

### INTRODUCTION

The Town seeks to facilitate the provision of public art as part of the private development process through the application of a percent for public art contribution policy. Consistent with the objectives of Council's Town Planning Scheme No. 1, the provision of public art has the capacity to enhance the social, physical and cultural environment of the Town, and promote the development of a sense of local community identity. The heritage of a place and its interpretation can also be reinforced through public art.

The delivery of public art as part of the development process facilitates higher quality built form and streetscape outcomes that can positively impact the utility, amenity and identity of the public realm, including streets, parks, squares, civic buildings and other publicly accessible environments. Public artworks may also improve the use and functionality of the public domain where it serves a functional as well as aesthetic purpose, such as appropriate street furniture, shading devices or other elements.

Significantly, the provision of public art can also enhance the amenity and increase the attraction of new and refurbished developments and their surrounding environments. This is of benefit to the residents and staff who will have regular and/or long-term opportunity to enjoy and interact with the public artwork. The occasional guests, visitors and customers of developments are also able to benefit from the provision of public artwork.

This policy is aligned with the State Government's *Percent for Art Scheme* (established in 1989) which advocates for up to one percent (1 %) of the construction value of new public works proposals with a value over \$2 million to be used for the commissioning and delivery of public artworks. This scheme has since been adopted and adapted for use by many local governments as a model of best-practice for the delivery of public artwork through the private development process.

### OBJECTIVES

- (a) The development and promotion of the community's identity through the provision of public artworks which reflect the place, locality and/or community of which the occupants, visitors and customers of new or refurbished developments form part;
- (b) To increase the amenity provided to the existing or future occupants of new or refurbished developments through the provision of public artwork on the development site or within the surrounding locality;
- (c) To establish a clear and consistent approach for the provision of public art as part of the private development process;
- (d) To facilitate understanding and celebration of the Town's natural, physical, cultural and social values, including natural and built cultural heritage;
- (e) To enhance the visual amenity, vibrancy and character of the Town's built environment; and
- (f) To improve way-finding and legibility of streets, open spaces and buildings, including landmark treatments where appropriate.

## POLICY SCOPE

This policy applies to development throughout the Town with an estimated *development cost* of \$2,000,000 or more.

Council recognises that some developments by virtue of their industrial nature, small size or occupancy reduces the amenity benefits that the provision of public art would provide as part of such developments. The policy also seeks for substantial, rather than token, public art to be provided and therefore excludes certain forms of minor development for which the provision of public art would not result in an appreciable amenity benefit to the development occupants and/or local community. These exclusions are identified under Clause 1.2 of this policy.

This policy does not replace a developer's responsibility to provide a high-quality development which positively interacts with the public realm, or to satisfy another condition of development approval. Rather, the policy is a mechanism to increase the level of amenity provided to the occupants and customers of new or refurbished developments, and to enhance their contribution to the identity of the local community of which their existing or future occupants will form part.

Development proposals which are not required to provide public art are encouraged to utilise this policy and the *Town of Victoria Park – Developers Public Art Handbook* as a guide for the provision of public art as part of their developments, where they choose to optionally do so.

## DEFINITIONS

**Developer** is the nominated person or parties responsible for carrying out the development and may include the applicant for the development application, the owner of the property being developed or their authorised representative. The property owner is ultimately responsible for fulfilling the obligations of this Policy and any conditions of development approval related to the provision of public art on-site or the payment of a percent for public art contribution requirement.

**Development cost** is the approximate cost of the proposed development nominated on the Application for Development Approval form required to be submitted with the development application.

**Estimated value of building work** has the same meaning as defined in Schedule 1, Clause 2 of the *Building Regulations 2012*.

**Public Art** refers to the integration of an artistic concept within or adjacent to the *public realm*, such that it is capable of being viewed and appreciated by the public. Public art can take many forms, incorporate many different materials and be produced in many ways. It can be stand-alone, applied to surfaces, or integrated into building facades, road infrastructure elements or landscaped outdoor spaces. Public art can be permanent, temporary or ephemeral. The distinguishing feature of these works is that a *professional artist* (or artist team) is wholly, or partly, responsible for the creation, design and/or fabrication.

**Public realm** refers to an outdoor public space from which the public has the ability to view and appreciate artwork, and may include streets, parks, foreshores, squares, plazas, and other publicly accessible outdoor spaces.

**Professional Artist** refers to an individual (or artist team) responsible for producing the artwork in fulfillment of the public artwork requirements of this policy. The characteristics and criteria utilised by the Town to further define a Professional Artist are contained in the *Town of Victoria Park – Developers Public Art Handbook*.

## **POLICY REQUIREMENTS**

### **1. Percent for Public Art Private Developer Contribution**

- 1.1 The approval of any application for development approval within the Town (both new buildings and additions/alterations to existing buildings) shall be subject to a requirement for the provision of public art to the value of one per cent (1%) of the *estimated value of building work* of the approved development, where the development has an estimated development cost of \$2,000,000 or more, with the exception of those forms of development listed in Clause 1.2 below.
- 1.2 The following forms of development are excluded from the public art contribution requirement of Clause 1.1:
- (a) Development within an area the subject of an approved Structure Plan, Local Development Plan or other planning instrument adopted by Council that contains alternative requirements for the provision of public art within that area;
  - (b) Development comprised solely of demolition, site works or other servicing infrastructure;
  - (c) Development on 'Industrial' zoned land;
  - (d) Development (or that portion of a development) comprising Commercial Vehicle Parking, Industry, Light Industry, Motor Vehicles and Marine Sales Premises, Motor Vehicle Repair, Motor Vehicle Wash, Service Industry, Service Station, Telecommunications Infrastructure or Warehouse/Storage land uses;
  - (e) Wholly residential developments containing fewer than 10 dwellings;
  - (f) Building refurbishments to existing premises of less than 1000sqm floor area; and
  - (g) External façade upgrade works and/or signage to non-residential buildings.

### **2. Options to Satisfy Percent for Public Art Contribution Requirement**

- 2.1 Satisfaction of the public art contribution requirement in Clause 1 can be fulfilled by:
- (a) Provision of public artwork by the developer to the value of the required contribution amount (Option A) as:
    - i. part of the approved development on the development site; and/or
    - ii. on public land under Council control within close proximity to the development site (subject to Council agreement); or
  - (b) Payment (cash-in-lieu) of the required contribution amount into the Town of Victoria Park's Community Art Fund for the future provision of public art by the Town (Option B).

### **3. Consideration of on-site provision of public art at development application stage (Option A)**

- 3.1 Where a developer/land owner intends to integrate the required public art contribution as part of their proposed development as per Clause 2.1(a), the



developer/land owner is encouraged to inform the Town of this in a covering letter accompanying the development application.

3.2 Developers/land owners are strongly encouraged to provide conceptual details of the artwork(s) in the development application for the main proposal to ensure that its design, installation and maintenance has been considered as part of the overall design.

3.3 Public art concepts presented to the Town during the development application stage are recommended to be informed by preliminary discussions with a professional artist to ensure that the conceptual artwork(s) can be feasibly fabricated, installed and maintained. This is particularly the case for significant developments where large-scale and/or a variety of public artworks may be proposed.

#### **4. Satisfaction of public art contribution requirement through physical installation of public art (Option A)**

##### **4.1 Process and approval for design and installation of public art work**

The following provisions apply where an owner/developer elects to satisfy the public art contribution requirement in accordance with Clause 2.1(a):

- (a) The owner/developer reviews the *Town of Victoria Park – Developers Public Art Handbook (Handbook)*, and consults with the Town as required under the *Handbook*;
- (b) The owner/developer seeks the Town's approval for their chosen professional artist, and an artistic concept(s) prepared by that professional artist, through submission of an Application for Artwork Approval to the Town in accordance with the *Handbook*;
- (c) The Application for Artwork Approval will be presented to the Town's Public Art Advisory Group, which will consider the proposed public artwork concept(s) and may resolve to recommend the proposal for approval by the Town. The Application for Artwork Approval may also be presented to the Town's Aboriginal Engagement Advisory Group (and/or other relevant indigenous groups or organisations) for artwork concept(s) that have themes, or are located on sites, of indigenous cultural significance, seeking their recommendation. If approval from the Town is given it will be provided in writing to the owner/developer;
- (d) The owner/developer enters into a contract with the approved professional artist to design, fabricate, install and/or complete delivery of the public artwork concept(s) in accordance with the approved Application for Artwork Approval;
- (e) A copy of the contract entered into with the professional artist as per (d) above is required to be provided to the Council prior to the lodgement of a building permit for the development, or other timeframe as agreed to in writing by the Town;
- (f) The approved artist undertakes the public art project in accordance with the approved Application for Artwork Approval, with complete installation to occur prior to the first occupation of the development or strata titling, whichever occurs first;
- (g) The Town shall be notified of the completed installation of the public artwork

and will undertake an inspection to confirm its satisfactory completion, including installation of a plaque for each permanent artwork in accordance with CI 4.2(c) below; and

- (h) Strata titling and/or occupation of the development may only proceed following the Town's confirmation of the satisfactory installation of the approved public artwork.

#### **4.2 Maintenance, Ownership and Moral Rights**

- (a) Where public art is situated or attached to a building on private property, including where it projects beyond the property boundary (e.g. an artwork attached to a building façade or an overhead canopy above the public pedestrian path), the public art is owned by the land owner (e.g. the strata company/body corporate in the case of a strata titled development) who is responsible for the ongoing maintenance and upkeep of the public art in good condition for the reasonable life of the artwork(s) of the kind installed;
- (b) Where public art is wholly situated on public property/land (with the agreement of the Town), the public art is owned and maintained by the Town following the completion of its satisfactory installation in accordance with CI 4.1(f);
- (c) The installation of all permanent public artwork shall include a plaque or plate in close proximity to the artwork, with the following information:
  - i. title of the artwork (most prominent text);
  - ii. artist's name;
  - iii. year the artwork was commissioned;
  - iv. Town of Victoria Park logo and acknowledgement of the Percent for Art Scheme;
  - v. details of any partner organisations or funding bodies; and
  - vi. in some instances, an artist statement may be appropriate to include on the plaque to assist in interpretation of the artwork;
- (d) Consultation with the artist should occur prior to any changes being made to a public artwork, including by removal or relocation; and
- (e) Public artwork installed in fulfillment of this policy must remain in the same position and remain visible from the public realm to the same degree as the design approved by the Town, except to the extent that the Town may otherwise consent to in writing.

### **5. Satisfaction of public art contribution requirement by payment of cash-in-lieu (Option B)**

#### **5.1 Payment of cash-in-lieu**

- (a) Where a developer elects to satisfy the public art contribution requirement of this Policy in accordance with Clause 2.1(b), payment of the cash-in-lieu contribution amount is to be made prior to strata titling or occupation of the development (whichever occurs first);
- (b) A discount of fifteen per cent (15%) to the public art contribution requirement will apply where a developer elects to pay cash-in-lieu in accordance with Clause



2.1(b), as such contributions:

- i. enable a pooling to create funding for substantial, integrated and themed artwork rather than ad hoc artworks;
- ii. reduce the administrative costs of both the Town and developers/land owners in preparing and evaluating individual public artwork proposals, thereby allowing for a greater proportion of artwork contribution funds to be utilised for the physical fabrication and installation of public artworks; and
- iii. the Town, through its ability to utilise the pooled funds, may be able to negotiate the commissioning of more substantial, impactful artworks with greater overall amenity benefits.

## **5.2 Use and timing of expenditure of cash-in-lieu public art contributions**

- (a) Expenditure of cash-in-lieu monies paid to the Town may occur at any time following substantial commencement of the approved development to which they relate;
- (b) If a development is substantially commenced but fails to reach completion, the Town will retain the cash-in-lieu payment to be expended in accordance with this Policy; and
- (c) Cash-in-lieu payments must be expended by the Town for the delivery of public artworks within the same locality as the developments they were generated by. This may include local parks, footpaths, streets, squares or other public realm locations within the same suburb or Precinct of the contributing development.

## **5.3 Circumstances for full or partial refund of cash-in-lieu payments**

- (a) Cash-in-lieu payments will only be refunded where they have been paid prior to substantial commencement of the development and:
  - i. the development does not proceed and/or does not reach substantial commencement; or
  - ii. in the event that the *estimated value of building work* as determined by the permit authority at building permit stage, is less than the value on which the cash-in-lieu contribution paid was based, in which case the refund will be pro-rata; and
- (b) The Town may require a statutory declaration from the developer and/or owner stating that the development will not be proceeding before any refund of a cash-in-lieu payment is issued under (a)i. above.

## **6. Development approval requirements**

### **6.1 Requirement for separate development approval**

- (a) Public art provided in fulfillment of a condition of development approval will not require a separate application for development approval where it has been factored into the design and construction of the approved development at development application stage, as strongly encouraged by Clause 3 of this Policy;



- (b) An application for amendment to development approval may be required where a developer at development application stage has stated that they will elect to pay a cash-in-lieu contribution in accordance with Clause 2(b), but following the granting of development approval has then decided that they wish to integrate a public artwork into the design and construction of the approved development in accordance with Clause 2(a), or vice versa. This is particularly the case where the change in election results in a substantial change in the external appearance and/or construction of the development. Owners/developers should obtain confirmation from the Town of whether an amendment application is required in these circumstances; and
- (c) Stand-alone public artwork proposals that are not associated with the proposed (re)development of a site will require a development approval to be obtained from the Town, with the exception of mural artworks in particular circumstances. Circumstances where mural artworks may be exempt from the requirement for development approval are specified in *Local Planning Policy 32 'Exemptions from Development Approval'*.

## 6.2 Development approval conditions

- (a) The requirements and obligations of this Policy will be secured through condition(s) of development approval for all relevantly qualifying developments approved by the Town; and
- (b) The Town may modify or impose additional conditions of development approval as part of its approval of an application for amendment to development approval due to the changes arising from the removal or integration of public artwork into a development.

## RELATED DOCUMENTS

*Town of Victoria Park – Developers Public Art Handbook*

*Town of Victoria Park Public Art Strategy 2018-2023*

## VERSION CONTROL

Date Initially Adopted :	Former Administrative Policy PLNG 3 'Public Art Private Developer Contribution' – adopted 20 May 2008.
Date(s) Amended :	<ol style="list-style-type: none"> <li>1. Amended by Council resolution at Ordinary Council Meeting 17 March 2009;</li> <li>2. Amended by Council resolution at Ordinary Council Meeting 11 August 2015;</li> <li>3. Adopted as Local Planning Policy 29 at Ordinary Council Meeting 9 February 2016;</li> <li>4. Amended by Council resolution at Ordinary Council Meeting <i>dd month year</i>.</li> </ol>