

Policy

Local Planning Policy No. 5 Development Contribution Towards Public Art



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Adopted:	14 February 2018
Last reviewed:	26 October 2022
Legal Authority:	Local Government Act Section 2.7 – The Role of Council Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 – Part 2 – Division 2

Policy:

1. Objectives

The objectives of this policy are as follows:

- a) To require that a contribution towards public art is provided as a part of specific private developments within the City;
- b) To enhance the aesthetics and interest of open spaces, buildings and streets by introducing public art that makes these places more identifiable;
- c) To allow for the interpretation of cultural, environmental or built heritage through public art;
- d) To enhance the amenity of the public domain through the use of public art; and
- e) To enhance the sense of place by encouraging public art forms.

2. Policy Application

The provisions of this policy apply to all land within Local Planning Schemes 2 and 3 within the City of Kwinana

3. Definitions

For the purpose of this policy the following definitions apply:

Public Art

An artistic work that:

- a) Is permanent in nature, and constructed of materials which can be maintained and repaired if necessary, including metal, wood, plastic, paint or any other durable material;
- b) Is either freestanding or integrated into the exterior of a building or other structure;
- c) Is created and located for public accessibility, either within the public realm or

within view of the public realm, such as the street, park, urban plaza or public building; and

- d) Has been designed by an artist or has been designed through a process overseen by an artist;
- e) Does not include art projects or elements that are:
 - a business logo;
 - directional elements such as signage or colour coding;
 - art works which have been mass produced;
 - art reproductions;
 - landscaping or generic hardscaping elements which would normally be associated with the project; or
 - services or utilities necessary to operate or maintain artwork.

Construction value

The estimated cost of the equipment, financing, services and utilities that are required to carry out a development but does not include the cost of land acquisition. The City will generally accept this to be the same as the estimated cost of development stated by the applicant on the building permit application.

Artist

Only professional practicing visual artists will be eligible to carry out public art commissions. The term 'artist' is self-referencing; therefore for the purposes of this policy, a professional practicing visual artist can be defined as a person who fits into at least two of the following categories:

1. A person who has a university degree or minimum 3 year full time TAFE diploma in visual arts or, if the brief calls for it, other art forms such as multimedia.
2. A person who has experience or a history of exhibiting their artwork at reputable art galleries that sell the work of professional artists.
3. A person who has chosen to commit a significant amount of their time to their artwork practice and earns the majority of their income from arts related activities such as teaching art, selling artwork or undertaking public art commissions.

At times, it may be appropriate to seek people that sit outside of the above conditions to carry out artwork commissions. This may apply in instances when young, local, emerging, Indigenous artists or students may be considered appropriate for a particular project or where architectural built form design and features of artistic merit are proposed and prepared by qualified architects for a development.

No artist under consideration for a public art in developments project may have a familial relationship to the Developer or have financial interest in the development.

Public Art Co-ordinator/Art Consultant

A person who is contracted to manage the procurement of the public art project on behalf of the developer. The public art co-ordinator or consultant will have extensive prior experience in

managing similar projects. No public art co-ordinator or consultant under consideration for a public art in developments project may have a familial relationship to the Developer or have financial interest in the development.

Eligible Costs

Costs associated with the production of an art project may include:

- a) professional artist's budget, including artist fees, Request for Proposal, material, assistants' labour costs, insurance, permits, taxes, business and legal expenses, operating costs, and art consultant's fees if these are necessary and reasonable;
- b) fabrication and installation of artwork;
- c) site preparation;
- d) structures enabling the artist to display the artwork;
- e) documentation of the artwork; and
- f) an acknowledgment plaque identifying the artist, artwork and development.

Note that the Public Art Coordinator/Consultants fee should be separately costed to the public artist fees.

Major Extension

Those extensions that introduce a new plant or physical infrastructure for a process chain and/or significant increases in throughput and production capacity. While not limited to, it may also refer to replacement and/or addition to administration buildings and/or other supporting facilities or buildings'

Zones and Reserves

Refers to land use planning zones and reserves as identified and detailed on the City's Local Planning Scheme No 2 and Local Planning Scheme No 3 text and maps and Metropolitan Region Scheme Map

Public Art Contribution Guidelines (Public Art Guidelines)

A document which guides developers through the approval process (the planning stages) for public art contributions and illustrates Council's objectives for artwork so that any art work commissions are in line with these expectations.

Public Art Master Plan

A city-wide strategy which identifies a vision for public art in the public realm, themes and forms of public art and strategic locations for delivery of public art

4. Policy Provisions

4.1. Amount of Public Art Contribution

- 4.1.1. All developments where the construction value at or in excess of \$2,000,000 shall contribute to public art
- 4.1.2. No contribution for public art is required for developments less than \$2,000,000.
- 4.1.3. A single development shall not be required to provide or contribute any more than \$500,000 in eligible costs to Public Art.

- 4.1.4. Eligible Cost - The eligible cost of any public art provided for under this policy varies depending on the type of land use zone and reserve to which the development applies.
- 4.1.4.1. For Residential, Commercial, Kwinana Town Centre, Mixed Business 1, Service Commercial, Special Residential, Special Rural, Rural A, Rural B, Rural Water Resource, Cluster/Communal Rural Settlement and Special Use zones, it shall be no less than one percent of the construction value of the development.
- 4.1.4.2. Within the Kwinana City Centre, for General Town Centre, Market Square, Shopping Business and Town Centre Residential zones, it shall be no less than one percent of the construction value of the development.
- 4.1.5. A public art contribution is not required for an application to develop a single dwelling (house)
- 4.1.6. For new developments or major extensions in General and Light Industry zones, Port Installation and Railway reserves, the eligible cost of any public art provided for under this policy shall be no less than 0.75 percent of the construction value of the development and no single development shall be required to provide or contribute any more than \$375,000 in eligible costs to Public Art. In this regard:-
- Development within lots abutting public roads or highly visible from the public realm have the option of art 'on site' or 'cash in lieu' public art contributions.
 - Where it is not or where the City is satisfied that the public art will not contribute to the immediate surrounding public realm, then a cash in lieu payment will be made.
- 4.1.7. Within the General Industry, Light Industry zones, Port Installation and Railway Reserves, the City does not require any contribution for developments which relate to refurbishment or upgrade of existing infrastructure. For the purposes of clarity, contributions will be required on new developments or major extensions only in these zones.
- 4.1.8. Cash in lieu contributions for new developments or major extensions in General and Light Industry zones, Port Installation and Railway reserves shall be set aside for exclusive use for public art associated with industry based on the City of Kwinana Masterplan's curatorial theme of 'The heart of industry'.
- 4.1.9. For new developments or major extensions in General and Light Industry zones, Port Installation and Railway reserves, a 10% discount will be applied by the City when calculating the public art contribution to be made should the proponent elect to meet their contribution as cash in lieu.
- 4.1.10. In all zones and reserves, development which is approved for a temporary period of 5 years or less shall not make a contribution towards public art under this policy. Development approved for a temporary basis between 5 years to 10 years shall pay 50% of the above eligible costs applicable above. Development approved for a temporary basis for over 10 years to 15 years shall contribute 75%

of the eligible costs applicable above.

4.2. Form of Public Art Contribution

- 4.2.1. On submission of a development application, the proponent must nominate the way in which the public art contribution will be met for consideration by Council.
- 4.2.2. At the discretion of Council, the proponent will meet their public art contribution in one or more of the following ways by:
 - a) establishing public art "on-site" as a component of their development;
 - b) providing cash-in-lieu to the amount specified within the development condition.
- 4.2.3. The proponent may also provide public art in the vicinity of the site in the public realm or reach an alternative agreement on the contribution subject to the support and agreement of Council.
- 4.2.4. The proponent should refer to the Public Art Guidelines which details the approval process through the planning stages to be undertaken

4.3. General Standards for Public Art

- 4.3.1. Where the proponent provides public art on site, the public art is to be clearly seen from the public realm.
- 4.3.2. The public art shall contribute to an attractive, stimulating and functional environment and not detract from the amenity or safety of the public realm.
- 4.3.3. The public art shall be specifically designed for, and be suitable for, the building or site where it is to be located and contribute towards the sense of place for that locality.
- 4.3.4. The public art shall be of high aesthetic quality, low maintenance, durable and resistant to vandalism and must be maintained during the continuation of the development.
- 4.3.5. The public art shall be original and be designed and created or overseen by an artist/s.
- 4.3.6. The public art must be designed and sited to avoid encouraging anti-social behaviour on the site or be used for assistance in unauthorised entry or concealing any person.
- 4.3.7. The public art must not be considered by the City to be obscene or offensive in any manner.
- 4.3.8. The proponent shall consider and apply the Public Art Guidelines which provides guidance to the forms and standards for public art contributions.

4.4. Forms of Public Art

- 4.4.1. Public artworks may take the following forms:
 - a) building features and enhancements such as bicycle racks, gates and lighting which have not been mass produced;

- b) components of public spaces such as benches, fountains, playground structures, shade shelters, lighting, screening which have not been mass produced;
- c) components of public spaces artistic paving and special planting which are an integral part of the space and contributes towards its artistic value and quality;
- d) landscape art enhancements such as walkways, bridges, greenwalls or art features within landscaping setting using landscape materials;
- e) murals, tiles or mosaics covering walls, floors and walkways;
- f) sculpture in durable materials;
- g) fibre works, neon or glass works, photographs, light projections and prints; and/or
- h) community arts projects resulting in tangible artwork.

4.4.2. The art project may be an interpretation of cultural heritage and the City may also consider alternative art projects including community arts programs, which involve the public and the incorporation of a cultural space that comprises a visual or performing arts space.

4.4.3. Public art should be made accessible to all members of the community, irrespective of their age and abilities. While art in public spaces might be considered primarily a visual experience, it can provide a range of sensory experiences for people with disabilities – artwork can be tactile, aural and give off pleasant smells as well as being visual. Artwork need not be monumental, but can be at heights suitable for people in wheelchairs to touch, move through and explore. Artwork can be interactive play objects for family groups and children. Interpretive signage in an easy to read format, including Braille, promotes artworks that are inclusive of all members of the community.

4.4.4. The proponent shall consider and apply the Public Art Guidelines which provides guidance to the forms and standards for public art contributions.

4.5. Approval Process for Public Art Contributions

4.5.1. Public Art proposals will be accompanied by a Public Art Report, as set out in Appendix 1 of this Policy and will be required to be approved prior to the lodgement of a building permit application for the associated development.

4.5.2. The proponent will be notified of the approval or refusal of the Public Art Proposal no later than 30 days from the date of submission (unless otherwise agreed by the proponent and the City). This timeframe assumes all information has been provided to the City's satisfaction to enable assessment and determination within the 30 days.

4.5.3. Public Art as fulfilment of a condition of planning approval shall not require a further development application. Where the public art entails structural elements a building permit application will be required.

- 4.5.4. The proponent will be required to forward copies of the artist's contract, maintenance schedule and artist contact to the City at the commencement of the art project.
- 4.5.5. Where provided by the proponent, the public art must be installed prior to the issue of an Occupancy Permit.
- 4.5.6. A notification pursuant to Section 70A of the Transfer of Land Act is to be lodged against the certificate of title to the land on which public art is located to make the proprietors and prospective purchasers aware of requirements to maintain the public art.
- 4.5.7. The following development condition/s will apply under this policy:-
The applicant shall make a contribution to public art to the sum of \$ and comply with the requirements of the City of Kwinana's Local Planning Policy No 5; Development Contribution towards Public Art to the satisfaction of the City of Kwinana.
- 4.6. Collection and Expenditure of Public Art Contributions
 - 4.6.1. Cash-in-lieu shall be paid into Council's Public Arts Reserve Fund and will be expended in accordance with the City's Public Art Master Plan. In this regard, cash-in-lieu funds may be accrued for more comprehensive public art projects as determined by the City
 - 4.6.2. Where applicable, the City is to have received the cash-in-lieu contribution prior to the issue of an Occupancy Permit (unless otherwise agreed to by the proponent and the City).
 - 4.6.3. Cash-in-lieu funds may be used towards maintenance of public artworks.
 - 4.6.4. Funds will be refunded to the owner/applicant upon request in writing to the City in the event the development proposal associated with the Public Art does not proceed.
- 4.7. Copyright and Ownership of Public Art
 - 4.7.1. Once an artwork has been completed and accepted by the City, copyright will be held jointly by the City and the artist. In practical terms, this means that the City has the right to reproduce extracts from the design documentation and photographic images of the artwork for non-commercial purposes, such as annual reports, information brochures about the City and information brochures about the artwork. The artist will have the right to reproduce extracts from the design documentation or photographic images of the artwork in books or other publications associated with the artist or artwork.
 - 4.7.2. Where situated on private property, the public art is owned and maintained by the owner. Where situated on public property, the public art is owned and maintained by the City.
- 4.8. Moral Rights and Acknowledgement of Art Work
 - 4.8.1. Since the year 2000, moral rights legislation has protected artists. In brief, an artist's moral rights are infringed if their work is not attributed or credited; their work is falsely attributed to someone else; or their work is treated in a derogatory way by distorting, modifying or removing it without their knowledge or consent.

- 4.8.2. In practical terms this means that the City cannot change an artwork in any way without seeking the artist's permission; likewise the City, cannot remove or relocate the artwork without seeking the artist's permission. A reasonable attempt to find the artist must be provided. The City will take special care to ensure that acts of restoration or preservation (of artworks) will be conducted in a sensitive manner with prior consultation with the artist/s. Wherever possible, preservation or restorative works should be carried out by professional conservators.
- 4.8.3. Special care will also be taken with the moral rights associated with works created by more than one artist, in that it is acknowledged that collaborators on artistic creations can take different views on issues such as relocation and restoration.
- 4.8.4. In line with moral rights legislation, the proponent will install a plaque or plate near each artwork, acknowledging the name of the artist, and the name of the person, agency or company who funded the artwork.
- 4.8.5. Should the public arts work become a safety hazard, the City may undertake necessary emergency action to alter or remove the artwork without consultation with the artist.

4.9. Decommissioning of Public Artwork

- 4.9.1. The City may decide to remove an artwork because it is in an advanced state of disrepair or damage or because the public art is no longer considered suitable for the location. In such cases, the City will prepare a documented archival record of the public art prior to its removal.

Acknowledgement:

This policy is based on Artsource's Model Planning Policy.

Appendix 1

Public Art Report

The Public Art Report is to include:

- i. Details of the artist's qualification, experience and suitability to the project.
- ii. Design documentation - including research, concept development and a detailed statement addressing compliance with this Development Contribution Towards Public Art Policy.
- iii. Detailed plans of the public art. Plans are to be to scale and include dimensions, materials, colours and installation details.
- iv. Plans showing location of proposed public art.
- v. Details of cost calculations including construction cost and the public art contributions costs, in accordance with this policy.
- vi. For public art to be located on or over the public land, written consent of the landowner and/or authority with management control of the land.
- vii. Details of requirements and written consent from the artist for any ongoing care or maintenance of the artwork by the owner or City.