

# Public Art

## Local Planning Policy 30



August 2023

This policy was adopted by Council to set governing principles in place that align the strategic direction of the organisation with PL.1 Diverse, Sustainable and Well-Designed Places, the *Strategic Community Plan 2040 and Creative Culture Plan 2023-2025*.

### Objectives

*Through the application of this Public Art Policy, the Shire propose to:*

- Identify suitable public art opportunities throughout the Shire
- Support local art, artists and the cultural industries to develop high quality works.
- Celebrate and tell the story of history and culture within the Shire through meaningful public art.
- Create artistic landmarks.
- Continue to enhance vibrancy, character and cultural life through public art, community art and ephemeral art projects that enliven and engage with the community within public spaces.
- Create a unique sense of place and community by including the provision of public art throughout the evolution of the built environment
- Ensuring the contribution of public art to a quality built environment is provided in a contextual and meaningful way that is reflective of local identity.
- Ensuring the incorporation of public art is considered early in the design process for substantial developments and integrated into a meaningful way into that development.

### Implementation

This policy guides the statutory requirement for public art to be included within significant development proposals, or through Percent for Art contributions to the Shire. It also guides the implementation of public art through expenditure of funds allocated within the Shire's annual budget, received through grant funding programmes and/or donations.

This policy applies to all staff and developers managing or coordinating significant development proposals that require a public art component and those managing or coordinating current public art projects or spaces that include public art owned or invested in the Shire of Augusta Margaret River. Responsibility for the implementation of this policy rests with the Chief Executive Officer, the Director of Sustainable Development and Infrastructure and the Director Corporate and Community Services

### Commitment

Assessment for any public art component will take place on all major infrastructure projects around town centres and recreation areas or any other identified space. Assessments will be undertaken by an Art Panel consisting of relevant Shire officers and members of the Arts and Culture Advisory Group in accordance with the Public Art Guidelines.

The Shire will always attempt to consult early on in any public art project with traditional owners to ensure cultural values and heritage are considered within public art commissions.

PUBLIC ART

The Shire will seek to commission local artists and cultural industries as a preference to support the development of high quality artwork within the local community.

## Definitions

### Art

Art is the product of practitioners who intend their work and activities to be seen, read and experienced as art. Art embraces material and immaterial products and concepts from the imaginative thinking of artists.

### Artist

Artists will be eligible to carry out public art commissions. The term artist for the purpose of this policy is defined as a person who meets a minimum of two of the following criteria:

- (a) A person who has a Bachelor's Degree or Diploma in visual arts or any similar field;
- (b) A person who has a track record of exhibiting their own original artwork at reputable art galleries that sell or exhibit the work of professional artist.
- (c) A person who has had their own original artwork purchased by major public collections, including (but not limited to) the Art Gallery of Western Australia.
- (d) A person who earns more than 50% of their income from arts related activities, such as teaching, selling artwork or undertaking public art commissions.
- (e) A person engaged in an activity related to creating art, practicing the arts, or demonstrating an art.

In some circumstances it will be appropriate to be more flexible and seek people other than professional artists to carry out artwork, such as commissions for an Emerging Artist.

### Contentious Public Art

People's interpretation of art will be influenced by their personal feelings, tastes, or opinions and art that achieves its objective of provoking thought is often controversial. While the Shire aims for public art to provoke thought, it aims not to offend. Proposals incorporating any of the following will not be supported:

- Negative racial stereotypes
- Political messages
- Sexually provocative nudity (general nudity is not considered provocative)
- Sexist
- Discriminatory

The responsibility of determining what is contentious rests with the Art Panel and the CEO.

### Community Art

Community art is a collaboration between professional artists and non-professional artists, often around dealing with a social issue, community building initiative, or as a form of community consultation. Community arts, also sometimes known as "dialogical art" involves exchanges between people as they interact with information, objects, and each other.

### Construction Cost

Construction Cost means the estimated cost of a development including:

- (a) All goods and materials (including manufactured goods for part of the work)
  - (b) Labour
  - (c) Services necessary
  - (d) Fees payable
  - (e) Overheads to be met
  - (f) Profit margin
- or

Contract price where the work is to be carried out under a contract provided the contract price includes the value for at least each of the relevant components (a to f above), the estimated construction cost of the development is the contract price (including GST).

### **Development**

Development means the development or use of any land, including

- a) Any demolition, erection, construction, alteration of or addition to any building or structure on the land;
- b) The carrying out on the land of any excavation or other works;

### **Ephemeral art**

Ephemeral artwork describes non-permanent work that may include temporary installations, performance art, dance, exhibition, experiential and/or participatory art.

### **Emerging artist**

An artist who is at an early stage in their career, who has specialised training in the art form or who has created a modest body of artistic work.

### **Public Art**

The term public art refers to artwork in any medium specifically created to be experienced in the public realm. Public art is typically located in highly accessible public spaces and can include sculpture, painting, installation, multimedia, sound or performance; it may also be integrated into architectural surfaces and landscaping. Where development is removed from public spaces by being remote from an urban area, public art shall be clearly visible from publicly accessible parts of the development site.

### **Significant Development Proposal**

Means a development that is within the categories of Tourism Uses, Licensed Premises, Commercial Uses or Community Uses under the Local Planning Scheme and that has an estimated construction cost of greater than \$1 Million.

### **Forms of public art**

Public art may take many forms including but not limited to the following categories.

- a) **Stand Alone**  
Artworks of a three dimensional nature embedded into a building or public space and may be a single or multiple installation works. This style of work has been traditionally associated with public artworks.
- b) **Integrated**  
Artworks that are integrated into a building or building space either interior or exterior. They may be imbedded in ceilings, floors, railings, screens and/or assist to define or separate spaces.
- c) **Applied**  
Works that are applied to interior or exterior surfaces, including commissioned paintings, tapestries and murals.
- d) **Installation**  
These works are where the work and the site are integral to each other. The work may be created to respond or compliment a space or draw attention or intervene in a particular environment.
- e) **Ephemeral**  
These are works that are non-permanent works that may include temporary installations, performance, participatory or experiential works.

# Policy

## Application

Funding of public art will generally be by one of the following means:

1. Shire Public Art Acquisition budget set annually as part of the annual budget process to contribute towards the acquisition of public art. The amount is to be determined through the annual budgeting process and may include opportunities to access grant funding for public art projects.
2. Donation or gift of public artworks funded through cash or other philanthropic measures but will be required to be the subject of public art assessment via the assessment process outlined. The Shire is not required to accept a donation of public artwork at any time.
3. Developer Contributions which facilitate the provision of public art works through the requirement for all developments (excluding private homes, subdivisions, rural and industrial development) above a value of \$1,000,000 (including GST) to allocate one per cent of the value of the development to public art.

The Per Cent for Art requirement also applies to Shire funded developments above a construction cost of \$1,000,000 (including GST).

### 1. Public Art in Development

A significant development proposal will incorporate the provision of public art to the value of one percent of the construction cost of a development with a value over \$1 Million up to and including \$10 Million, with an additional 0.5 percent contribution for the construction cost of a development over \$10 Million.

#### 1.1 Incorporation of Public Art into Development

- a) Public art may be provided through the implementation of a development proposal. Where public art is provided as part of a development proposal it should be suitably detailed through the application and assessment of a development.
- b) Valuation of the provision of a public art component of a development shall be provided to demonstrate that where incorporated within a development proposal, the art provided is to a value commensurate with the requirement for public art in development. Valuation may be provided following approval to demonstrate compliance with a condition of approval requiring public art.

#### 1.2 Provision of cash in lieu for Public Art

- a) As an alternative to the incorporation of public art within a development, cash in lieu to the value of the requirement for public art may be paid to satisfy the requirement for public art.
- b) Cash in lieu of public art will be paid into the Shire's Public Art Fund and used for the provision of public art in accordance with the Shire's Public Art Guidelines.
- c) Cash in lieu of public art will only be accepted where nearby public spaces can be enhanced by the provision of public art.
- d) Cash in lieu of public art will be refunded where a development approval expires or is no cancelled, upon request of the owner of the approval.
- e) Cash in lieu funds may be aggregated for expenditure on public art.

### 1.3 Valuation of Public Art Provision

The value of public art will be taken as the sum of:

- a) The fees of an artist for design, materials, assistant's labour costs, insurance, permits, taxes and other costs directly and proportionally related to the production of a particular item of art. The artists fees must not exceed 20% of the overall cost of the art work.
- b) Fabrication and installation of art work.
- c) Site preparation.
- d) Structures to enable display of a particular art work.
- e) Documentation of a particular art work.
- f) An acknowledgement plaque for the art work.
- g) Any ongoing costs for maintenance/upkeep of the works.

## 2. Implementation of Public Art Proposals

### 2.1 Suitability of Public Art Proposals

- a) Public art proposals will be assessed in a manner consistent with the Shire's Public Art Guidelines.
- b) Public art proposals may include the following:
  - Building features and enhancements such as bicycle racks, gates, benches, fountains or playgrounds structures that are unique and produced by an artist.
  - Murals, tiles mosaics or bas-relief covering floors, walls and walkways. Murals may be painted or constructed with a variety of materials.
  - Three-dimensional works which can be free standing or wall mounted.
  - Neon or glass art works, photographs, prints and any combination of media including lighting.
- c) Public art should satisfy all of the following criteria:
  - Be located where it can be clearly seen from the public realm.
  - Be an original artwork.
  - Be of high aesthetic quality.
  - Be durable, sustainable and easy to maintain.
  - Be resistant as possible to vandalism.
  - Be created with consideration for the Shire's *Strategic Community Plan 2040* and *Creative Culture Plan 2023-2025*.
  - Contribute to an attractive and stimulating environment.
  - Shall not detract from the amenity or safety of the surrounding area.
  - No adverse amenity impact on the surrounding locality
  - Be responsive to the site context and reflect the local area's natural, physical, cultural or social values history.
  - Take into account the existing public art in vicinity so to avoid repetition and to ensure the artwork is unique.
  - That the public art be functional where appropriate.
  - Meet any safety standards or requirements for public spaces
- d) Public art proposals that comprise the following will not be acceptable as provision of public art:
  - Business logos, wording or names related to the development.
  - Directional elements such as supergraphics, signage, or colour coding.
  - 'Art Objects' that are mass produced such as fountains, statuary or playground equipment.
  - 'Off the shelf' art or reproductions.
  - Objectionable or contentious public art subject to assessment through the guidelines

- Landscaping or architectural elements which would normally be associated with the project

## Relevant legislation

*Planning and Development Act (2005)*

An artist's rights are protected under the *Copyright Amendment (Moral Rights) Act 2000* (the Act). Under the Act, all original artwork must be attributed to the artist.

The ownership of the public artwork and copyright will be determined within the commissioning process, the contract and the land on which it is located.

Unless otherwise agreed, copyright of both the preliminary visual material and the work itself should be retained by the artist.

The Australian Copyright Council provides advice on copyright and ownership in relation to public art: <http://www.copyright.org.au/>.

## Related documents

*Public Art Guidelines*

*Creative Culture Plan 2023-2025*

*Strategic Community Plan 2040*

Document and version control table			
<b>Responsible Directorate</b>		Sustainable Development and Infrastructure	
<b>Contact officer</b>		EA to Director of Sustainable Development & Infrastructure / Project Administrator	
<b>Adopted / approved by:</b>		Council	
<b>Date of adoption / approval:</b>		23 August 2023	<b>Decision Ref:</b> OM/2023/160
<b>Date of next review</b>		23 August 2027	
<b>Document No.</b>	N265321	<b>File No.</b>	<b>GOV/38 LND/52</b>
Version	Date	Decision Ref.	Brief description
1.0	14 September 2022	OM2022/144	Reviewed (advertised)
1.1	23 August 2023	OM2023/160	Adopted by Council



# Public Art Guidelines



August 2023

The Shire of Augusta Margaret River recognises the potential for public art to represent the heritage and cultural identity of an area; beautify and enhance streetscapes, activate public place, increase amenity and draw visitors to the Shire. It contributes to a sense of identity and well-being by reflecting a places unique character. It plays a key role in urban renewal, place making, urban design and tourism. In short, when combined with good design principles, public art creates places where people want to be.

## Objectives

These guidelines are intended to provide a guiding process for procurement, implementation and ongoing management of public art within the Shire and shall be read in conjunction with the Shire of Augusta Margaret River's *Local Planning Policy 30 – Public Art* (LPP30).

## Procedure

Funding of public art will generally be by one of the following means:

1. Shire contributions via moneys set aside annually to contribute towards public art. The amount is to be determined through the annual budgeting process or via access to grant funding for public art projects.
2. Developer Contributions Per Cent for Art which facilitates the provision of public art works through the requirement for all developments (excluding private homes, subdivisions, rural and industrial development) above a value of \$1,000,000 (including GST) to allocate one per cent of the value of the development with an additional 0.5 percent contribution for the construction cost of a development over \$10 Million to public art as outlined in the Local Planning Scheme No1 Scheme Amendment No.35 - Developer Contributions, and Local Planning Policy 30 – Public Art (LPP30).

The developer has two options to satisfy their public art obligation. They may choose to:

- Include one per cent of the construction cost for public art in their designs in locations accessible to the public. Developers must ensure that their proposals meet the criteria outlined within these guidelines or
- Provide a cash-in-lieu contribution to the Shire based on the applicable rate. This funding will then be utilised to develop public art projects in line with LPP30 and these guidelines.

Per Cent for Art also applies to Shire funded developments above a construction cost of \$1,000,000 (including GST).

3. Donation or gift of public artworks funded through cash or other philanthropic measures but will be required to be the subject of public art assessment via the assessment process outlined.

The Shire is under no obligation to accept any donation or gift of public artworks.

## Public Art in Development

### Suitability of Artwork in Development Proposals

Public art may be provided through the implementation of a development proposal. The artwork proposal shall be included with the development application to include the artwork location, type, design documentation and valuation assessment. The Shire's Art Panel will assess art proposals in accordance with the provisions of the Public Art Policy (LPP30), and against the following criteria:

- Durability of materials
- Legality and safety
- Visibility from publicly accessible areas
- Adherence to any special conditions applied by the Shire
- Suitability of the artwork in the context of the development and surrounding areas
- Maintenance of the approved public artwork on site is the responsibility of the developer/land owner.

### Cash-in-lieu Contribution for Public Art

Cash-in-lieu payments are to be paid to the Shire of Augusta Margaret River Public Arts Fund (Percent for Public Art) and expended in accordance with the following. Where cash in lieu is proposed the applicant will provide a monetary figure of 1% of the development cost that will be used to fund future public art projects within the nearest townsite to the development. All money received by the local government in this way is required to be paid into a separate account of that authority (Shire of Augusta Margaret River Public Arts Fund (Percent for Public Art)), which should clearly set out the purposes 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. The funds shall be expended by the Shire within five (5) years of receiving the contribution and will be subject to the standard assessment outlined in these guidelines. The Shire will commission public artwork to be installed in line with these guidelines and LPP30 to meet the objectives of the Creative Culture Plan.

### Criteria for Expending Cash-in-lieu Contribution

In cases where the proponent chooses a cash in lieu payment as their preferred method of satisfying their public art obligation, the funds collected shall be expended by the Shire on public artwork within the closest town centre zone or closest identified public art site. This includes the following townsites and relevant centre zones:

- Margaret River
- Cowaramup
- Witchcliffe
- Augusta
- Gnarabup/Prevelly
- Gracetown

### Expending Cash-in-lieu for development located within a townsite

Where cash in lieu is provided for a development within a townsite, expenditure on public art should occur within the townsite that the development is located and where practical within the locality of the development site. For the purposes of these guidelines the locality is determined as a location visible from the development site, or within a walkable catchment (400m) of the site.

### Expending Cash-in-lieu for development located outside of a townsite

Where development occurs outside of a townsite, the public art contribution will be expended within the nearest centre zone. The contributions applied within the locality of the development will promote vitality and a sense of place within the nearest townsite.



## Assessment of Public Art Projects

When public art projects are presented to the Shire, an Art Panel will be formed consisting of:

- At least two members of the Art and Culture Committee or two representative members from local art organisations if committee members are unavailable (generally this is easily acquired from within the A&C Committee membership).
- Two Shire offices – Generally this would be the responsible officer and a management representative and other staff may be added if particular expertise is required.

All public art projects will be managed in line with the WA Department of Culture and the Arts, Public Art Commissioning Guidelines and any projects will be assessed against the following criteria:

- Compliance with the Expression of Interest requirements outlined in the Artwork Brief
- Relevant experience and quality of previous work
- Artistic merit
- Works are created by an artist (see definition)
- Approach and philosophy
- Works must be appropriate for the space and reflect the areas natural, physical, social values, history and/or culture.

The following forms are ineligible for consideration in public art projects:

- Business logos
- Mass produced objects unless constructed in a unique way deemed to have artistic merit
- Art reproductions unless constructed in a unique way deemed to have artistic merit.

On success of a proposal the artist may be required to develop a prototype or be asked to redesign or amend the artwork to fit the requirements of the project. This process (if required) is to be negotiated between the responsible Shire officer and the artist with input from the art panel if required.

On agreement of the final work to be delivered a contract for acquiring the works must be signed by both parties agreeing to:

- What will be delivered
- Budget cost
- Installation process
- All parties responsibilities
- Ongoing maintenance requirements

## Commissioning process for a Public Art Project

### Commissioning Models

There are a number of different commissioning models and the most appropriate model in any situation will depend on a number of factors including;

- Scope of project
- Budget
- Location
- Site profile
- New or refurbishment
- Overall project contract

A project may also use a combination of commissioning models if appropriate.

### **Open Invitation**

A process that invites all artist to respond to a brief. Generally this is an Expression of Interest (EOI) procedure and the most common form of commission.

### **Curated**

A coordinator or curator is employed to curate an area of specialist expertise and the project is generally not advertised. An example project is the Ephemeral Public Art Program at the Perth Cultural Centre.

### **Limited Invitation**

A limited invitation to a selection of artists to respond to a brief or present the scope of their practice to a panel. Generally this is used for smaller commissions such as a foyer artwork design or street art commission.

### **Direct Purchase**

The commissioner purchases an artwork directly from the artist or artist's agent against relevant procurement processes. This model is used when a particular piece of work is considered relevant for a project or it is a private development.

### **Direct Commission**

This model differs from direct purchase as the artwork is specifically designed for the project. The Artist may be interviewed as part of the process and is often used for engaging specific Aboriginal artists.

## **Commissioning Process**

### **Artwork Brief**

The brief is the most important part of the process, it should be flexible to allow for creative response from the artist/s and also meet the functionality and client requirements.

The brief may include:

- Background and history of the project
- Outcomes - social, economic, artistic, historical etc
- Budget
- Location/character/artists impressions of the building or place
- Scale & scope of the art work
- Any required consultation (community, contractors, other stakeholders)
- Time schedule, milestones etc.
- Technical requirements – drawings, site analysis and constraints, plans etc
- Sub-contracting options (often artists may work with other subcontractors for parts of a commission)
- Proposed contract arrangements

The brief should also outline any criteria that will be used to assess various stages of the process.

### **Expression of Interest**

Usually the brief is released via an EOI process although some public art commissions do not require this.

An EOI invites artists to submit their interest in undertaking the public art commission and would generally include:

- Artist/s CV
- Written response to the artists brief, with demonstrated experience relating to the selection criteria and;
- Relevant images/examples of past works.

PUBLIC ART GUIDELINES

Artists submissions may be individual or as part of a team and the EOI would generally be open for 3-4 weeks although larger commissions may be open longer.

### **Short listing**

For projects involving and EOI process applications are to be assessed against the selection criteria by the selection panel.

The panel composition would usually comprise of the project architect or manager, up to 3 members of the Art and Cultural Advisory Committee and 1 other shire staff member plus the Art Coordinator who acts as a non-voting chair.

The panel member review and rank each application individually against the selection criteria before meeting to undertake a group assessment based on the same criteria. From this assessment between 2 – 4 artists would normally be shortlisted and invited to proceed to the design concept stage. Commissions form large projects may instead use a shortlisted pool of artists who may be called to submit a project proposal during the build.

The Chair collates all information from the selection process and prepares a report and all artists are notified in writing of the outcome. Deliberations of the panel are confidential but artists may seek feedback on their application.

Some limited invitation and direct commission models may commence the public art project at the Design Concept stage.

### **Design Concept**

For EOI commissions the design concept stage allows shortlisted artists to develop the concepts they submitted as part of the EOI.

A briefing would be held with the shortlisted artists to provide more detailed information and may include presentations by the art coordinator, commissioning agent, architect or any other relevant professional as well as a possible site visit.

A fee would be provided to all shortlisted artists to assist development and production of the design concept. The fee is for production only and the artist remains the copyright owner of the concepts and all drawings, models etc remain the property of the artist.

Design concepts may include:

- Written description and response to theme
- Drawings, sketches, digital images which should indicate scale, length, colour and materials.
- A 3D model
- Material samples
- Details of fabricators, industry collaborators and other design professionals required for production
- Budget and/or cost estimates
- Work program and payment schedule
- Installation requirements
- Any required proof of insurances required.

Normally a 4 week period would be given to artists to submit their design concept but this may depend on the scope and complexity of the public art project.

## **Final Selection**

Design concepts should be presented to the panel in person.

The panel will assess the design concepts in a similar process to the EOI process.

Assessment should consider:

- Response to the brief
- Quality and creativity of the proposal
- Previous experience
- Appropriate skill level to match the proposal
- Ability to work collaboratively with the project team, community etc
- Realistic budget.

## **Contract**

The successful artists will be contracted with the agent and the contract will set out all work requirements with milestones and a payment schedule.

The contract or Commission Agreement should include:

- Schedule A – A Work Program
- Schedule B – Payments Schedule
- Schedule C – Artwork descriptions, drawings and overall budget

The contract may also include requirements such as:

- Who pays for preparatory works
- Transport, delivery and installation costs and requirements
- Remedial works after installation
- At what point responsibility transfers
- Maintenance requirements and care of the completed works.

## **Artwork Development**

During the artwork development the artist or artist team may:

- Review or refine the original concept
- Take direction on any required changes
- Review and finalise budget
- Meet with architect and any other project stakeholders or consultative groups required
- Meet with material suppliers/fabricators/installers
- Undertake anything else required prior to finalising the works
- Production and completion of artwork

The production may include the artist producing the work themselves or supervising its fabrication or both.

Once the artwork is completed according to the terms of the contract the artwork will be installed as per the agreement and at the completion of the installation the artist provides the shire with photos of the completed works and a maintenance report.

A launch event may take place at this stage and include an artist talk which may help with community understanding of the work.

## **Maintenance**

The ongoing maintenance of the public artwork is usually the responsibility of the owner of the land or building. The maintenance report is prepared by the artist at the end of the project and outlines:

- a description of the artwork (including digital images and the date of completion);
- artist/artist team contact details;
- a maintenance schedule and an agreement on who is responsible for the ongoing maintenance;
- the expected lifespan of the work;
- the method of construction, the types of materials used and details of the fabrication company (if relevant);
- details of any electrical and/or mechanical systems installed;
- any specific instructions or products to be used when cleaning and maintaining the artwork; and
- any instructions to respond to urgent maintenance issues such as vandalism.

### **Deaccessioning artwork**

If an artwork has reached its intended lifespan, has been damaged or destroyed, or is no longer safe, there may be a need to remove or relocate the artwork. This may also happen if the site on which the artwork is located has been sold or is to be redeveloped.

Before an artwork is deaccessioned, a formal process should be implemented which may consider:

- the intended lifespan of the artwork; any conditions relating to the deaccessioning of the artwork, as outlined in the original contract;
- the opinions and advice of relevant stakeholders including the artist, maintenance contractors, the owners of the building or land on which the artwork is located or any other experts, such as engineers; and
- community or cultural issues associated with the artwork, building, land and/or original commissioning process.

The artwork should not be removed, relocated, sold or destroyed without first notifying the artist. The National Association of Visual Artists (NAVA) can provide additional information regarding the obligation and rights of artists in this regard.

### **Copyright, legal title and ownership**

An artist's rights are protected under the Copyright Amendment (Moral Rights) Act 2000 (the Act). Under the Act, all original artwork must be attributed to the artist.

The ownership of the public artwork and copyright will be determined within the commissioning process, the contract and the land on which it is located.

Unless otherwise agreed, copyright of both the preliminary visual material and the work itself should be retained by the artist.

The Australian Copyright Council provides advice on copyright and ownership in relation to public art: <http://www.copyright.org.au/>

<b>Related Procedures</b>	Local Planning Policy 30 – Public Art
<b>Responsible Directorate</b>	Sustainable Development and Infrastructure Services
<b>Prepared by</b>	Planning Department
<b>Approved by Director/CEO</b>	Director of Sustainable Development and Infrastructure
<b>Last Reviewed</b>	Date: 23 August 2023