

Case Note: Bestry Property Group Pty Ltd and Western Australian Planning Commission

Public open space contribution and injurious affection

In [Bestry Property Group Pty Ltd and Western Australian Planning Commission \[2019\] WASAT 15](#), the Tribunal recently dismissed a SAT application seeking review of conditions of approval for a 23 lot residential subdivision in Balcatta that required 10% Public Open Space to be ceded free of cost to the Crown. The area required to be given up for POS forms part of a larger area which is reserved for 'Public Open Space and Local Authority Purposes' under the local planning scheme. Having been refused development approval in relation to the reserved land, the applicants claimed compensation for injurious affection from the responsible local government. The local government elected to acquire the reserved land instead of paying compensation for injurious affection.

The Tribunal did not accept the applicant's submission that the conditions of subdivision approval defeated their right to compensation, because they were two separate, independent and distinct statutory processes.

The Tribunal found that the disputed planning conditions accord with the state planning framework for a subdivider to cede 10% of land for POS to meet the recreational needs of the incoming population. Also, deleting the conditions would be inequitable to subdividers in the area who have already contributed land or cash in lieu for POS.

The full judgement is available [here](#). More case notes available [here](#).