Department is the primary provider of public open space in Queensland and is the proprietor of the beds and banks of boundary watercourses. Local community land obtained by surrender at time of subdivision can augment the network of public open space provided by the State);

- the Department has a State interest in protecting land in localities of future urban growth for public open space. (Resource Planning Guideline A2 refers). (State

interests derive from the Department's portfolio programs and policies as well as its statutory heads of power).

2.2 Involvement can occur at several stages:

- by disseminating State-wide policy and technical guidelines, NR&M is able to assist local governments to adopt a reasonably consistent approach and to align their decisions with good professional practice;

- by conveying submissions to local governments when planning schemes and ICPs are being finalised. This should reduce the time required to investigate individual applications later;

- by making comments to assessment managers as a third party adviser when development applications are lodged. (NR&M may receive an application as a *referral agency* within the IDAS process, but NR&M is not a gazetted referral agency for parkland matters, so any comments on this subject are to be made as a third party adviser).

- by considering the need for parkland when acting as an *assessment manager* (for whatever reason). Subdivision may be part of a proposal for some other development. (Usually this will happen only where the subdivision will not be subject to assessment under a planning scheme because if it were, the local government would be the assessment manager).

3. LEGISLATIVE BACKGROUND

Powers to Exact a Charge

3.1 IPA at ss.3.5.11 and 5.1.1ff provides that development approval may be subject to conditions which include payment of an 'infrastructure charge'. This charge is in recognition of the costs that the local government might otherwise have to bear to supply infrastructure to the new development. The charge can be only for an item identified as a 'development infrastructure item' within an 'infrastructure charges plan' (s.5.1.6), as defined in s.5.1.1. This is a component of the planning scheme and must include a statement of the desired standard of service for the network, having regard to user benefits and environmental effects of the network. Accordingly, this standard of service must be in accordance with the relevant desired environmental outcomes (DEOs) of the planning scheme, local laws and planning strategies. An open space plan may also define or identify the desired standard of service. The charge is usually monetary, but the applicant may surrender land as an alternative to paying money, according to s.5.1.15(1), or may construct comparable works as defined.

3.2 Land may be taken as an infrastructure charge only for local recreation purposes predominantly serving a local area or for a prescribed purpose. (See definition of 'local community purpose' in Schedule 10. The draft *Guidelines for Infrastructure Charging* at p.58 give examples of local community purposes: multi-purpose community halls or centres; neighbourhood houses; recreation or activity centres; information and visitor centres; and public libraries). No other purposes have yet been prescribed. This means that under IPA, land may *not* be taken for a purpose that is *primarily* scenic amenity or nature conservation.

3.3 Higher order infrastructure items (in this case district or regional parks) may serve parts of more than one local government area. Consequently, an infrastructure charge may be imposed for development infrastructure that is partly or wholly outside the local government's area, according to s.5.1.13. The decisive issue is the link between the infrastructure item and the service received by the premises, not the existence or otherwise of administrative boundaries.

According to s.5.1.6(2)(b) and s.5.1.15(5) the statutory charge must not be more than can reasonably be apportioned to the development for which the charge is fixed. In other words, an applicant/developer cannot be expected to pay for the costs of infrastructure that serves a larger catchment.

Provision of regional parks is a responsibility of this Department, the Environment Protection Agency, other State agencies and local governments, usually undertaken in accordance with strategic planning activities; however, local community land may become part of a wider network or may inherently possess attributes of regional significance. Refer to Resource Planning Guidelines G32 for information on writing development conditions and E31 for methods of assessing the merits of land for regional open space.

3.4 To date, the Department of Local Government and Planning has not provided guidelines as to the quantum or quality of land that can be taken, as it is a principle of IPA that conditions should be set on a performance, not a prescriptive basis. Item 10 below debates this approach. An open space plan could identify a hierarchy of open space and the function of each category, so assisting in defining performance standards.

Tenure Considerations

3.5 By s.5.1.15(1)(b) and (3), local community land taken in accordance with infrastructure provisions must be given in fee simple. By s.5.1.15(6), if land has been given, it is given 'on trust'. The primary stated limitation on the 'trust' seems to be the requirement that the local government cannot sell the land without advertising in a newspaper circulating locally. 'Trust' does not mean 'trust' as used in the *Land Act 1994*. Indeed, it seems that neither the developer nor the local government is empowered to surrender infrastructure land to the State directly.

3.6 The only way that such land could become State reserve would be for the local government to surrender it or sell it to the State *after* the transfer to the local government had been effected and then *after* it had cancelled the trust pursuant to s.5.1.16-18 of IPA. Section 327 of the *Land Act 1994* enables the owner of land in fee simple to surrender it to the State. However, invoking this provision prior to cancellation of the IPA trust would present the local government with two difficulties. First, it holds the land only on trust. It cannot be reserved under the *Land Act 1994* until it is surrendered into the State's hands and no guarantee can be given prior to surrender that it will be so reserved, because the discretion of the Minister in reserving it cannot be fettered. Second, even if that difficulty were overcome, the provisions in the Land Act for revoking a reserve are less onerous than the provisions in IPA and do not even require the Minister to advertise the proposed revocation. S.33 of the Land Act refers.

3.7 The requirement upon the local government to advertise any proposal to sell (dispose of) a lot obtained through the implementation of infrastructure provisions is sound in law and policy, as is the requirement to notify the adjoining owner/s and provide community notification. This is because such properties are in effect a tax upon the purchasers of the newly created lots and there should be a relatively high hurdle which must be overcome if the interest of those landholders is to be cancelled.

3.8 Section 51(3) of the *Land Title Act 1994* has provided that land (other than a road) to be dedicated for public use becomes unallocated State land upon registration of the plan that defines it. No overt action is required by the Registrar for this to happen. However, if the land is then to become a reserve, deliberate action is necessary under s.31 of the *Land Act*. If a council seals a plan which shows a lot as 'reserve' or 'park', and in so doing deliberately or unintentionally does not require the developer to surrender the lot under the provisions of IPA, then the land would travel down the Land Title Act - Land Act route and in due course presumably would be reserved and placed under the control of council as trustees. From an

IPA point of view, the local government has omitted to levy an infrastructure charge to include this lot. However, so long as the quantum and quality of the land is a fair and reasonable contribution in regards to that development, no impropriety has been committed. In other words, such reservations are unlikely to be deemed unlawful, but they are outside the infrastructure charges provisions. This has implications for the rights under IPA of both local government and the applicant.

3.9 It is possible that some local governments are at present following tradition in having the areas surrendered set aside as reserves without having looked closely at the provisions of IPA. This raises the question as to whether the Department should draw the matter to the local government's attention. It would seem that it is too late to remedy the situation once the plan has been sealed and accepted at the Registry.

On the other hand, it is likely that many local governments are now deliberately not accepting land because of the costs of maintenance. If land is surrendered following lodgement of a plan of subdivision, by default the State becomes responsible for it and there is no statutory discretion for the Minister to refuse to accept it. There is also no statutory obligation upon the local government to accept trusteeship after reservation – the actions of reservation and appointment of trustees have been matters of practice and assumed intent.

3.10 One consideration for local governments will be the complexity of the range of tenures they are left to administer. Councils often mistakenly believe that they 'own' all the land that is under their control and act accordingly. They can hold freehold unencumbered, freehold acquired/purchased for particular purposes with ratepayers' money for parkland, IPA land held in its special form of trust, various leasehold tenures as well as State reserves under trusteeship. The provision to hold surrendered land in freehold in trust – a provision that local government requested – has come with some significant additional responsibilities.

Legal Access

3.11 There is nothing in IPA that requires legal access as a precondition to the registration of an isolated parcel of community purpose land held by local government. As the *Land Act 1994* is not involved, there is no role for the Minister under that Act. The transfer by the developer to the local government would be by Form 1 transfer in the usual way, not by dedication. There is nothing in the *Land Title Act 1994* that would give the Registrar any power to require that provision be made for legal access to the transferred land. Despite this, where the intended use of this parkland is for recreation, access would be advisable. Access would be possible through dedication, except when:

- the land is to be included in an existing reserve which has dedicated access; or
- the land forms part of a scheme for a continuous trail or promenade which, when linked with other areas that are being progressively acquired, will have dedicated access. In these instances, until dedicated access is available, interim legal access may be provided by way of an easement over the adjoining land linking it to a dedicated road; or
- an easement has been executed by the registered proprietor in favour of the local government and its servants and agreed to by that local government.

4. PROCESSES FOR LOCAL GOVERNMENTS TO SECURE PARKLAND

Under IPA

4.1 The following is the recommended process for local governments to secure parkland as a condition of development approval. The process would be initiated when a developer submits an application for a material change of use (that involves or will lead to a subdivision) or reconfiguration of a lot (subdivision). The intention would be for this process to be undertaken as part of the IDAS investigations.

1. Local government officers determine whether a monetary or works contribution should be required, in lieu of a land contribution, according to criteria in item 10.2.1 below.

2. Local government officers identify suitable parkland in accordance with the local government open space/parkland strategy (if it exists), or with Part C of this paper, with assistance as required from NR&M officers, according to Departmental practice.

3. Local government officers advise the applicant of the parkland surrender requirements under the infrastructure provisions in the planning scheme, or a transitional policy document if those provisions are pending.

4. Local government officers undertake preliminary negotiations and obtain valuations, including searches necessary to identify any encumbrances and deficiencies that may affect the allocation.

5. Local government officers report to council and (unless powers are already delegated) seek approval to allocate the particular parkland.

6. Local government officers consider all submissions to the proposed plan, including objections or comments from State agencies, including NR&M, based on departments' State interests. The local government should pass the proposal to departments or other bodies which may have a third party interest. For example, Sport and Recreation Queensland may have a State interest in the application if an open space plan has been prepared as part of a State program.

7. When the final plan of subdivision is endorsed, local government registers the land in their own files as community parkland held on trust.

Beyond IPA

4.2 Councils are entitled to take land outside the statutory provisions of a planning scheme – as long as the applicant agrees. Some councils have taken as much as 80% of allotments in return for permitting more intensive development of the remainder. Such transactions are not protected by the appeal provisions of IPA and the 'reasonable and relevant' test need not be applied in a strict legal sense, although the deal should be equitable and transparent. These transactions can represent good planning practice and can be very much in the public interest.

PART B – DISPOSAL OF REDUNDANT PARKLAND

5. Disposal of Parkland Under IPA

5.1 This section applies for land that was surrendered for parkland at the time of subdivision and allocated as parkland for community purposes under the *Integrated Planning Act 1997.*

5.2 Section 5.1.16 of IPA allows for a local government to sell parkland surrendered at the time of subdivision, provided that it notifies the public of its intention to sell. It is preferable that there be a systematic process of open public consultation. In addition, it is recommended that the local government's officers should provide written evidence of how the existing parkland:

- is under-utilised by the community (a tough one to quantify); and
- no longer fills the requirements of the local government's open space/parkland strategy; and
- has no cultural or environmental features that are significant and worthy of preservation; and
- does not function as an overland flood path or serve some other utilitarian purpose.

The local government should also specify the kind of redevelopment (as per planning scheme) that can be expected to be carried out on the redundant land, as well as any plans to acquire or develop other substitute parkland in the district. Replacement land should be at least equal in both quantity and quality and should serve a useful function in the parkland system – by 'plugging a gap' rather than by simply adding acres.

5.3 If any parkland is sold by the local government, proceeds from the sale should be used for the acquisition of new parkland, on the economic principle that capital assets should not be sold to fund recurrent expenditure; and on the planning principle that opportunities to secure open space decline as a locality is developed. Alternatively, if a locality is well supplied, the proceeds can be used for capital development of existing parkland benefiting the local community. (However, the notion that parkland can be sold because that is the only way to raise moneys to develop some other parkland should generally be strongly discouraged).

5.4 Until they are expended, moneys should be placed in a trust fund set up for the purpose. This is unless the remaining parkland would adequately provide the required parkland for the local area, according to items 10.1.2 and 10.1.3 below, and including provision for conceivable increased population densities in future. In this case the funds should be used for a comparable community purpose.

6. Disposal of Parkland Reserved Under the *Land Act 1994*

6.1 This item refers to parkland that was surrendered at the time of subdivision and allocated as parkland for community purposes under the *Local Government (Planning & Environment) Act 1990* (P&E Act) (or for that matter secured under any other pathway) then reserved under the *Land Act 1994.* It relates to the desire by some local governments to consolidate or rationalise their existing parkland.

6.2 When parcels previously reserved no longer align with the local government's open space/parkland strategy or meet the community's needs, parkland may be disposed of and new land acquired for community purposes. The *Land Act 1994* provides for re-allocation of land to a more appropriate use and this includes re-allocation by sale or purchase. The Department can facilitate this process. (A test case was run in the City of Logan from 1997 and the results of that experience are available). Assessing 'the community's needs' requires more than heeding interest groups or taking a poll of neighbours.

PART C – SPECIFYING PARKLAND CONTRIBUTIONS

7. PURPOSE

7.1 The purpose of Part C is to enable NR&M staff to offer constructive assistance in providing for parkland within planning schemes, infrastructure provisions, open space infrastructure contributions policy or open space/parkland strategies, as well as other strategically important planning activities, such as regional planning. The items cover both design and quantum of allocation.

7.2 The recommendations are intended as guides only as each case will be individual in its application and context. These provisions should act as minimum standards, and negotiations should aim to optimise contributions to benefit the local community. The material has been summarised from reports describing *current practice* in other jurisdictions around Australia. In many cases there is little theoretical justification for the figures. Also, numerical prescriptions without linkage to desirable outcomes is deemed to be unacceptable in the performance-based format of IPA planning schemes.

7.3 Refer to the Draft IPA Guideline *Infrastructure Charging*, by the Department of Local Government & Planning (4/98). The draft is the primary guideline to aid local governments in preparing infrastructure charges plans, and this Resource Planning Guideline supports it. It is available on the Internet at: www.dlgp.qld.gov.au. Refer also to Resource Planning Guideline E31, *Assessing, Evaluating and Protecting Land as Open Space*.

8. PRINCIPLES FOR DESIGNING PARKLAND CONTRIBUTIONS

The following principles are a guide when considering design attributes of proposed parkland including locational attributes. Of course, 'parkland' is a generic term: land may be required (for example) for ecological protection, landscape protection or for active recreation, each having specific biophysical requirements.

1. Open space/parkland planning should be proactive, expressed in regional plans and planning schemes, not solely reactive to individual development applications.
2. The economic and other importance of securing effective open space should be highlighted, as open space promotes orderly and efficient urban development. Along with the transport corridors, open space corridors establish the 'frame elements' of a developing locality. Once these frame elements are secured, planning at the local and neighbourhood level is greatly enhanced and certainty for developers and residents alike is increased.
3. To support decision-making by councils, parkland surrender should be based on a State-wide standard but with flexibility to adjust to specific situations.
4. Parkland should seek to conserve and enhance the existing natural and scenic resources of the locality, not assume that they can be generated afresh or that a pocket handkerchief urban playground is a satisfactory substitute. Take particular note of the ridgelines and watercourses which frame the landscape.
5. Parkland and related infrastructure charges are justified because of an increase in density of development. They should be equitable and based on increased need for green space. The need is not necessarily confined to recreational patronage.
6. Land secured for open space or park purposes should be in addition to any land required for utilitarian purposes such as road, access, drainage or waterway purposes.
7. Local governments should not use money gained through infrastructure charges for recurrent maintenance of parkland. (Even if moneys are taken to cover 'life-cycle costs', these should be seen as comparable to depreciation not maintenance).

8. Parkland should be permanently set aside in accordance to the local government's open space/parkland strategy (or comparable document) and the purpose of its acquisition.

9. CRITERIA FOR DESIGNING PARKLAND CONTRIBUTIONS

'Quality' of an open space system is as important as 'quantity'. The following criteria for quality should be applied when determining specifically *which* portion of a development should be allocated as parkland, in conjunction with the criteria on *how much*, as set out below in item 10. These guidelines should be used in conjunction with Resource Planning Guideline E31. The criteria are ideals and almost always, parkland which is less than ideal is better than none at all.

9.1 Minimum dimensions

Parkland should be of dimensions suitable to accommodate the intended activities and clientele. The following labels are often used:

- Local Parks are those with a minimum area of 0.2ha; and
- Neighbourhood Parks are those with an average area of 2ha; and
- District Parks are those with an average area of 10ha or more.
- Regional and State Parks are those of any size that serve a clientele from beyond the district. (Also, 'State' Park is a term often used to indicate that the property is managed by the State rather than to denote size.)

9.2 Desirable environmental qualities

Parkland should be of environmental quality suitable to accommodate the intended activities, in particular:

- a locality's parkland system should integrate and link waterways, drainage lines, hills and natural vegetation; and
- parkland should include and conserve significant vegetation and landform features within the locality; and
- parkland systems should be used to buffer, define and associate districts and residential areas; and
- parkland should contain a variety of settings for active and passive recreation.

Lands affected by unreasonable hazards such as contamination and high-tension power lines are generally not suitable for parkland purposes.

9.3 Access and safety

Parkland should be accessible to local communities. In particular:

- every dwelling should be within walking distance (~400m) of a Local Park; and
- every dwelling should be within 1km of a Neighbourhood Park; and
- every dwelling should be within 5km of a District Park; and
- parkland (local or neighbourhood) should not be separated from the area it is intended to serve by any physical barriers such as heavily trafficked roads; and
- parkland should provide for safe and convenient bicycle and pedestrian access; and
- parkland should have sufficient frontage to a local public road, to maximise usability by the surrounding community, through visibility and accessibility.

9.4 Watercourses and Flooding

9.4.1 When a property is being subdivided adjacent to a watercourse, consideration should be given to surrendering a corridor in order to protect riparian values. Resource Planning Guideline G10 (*Land Subdivision Adjacent to Watercourses*) refers and also describes alternative

mechanisms for securing the riparian values. The infrastructure charges plan can include a provision of this kind.

9.4.2 Land below generally the 1-in-5 year flood level is considered to be not free from regular inundation. This would normally be part of a watercourse corridor or detention basin rather than parkland contribution, and should comply with the criteria set out in items 9.4.1 and 9.4.5 respectively. Of course, if the flood-prone land is genuinely of considerable value for park or recreation (for example, is well-drained and can be used for playing fields with minimal down time), some flexibility can be accommodated.

This provision is not to deny that flood-prone land can be used for park or recreation, but to prevent applicants from offering otherwise useless land to satisfy their obligations to provide a proportion of the useable land for community purposes. These issues can and should be argued within the infrastructure charges plan.

9.4.3 The land outlined in items 9.4.1 and 9.4.2 should be reserved for public purposes in addition to the recommended 10% land contribution, (always assuming that the 'reasonable and relevant' test is satisfied) unless it can be proven that:

- it can meet the requirements of parkland designated for certain purposes; and
- it complies with the criteria set out in items 9.1 and 9.2; and
- flooding will not inhibit its long-term use or development for public recreation. In this case this proportion of land will be subtracted from the total contribution required for the local area. For example, if a neighbourhood park of 1 hectare can be developed in a flood-prone area, this 1 hectare requirement can then be subtracted from the overall requirement of the local area.

9.4.4 If proposed parkland is subject to inundation, the following criteria should be adhered to:

- parkland should not comprise part of a high velocity overland flow path (>1.0m/s), which would pose a danger to the public or be liable to cause erosion or other damage and does not consist of areas used for long-duration storage of flood waters; and
- sufficient land above the 1-in-20 year flood level will need to be reserved to accommodate any structures proposed as part of parkland facilities.

9.4.5 If a detention basin is included in a proposed parkland, a portion of the total area of that basin may be included in the contribution, provided that:

- the size and design of the basin allows for active public recreation; and
- slopes are generally less than 1-in-6 (rock or retaining walls may be used in some cases); and
- the basin appears like parkland and complies to general parkland criteria; and
- the relevant authority has approved the design.

9.5 Land with Limited Use as Parkland

A portion of contributed land may comprise land with limited use as park if it includes:

- land steeper than 1-in-6. Up to 50% of the total area of that land may be included in the contribution; and
- a water body. Up to 50% of the total area of the water body may be included in the parkland contribution, provided that it complies with water quality criteria approved by the relevant authority.

The total allowable land within criteria 9.4.2 and this criterion 9.5 should not constitute more than 30% of the total parkland contribution. Relevant authorities should agree that these exemptions would provide a complementary benefit to existing or proposed public parkland adjacent to the subject site.

10. PRINCIPLES FOR ALLOCATING PARKLAND IN RESIDENTIAL AREAS

This section provides suggested criteria for the quantum of allocation of parkland within residential areas. The figures presented have been compiled from reports of best practice elsewhere in Australia and from basic planning principles. *They may not necessarily be achievable by parkland contributions under IPA alone*: IPA charges must conform to the Act, the planning scheme, infrastructure charges plans and case law and take account of previous contributions. After a local government has developed an ICP with more sophisticated formulae, or its own open space or recreation strategy, or comparable plan, these nominal standards may (for the purposes of IPA) be progressively superseded.

The Draft IPA Guideline *Infrastructure Charging* on page 56 states "The rate of supply should reflect demand, eg a rate linked to anticipated population increase or other reasonable estimate of likely usage, rather than an unrelated measure such as a percentage of land or the value of a property or development." Certainly, percentages tend to be arbitrary but in the early stages of the new regime of infrastructure charging they are more easily applied than a performance measure. Also, a performance-based approach places a considerable weight of technical investigation on the shoulders of the local government, which carries the onus for justifying the figure. Justifying the figure is easier if there has been an open space plan undertaken as this can also set out desired standards of service or performance criteria. A prescription based policy would not negate the need for an open space plan or the necessary research to determine the appropriate charge, as most 'standards' do not consider built facilities such as recreation centres or sport facilities nor the diversity of settings which may be possible in each (unique) local government area.

10.1 Land Contribution

When Parkland Contribution is Required

10.1.1 Parkland contributions in the form of land should be levied on all subdivision unless the applicant demonstrates that no additional demand for parkland will result from the development, that an appropriate contribution has previously been paid or that it would be inequitable to impose a charge. Even if the infrastructure provisions are included in the planning scheme and there is no formal opportunity for further bargaining, policy support by the State strengthens a council's negotiating position.

Standard Parkland Contribution

10.1.2 The standard area of land surrendered for public open space, in the absence of a more specific formula, is recommended to be a minimum 10% of gross residential area. Ten per cent is prescriptive and doesn't take into account developments incorporating a mix of medium density and detached dwellings, or demography, or the extent of existing public open space. In Queensland, with an average lot size of 680m^2 (14.7lots/ha) and an average household size of 2.6, the gross residential density would be 38 persons/ha, requiring 26ha to house 1000 persons. If the 10% rule is adopted, the required public open space would be approximately 2.6ha.

An alternative is to adopt a quantum of land per thousand population. The Perth State Planning Commission (1986) suggests that a total of 2.75ha of public open space is required for every 1000 persons.

10.1.3 Within these overall proportions, parkland may be categorised into the following scales (based on research by the South Australian Urban Land Trust in 1988 and taking a 2.75ha/1000 figure):

- Local Park (allocation rate 0.3ha/1000people, distribution 1:200m radius); and
- Neighbourhood Park (allocation rate 0.85ha/1000people, distribution 1:1km radius); and
- District Park (allocation rate 1.6ha/1000people, distribution 1:5km radius).

In this paper, 'local community purposes' is considered to embrace these three categories, though there is some uncertainty as to whether IPA really casts the net that widely and only legal evaluation cases will tell.

10.1.4 Ancillary space (e.g. roadsides, screening/buffering or shelter belts) and land allocated for utility purposes (e.g. electricity installations, telecommunications or stormwater management), should generally not be included within parkland contributions. Similarly, land for organised social, recreational and sporting purposes, including playing fields, tennis courts, meals on wheels, model aircraft fields and bowling greens should not be included if the land is assigned to clubs at the exclusion of the public.

Factors Which May Affect the Required Contribution

10.1.5 As each specific application is unique, the minimum 10% target threshold may not be appropriate. The following situations may result in an increase or decrease of the required parkland contribution.

Development density bonuses
Applicants may voluntarily surrender a much higher percentage of a property in return for some density bonus or a clustering of small allotments in one portion of the development site. There is nothing to prevent a developer and a local government from reaching agreement to yield more than the minimum. In some cases such as in Beaudesert Shire (under the previous Act), a surrender of 80% or more has been negotiated amicably, for example where the terrain is difficult and only a small amount of level land may be available for development.

The concept of clustering subdivisional entitlements in one part of a property (where the lots can be serviced efficiently) leaving the bulk in open space is sound in planning principle. But there may be a downside: it may encourage subdivision which otherwise should not occur or it may transfer large parcels of inaccessible or difficult-to-manage land from private maintenance to public expense.

Varied development densities
To allow for variations in density of housing development, the following formula can be used to calculate the new percentage of parkland contribution:

0.8 X proposed lots/ha

This is relevant because increased density of proposed developments should lead to increased parkland contribution. The 0.8 factor was derived from dividing parkland contribution percentage by the average lots/ha in a development. Proposed lots/ha was used in the formula, as this has been the standard unit of measurement used in subdivision design. (Though it is recognised that nowadays gross floor area or unit servicing costs per metre of allotment frontage is more relevant).

Rural residential subdivision
The proportion levied on rural residential development may not necessarily be lower, because, although population densities per hectare may be less, there may be strong corridor or habitat reasons for large retrievals. This in turn would affect the resultant accessibility of parkland to

the local community, as expressed in item 10.3. In this case, allocation of Local Parks could be forfeited in place of improved provision of Neighbourhood or District Parks, as there would be insufficient residents to justify the public spaces at the smaller scale.

Situations where parkland contribution should <u>not</u> be decreased
Where the potential demand on parkland in a local area can be argued to be lower, e.g. a retirement village subdivision, the required parkland contribution should *not* be reduced, as open space has values above active use. The same applies where active natural recreation areas are in close proximity, such as beaches and State forests. Also, these areas cater for specific recreation activities and will no doubt form only a small segment of the overall network.

It is often argued that land should not be required of new developments if it places an unmanageable demand on maintenance by local governments. However, local governments should be encouraged to secure parkland at the time of subdivision, regardless of resources available for maintenance of existing public landholdings. The opportunity to increase resources available for maintenance is always available, notably at annual budget time; the opportunity to retrieve park contributions is unlikely to become available again, once the land is subdivided.

10.2 Monetary Contribution

10.2.1 A monetary contribution in lieu of land could be levied where:

- the land is unremarkable in location or attributes *and* the area of the park is likely to be smaller than 2000m^2; (but remember that some of the most important social spaces are small – such as the small wayside area near a bus stop. Notwithstanding the higher land unit cost of maintenance, the return for investment of small parcels can be high and the State needs to take care in recommending a minimum size without qualifying the application of the standard;
- existing parkland in the local area is adequate in size according to items 10.1.2 & 10.1.3; (but size must not be the only criterion); or
- land to be subdivided is in an existing or exhibited local plan and does not contain any land designated in the local plan as desirable parkland and this absence is reasonable.

10.2.2 The basis of determining the amount for a monetary contribution is the nominal *retail* value of purchasing a land contribution. For development of multi-unit dwellings \$/m^2 of gross floor area should be used.

10.2.3 As the monetary contribution rate will be applicable only for intensification of use, any previous contributions made for that land (e.g. where detached housing existed before units) will be deducted from the new rate. This assumes that developers of previous subdivisions paid a fair contribution in good faith. If it can be demonstrated otherwise, the present developers should be required to pay the full development charge according to the latest density.

10.2.4 The money should be used to improve the accessibility and provision of parkland in the local area, by either purchasing land or constructing permanent facilities in existing parkland, in accordance with the council's open space/parkland strategy or comparable document.

10.3 Works Contribution

10.3.1 A works contribution may be accepted at the discretion of a council according to criteria in item 10.2.1, if works are:

- used to develop and enhance parkland according to council's public recreation plan; and
- equal in value to the amount that would ordinarily apply to a monetary contribution.

11. PRINCIPLES FOR ALLOCATING PARKLAND IN NON-RESIDENTIAL AREAS

Land Contribution

11.1 Commercial and industrial development has a demand for parkland different from that of residential development. Small areas suitable for lunching are required. Using the same method as in residential areas, the resulting rate of contribution is recommended to be 5% of site area. Negotiation on this amount may be necessary, as these developments will have a wider range of effects on the surrounding area and so on buffering requirements.

Particular attention should be paid to the pressures placed by industrial and commercial development on road infrastructure, drains and waterways. Contributions for these purposes may differ from those for residential areas.

Monetary Contribution

11.2 These areas might require a contribution of 5% of the market value of the land, with the same criteria as parkland contribution in residential areas.

Works Contribution

11.3 The criteria applied are to be the same as for works contribution in residential areas.

REFERENCES

Anon 1995. *AMCORD 95: A National Resource Document for Residential Development*, AGPS, Canberra.

Cox, G. 1991. *Financing of Urban Public Infrastructure from Developer Contributions- A Review of New South Wales and United States Practice*, Monograph No.32, Planning Research Centre, University of Sydney, NSW.

Department of Local Government and Planning. c.1994. *Queensland Residential Design Guidelines*.

Manidis Roberts Consultants. 1992. *Outdoor Recreation and Open Space, Planning Guidelines for Local Government*. Department of Planning, Sydney.

National Capital Development Commission. 1981. *Urban Open Space Guidelines*, technical paper 21, Canberra.

South Australian Urban Land Trust. 1988. *Human Services Planning Kit*, Community Planning and Development Branch, Adelaide.

State Planning Commission. 1986. *Public Open Space: Policy Statement* p.3, Perth.

End of Guideline G23