

**SCHEDULE OF SUBMISSIONS**  
**Draft Revised Local Planning Policy 29 'Public Art Private Developer Contribution'**

Date advertised: 16 January to 6 February 2020

Total of 2 submissions received

**Submission 1:** Curtin University - Gallery, received 28 January 2020

**Submission type:** Support, with suggested improvements

Submission comments (verbatim)	Council Officer's Response
I think the provision for a cash-in-lieu is a positive move.	Support noted.
I think the requirement for conceptual details to be presented at development application stage will help with ensuring artworks are considered within the context of the site.	Support noted.
Best practice in public art commission encourages consultation with Indigenous traditional owners who are custodians of the intended site of the artwork: is there any consideration for this to take place?	Supported. This is a valid and worthwhile consideration and additional changes have been incorporated into draft revised LPP 29 to explicitly include consultation with relevant indigenous groups/stakeholders.
Links to further information may be useful for developers that have limited experience in public art, though this may be available already in the Town of Victoria Park - Developers Public Art Handbook which I have not read. Information such as standard contracts, copyright and moral rights may be useful.	Noted. <i>The Town of Victoria Park - Developers Public Art Handbook</i> contains information in this regard, and will be revised should the subject proposed changes to LPP 29 be adopted by Council, providing an opportunity for the type and detail of information provided in the handbook to be further improved.

**Submission 2:** Property Council of Australia, received 6 February 2020

**Submission type:** No position stated, but raising concerns/requesting changes

Submission comments (verbatim)	Council Officer's Response
The Property Council is grateful for the opportunity to provide feedback on Town of Victoria Park's ("town") <i>Public Art Private Developer Contributions Policy</i> . The Property Council represents more than 300 companies across WA in the residential, retail, retirement living, industrial and hotel sectors. The property industry now employs more people in Western Australia than any other sector, with more than 233,500 jobs.	Noted.

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<p>We believe that public art plays a significant role in developing the identity and character of a place. However, developer contributions to artworks should be carefully and transparently managed. We do not support a blanket approach as not all developments require public artworks.</p>	<p>Noted and agreed. The draft revised policy provisions include a list of specified exemptions for various forms of development that are not considered to generate a requirement for public artwork, including due to the nature of the land use or the number of future residents, occupants or visitors the development is likely to attract.</p>
<p>For example, while it might be reasonable to expect a residential developer to contribute towards public art, the same may not apply for a developer of industrial lands where no artwork is required (as noted in the policy).</p>	<p>Noted.</p>
<p>We believe any public artwork should enhance the identity of location ensuring that its contribution to the public realm is greater than the cost.</p>	<p>Supported in part. The Town and revised policy support artworks that enhance local identity and the public realm, however quantifying whether the contribution it makes to the public realm is greater than the cost is subjective and unclear. Presumably if a public artwork is able to provide benefits and enhancements to the public realm, enhance local identity and sense of place, as well as provide positive amenity impact to the occupants of the development from which it was generated, then this could potentially be the case as compared to an isolated/internal artwork on a development site.</p>
<p>More problematically for our members, there are often restrictions and strict conditions on the location, format and style of art that can be used within individual developments. These include, for example, separation from the building, shape, size, durability of art, public health and safety considerations.</p> <p>Not only does this directly and negatively impact the design and financial modelling behind any investment, it often results in a high level of homogeneity which would appear to defeat the objective of having public artwork as a place identifier. This has the potential to reduce the value of public art rather than ensuring it achieves the policy aim, which is to: "increase provision, enjoyment and appreciation of artwork in the community."</p>	<p>Noted. The Town's policy provisions do not seek to specify or prescribe the degree of separations, shape or size of artworks. In regards to durability, and public health and safety outcomes, these are relevant factors that should be considered for any artwork that is intended as a physical, permanent artwork installation. In any case, the draft revised policy does not contain prescriptive or onerous requirements in relation to these matters, which should be considered on a case by case basis for each public artwork proposal.</p>
<p>We believe the \$5 million threshold for public art contributions should not be lowered.</p> <p>A \$2 million threshold for contributing "developer funds" to a project is so low that it has the potential to affect "mum and dad" investors building something as simple as a triplex (amounting to an additional cost, at 1%, of around \$20,000 per development at minimum with no cap).</p>	<p>Not supported. An analysis of other metropolitan local government (LG) public art contribution policies found the Town's existing policy to have the highest development value threshold, whereas the majority of local governments were found to range in value from \$1 million (9 LGs) and \$2 million (4 LGs and the MRA). Lowering the Town's threshold to \$2 million still puts it at the middle range of contribution values across the metropolitan area, with only 4 local</p>

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	<p>governments having thresholds higher than this (Belmont at \$4.5 million; Canning at \$4 million; East Fremantle at \$3 million; and South Perth at \$4 million).</p> <p>The revised policy provisions contain exemptions for certain development types to avoid it affecting “mum and dad” investors in small-scale residential developments as well as the refurbishment of small to medium sized (in terms of floor area) businesses. These exemptions include:</p> <ul style="list-style-type: none"> <li>- Wholly residential developments containing fewer than 10 dwellings;</li> <li>- Building refurbishments of less than 1000sqm floor area; and</li> <li>- External façade upgrade works/signage to non-residential buildings.</li> </ul>
<p>If the Town of Victoria Park is intent on implementing this policy, we would prefer the \$5 million threshold remain unchanged.</p> <p>Even for larger projects, there is a point at which the additional contribution of public art is of little value. The policy, while applied across numerous local government authorities, also directly impacts on the issue of housing affordability as the cost of dwellings rises with each additional impost.</p>	<p>Not supported – refer to comments above.</p> <p>Consultation with members of the Town’s Arts Working Group and other public art consultants has argued strongly that increasing development scale does not make public art contributions less effective once developments reach a certain size. Indeed, they have argued that the sophistication, scale and contribution that public artworks should make is even more significant and important.</p>
<p>Should a public artwork contribution be required, we suggest a contribution fund, with a much higher ceiling, that:</p> <ul style="list-style-type: none"> <li>• Can allow for a greater range of public art without consideration restrictions (including performances or other ephemeral forms of art);</li> <li>• Ensures artworks are complimentary to public spaces in creating and fostering identity and character;</li> <li>• A whole of local government approach to artwork should facilitate a better, more consistent and targeted public artwork program thus assisting in marking it as a destination and to assist in marketing the development;</li> <li>• Contributions, if required, form a “reserve fund” that can be used across the town and not in one development-specific location.</li> </ul>	<p>Not supported. The Town’s experience has been that when provided the choice (as has always been the case with the Town’s policy) to integrate an artwork as part of a developer’s own development on site versus contributing to the Town’s public art fund, developer’s have always sought to integrate an artwork as part of their own development. To date the Town has not received any cash-in-lieu public artwork contributions . Notwithstanding, the revised policy provisions continue to allow for contributions to be provided in lieu of the delivery of actual public artworks should a developer elect to do so.</p> <p>In regards to the use of contribution funds, the Town’s legal advice has confirmed that funds generated by a development should be expended within the same locality or precinct in which the development is located. This is in order to demonstrate that the expenditure of the funds can be reasonably shown to at least have the ability to benefit and be enjoyed by the users/occupants of the contributing developments, notwithstanding that it may have amenity benefits to the public at large. The use of funds in a manner that cannot reasonably be demonstrated to do this may leave the Town open to legal challenge. Any contribution funds received by the Town must be used in a highly coordinated and accountable manner and not simply rolled into a large general fund for expenditure anywhere across the Town. Anecdotally, the Town</p>

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	is aware of isolated circumstances where other local authorities have not responsibly tracked and managed the collection and expenditure of public artwork contributions received over time, resulting in significant governance and accountability issues.
We are concerned this policy discourages investment and, given the Town's proactive position on density, development and infill, undermines the Town's own goals. The policy notes a future budgetary gain to the Town if these contributions are collected. There is a real risk of budgetary loss if the policy discourages future development.	Not supported. Public art contribution policies are common-place across major capital cities in Australia, the United States and many European countries, and have contributed to more interesting, vibrant and inviting public realms, streets and successful developments. Public artworks have the potential to contribute significant amenity benefits to the users, visitors and occupants of the developments from which they are generated and can act as unique investment and visitor attractors in their own right, contributing to local identity, sense of place, and the success of local businesses.
Should this policy be applied in the Town without further consultation, it is the strong view of the Property Council and its members that the policy should apply only to future projects. It should not be retrospective.	Noted. The proposed policy changes in terms of the threshold value of developments to which they would apply, would only come into effect for development applications approved following the formal adoption (and publication) of the draft revised policy, should the Council determine to adopt it. In terms of process for artwork approvals for developments already approved and subject to a requirement for a public artwork contribution, should the draft revised policy be adopted, then the revised policy provisions would apply. In this case, the revised policy provisions have been designed to facilitate (i.e. make more straightforward) and provide clarity to developers of how to meet their public artwork obligations, without necessitating the sometimes drawn out and expensive process of entering a legal agreement with the Town as is currently required by the existing policy.
On the policy's 27th point, it notes "recognising the lowering of the threshold for public art contributions would have a financial impact upon developers." A mitigating note also states that this issue can be managed through careful community consultation. The Property Council does not believe careful consultation offsets the cost.	Noted. The comments in the 27 <sup>th</sup> point/paragraph in the Officer report for the 19 November 2019 Ordinary Council Meeting did not state and were not intended to imply that careful consultation offsets the financial impacts of lowering the contributing development value threshold from \$5 million to \$2 million. It was simply to state that the Town's Officers would be carrying out careful consultation given these circumstances. This has been carried out with direct invitations being sent to a number of major landholders and developers within the Town as well as property and development industry organisations. Only 3 submissions (including the subject submission) were received by the Town.

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We would be more than happy to discuss this matter with the Town in more detail.	Noted.
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**Submission 3:** Mirvac, received 14 February 2020

**Submission type:** Support, but raising concerns/requesting changes

Submission comments	Council Officer's Response
<p>Mirvac as the long-term developers of The Peninsula Burswood and owners of undeveloped land within the Burswood Precinct provide the following submission on draft Local Planning Policy No.29 – Public Art Private Developer Contribution (draft LPP29) which is currently being advertised by the Town of Victoria Park (the Town).</p> <p>The Peninsula Burswood is a masterplanned precinct which Mirvac has been exclusively responsible for planning and delivering over the past 17 years. The development of this community by Mirvac has involved more than just the construction of residential developments, with significant areas of public open space designed, developed and maintained well beyond best practice standards for a precinct of this nature. These areas of high amenity architecturally designed public open space have been ceded to the Town as a significant community asset.</p>	<p>Comments noted.</p> <p>Mirvac's delivery of high-quality public open space and public realm treatments is noted, however this is not tied to the delivery of public art and is not dissimilar to developments delivered by Mirvac elsewhere and by other major developers of significant high value landholdings across Perth. This is particularly the case for prestigious, high value developments in close proximity to the coast or Swan River, where investments in the public realm and the delivery of high quality public open spaces is an expectation of purchasers/investors and of direct benefit to the marketing and financial success of these developments.</p>
<p>The Burswood Lakes Structure Plan has supported the delivery of these high-quality public realm treatments and public art installations within the Peninsula Burswood, as is consistent with the intent of draft LPP29 as set out under Cl. 1.2 (a). The high quality public realm, inclusive of public art, will continue to be developed by Mirvac as part of future stages of development. On this basis and given that the Burswood Lakes Structure Plan predates the original LPP29, the draft LPP29 should be amended to exclude its application to the Peninsula Burswood precinct.</p>	<p>Not supported. Mirvac's delivery of public artworks as part of its public open spaces is noted, welcomed by the Town and entirely consistent with the objectives of LPP 29. Notwithstanding, the number, type, quality and value of the public artworks delivered by Mirvac to date has not been communicated to the Town.</p> <p>At this stage, it is considered procedurally unfair, inconsistent and inequitable to exclude Mirvac's developments/landholdings from the same rigour and requirements that developments elsewhere within the Town are subject to. This is particularly so when the developments delivered by Mirvac are so amenable to public artwork provision that benefits both the residents of their developments and the public at large, having the enviable position of being located in a riverside location, surrounded by parklands, in close proximity to</p>

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	<p>the Perth CBD, major entertainment and sporting venues, public transport, and other amenities.</p> <p>There may very well be unique circumstances that justify the provision of public artwork by Mirvac being coordinated and facilitated through an alternate mechanism to the Town’s LPP 29, as Cl. 1.2(a) of the draft revised policy provides for, however this needs to be demonstrated in detail and an alternate mechanism presented to the Council for possible adoption.</p> <p>For example, this could be in the form of a specific public art masterplan secured through an M.O.U and development approval conditions for future developments, a specific public art LPP for Burswood Lakes, or a proposed amendment to the Burswood Lakes Structure Plan that inserts specific requirements for the provision of public art within the structure plan area.</p> <p>Notwithstanding the above, any alternate mechanism presented to Council would not necessitate any changes to the existing wording of the provisions contained in draft revised LPP 29. Accordingly, it is not considered necessary that the adoption of revised LPP 29 be delayed until such time as any alternate mechanism is prepared and presented to Council for possible consideration.</p> <p>The exclusion of the broader Burswood Peninsula Precinct from LPP 29 is not supported, as it would not only encompass Mirvac’s landholdings but also those of other major landholders, including the owners of Lots 9 and 9525 Victoria Park Drive, the Belmont Park Racecourse and the Golden Group’s surrounding Belmont Park landholdings, which are the Town’s largest current and future development areas for the next three decades.</p>
<p>The areas of public open space provided within the Peninsula Burswood precinct contain numerous high-quality examples of public art, installed by Mirvac as part of an integrated approach to the delivery of an exceptionally high-quality public realm.</p>	<p>Noted. Refer to comments above. Additionally, any future public artworks within the public realm delivered by Mirvac could be used to satisfy (in whole or in part) any existing or future public artwork contributions under LPP 29 (or other Council adopted public art contribution mechanism) that have/will be secured through development approval conditions.</p>
<p><b>Clause 1.2 (A) Amendment</b></p> <p>It is understood that under Draft LPP29, Council’s position is that the Burswood Lakes Structure Plan (specifically future developments such as Lots 21/22 and Tower 7) would require to provide public art under the provisions of the Draft LPP29.</p> <p>Draft LPP29 proposes to exclude the requirement for public art contributions for developments within an area covered by an approved structure plan, local</p>	<p>Not supported.</p> <p>Refer to comments above regarding the position of Council Officers that it is not appropriate to exclude Mirvac landholdings from the requirements of LPP 29 at this time, and the opportunity that Mirvac (and any other developer) has of presenting an alternate mechanism for private developer public art contributions to Council to consider for adoption.</p>

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development plan or other planning instrument which contains an alternative requirement for the provision of public art, as follows:

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.*

The subject site is located within the Burswood Lakes Structure Plan, adopted in 2003, some five years before the original LPP29 was prepared in 2008. For this reason, the Burswood Lakes Structure Plan does not contain provisions which specifically reference and seek to vary the requirements of LPP29 however does contain alternative requirements to public art in conjunction with the delivery of significant public realm.

The Burswood Lakes Structure Plan requires the following in relation to the provision of public art:

*"The development has been carefully designed to ensure that all dwellings have access to an abundance of public amenities, including: 'kick-about areas', child-play and barbecue areas, areas for quiet contemplation, **public art**, an extensive ornamental lake system, and unrivalled views across the golf course and Swan River to the Perth CBD."*

*"The proposed two- and three-storey houses will be located throughout the development and will be generally grouped around "pocket parks". All streets, parks, and plazas will be defined and edged by buildings with windows overlooking these important public places. This, together with the careful integration of trees, shrubs, **public art** and street furniture will help to provide a vibrant street life and sense of community."*

The above requirements have resulted in the provision of several high-quality public artworks within the Peninsula Burswood and are consistent with the objectives of draft LPP29.

The Burswood Lakes Structure Plan is an approved Structure Plan that does contain alternative requirements for the provision of public art and therefore the interpretation of Clause 1.2(A) should exclude the provision of public art as outlined in the Draft LPP29.

The excerpts referred to in the Burswood Lakes Structure Plan come from the Executive Summary (Parts 3.1 and 3.2) on pages 7 to 8 of the document, in relation to the very general questions of "What Will Burswood Lakes Offer as a Community?" and "What Will the Development Look Like?", with the term 'public art' being mentioned once in the response under each question, as one of a range amenities that may be included in the public realm as part of Mirvac's development of the structure plan area. Public art is mentioned nowhere else in the document.

It is not considered reasonable to interpret the mere mention of 'public art' in two instances under the existing structure plan as fulfilling Cl. 1.2(a) of draft revised LPP 29.

The existing structure plan does not contain alternative (or any) requirements for the provision of public art.

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<p><b>Historic Public Art Application Precedent</b></p> <p>Prior to the most recent planning approval for Tower 6, no public art contributions have been formally required by the Town within the Peninsula Burswood.</p> <p>Further, the condition related to public art that has been placed on Burswood Tower 6, the Joint Development Assessment Panel (JDAP) determined to require the provision of public art within the space, albeit not the standard 1% contribution.</p> <p>It has been acknowledged by council (and JDAP) the delivery of landscape and the ceding of proposed public places to council will provide significant benefit both to the community, council and the future residents of Tower 6. This demonstrates acknowledgment that the public art as an integrated component of a high-quality public realm which has been provided within the precinct to date should form the same precedent for future development sites such as Lots 21/22 and Tower 7.</p> <p>On this basis, it is requested that future development of the Peninsula Burswood be excluded from the requirements of draft LPP29. The significant contribution provided by Mirvac to date includes numerous pieces of exemplary public art and an exceptionally high-quality public realm. Providing an exclusion of Burswood Peninsula from the Draft LPP29 would ensure a consistent approach across the Peninsula.</p>	<p>Not supported.</p> <p>The Town has not been provided with details of the number, quality or location of the public art works, in association with the number and value of developments implemented across Mirvac’s development sites to date. As such, an assessment of the actual outcomes being achieved is not able to be carried out by Council Officers, and simply excluding Mirvac due to prior artwork provision (of unknown value) would be unfair to and inequitable with the application of LPP 29 that has occurred elsewhere within the Town to date. The basis upon which developments approved prior to Tower 6 were excluded from requiring to provide a public artwork contribution since the adoption of LPP 29 in 2008 is unclear, and the Town does not have a detailed understanding of the number, type or value of artworks delivered prior to or since this time. It is not known if an audit of public artworks delivered to date would be less, equal or more than 1% of the value of developments approved since adoption of LPP 29. Council Officers are open to Mirvac demonstrating this should they wish to do so, and/or wish to justify alternate arrangements for the provision of public art within the structure plan area, that differ from LPP 29. Notwithstanding, even if it is able to be demonstrated that the delivery of public artworks to date has met 1% of the value of qualifying developments approved since adoption of the LPP 29, it is not understood why a public art contribution requirement should not be applied to future qualifying developments under the policy. As noted previously, the provision of high quality public open spaces is of benefit to current and future residents, and a market expectation for developments of the type, scale and value being developed by Mirvac and other major developers. It is not considered appropriate to trade off public artwork requirements with the delivery of a high quality public realm and public open spaces (or any other requirements) that may be applicable to development within the structure plan area.</p>
<p><b>Public Art Definition Amendment</b></p> <p>In line with current trends in public art policies, and in recognition of the value of artistic and cultural activations, it is recommended that further consideration and clarity be given to the types of temporary and ephemeral opportunities accepted as public art under the policy. Artist in resident programs, temporary artworks, exhibitions and events provide considerable value in line with the objectives of the draft policy. These cultural activities</p>	<p>Supported in Part.</p> <p>Public artwork proposals (whether permanent physical installations, temporary artworks or other ephemeral forms of art) must be treated on their merits on a case-by-case basis, having regard to the objectives and intent of the policy. This needs to be demonstrated by an applicant/developer as part of each artwork proposal, but also allows for a very wide spectrum of artwork forms and types to be considered.</p>



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<p>additionally contribute to social cohesion, place activation (and subsequent safety), community engagement and diversifying the types of creatives who benefit from the policy.</p> <p>This clarification would acknowledge the value of arts and cultural programming outcomes beyond hard infrastructure public art (sculpture, functional and integrated artworks), and allow for a creative and innovative use of public art funds to importantly provide activation for the wider community.</p>	<p>The Town is open to considering temporary and ephemeral artworks as noted in the policy's definition of "public art", and would enable the Town to consider temporary installations, events, exhibitions, etc.</p> <p>It is not considered necessary to clarify the accepted types of temporary or ephemeral artworks able to be considered as public art at this stage, as due to their very individual and context-specific nature they must be assessed and considered by the Town on their individual merit, informed by the professional expertise of the members of the Town's Arts Working Group.</p>
<p><b>Summary</b></p> <p>Mirvac supports the Town's review of LPP29 and suggests an amendment to exclude the Peninsula Burswood for the following reasons:</p> <ul style="list-style-type: none"> <li>· The Peninsula Burswood has been designed and delivered by Mirvac, seeing the delivery of significant community public spaces to the benefit of council, the community and the future residents.</li> <li>· The Burswood Lakes Structure Plan is an approved Structure Plan that does contain alternative requirements for the provision of public art.</li> <li>· The structure plan provisions as already contained within the Burswood Lakes Structure Plan have delivered an exceptionally high standard public realm, inclusive of public art.</li> <li>· The existing public art collection has had a positive impact on the quality and amenity of the public realm and meets the objectives of LPP29.</li> </ul> <p>This submission has been prepared with the intention of providing Mirvac with the ability to develop the Peninsula Burswood to the highest possible standards in the future. The current draft LPP29 does not acknowledge the community and public realm (inclusive of high-quality public art and landscaping) which has been created by Mirvac at the Peninsula Burswood over the last 17 years.</p> <p>Based on applying a fair, equitable and a consistent approach, it is respectfully requested that the Town make the amendments detailed in this submission prior to the finalisation of draft LPP29.</p>	<p>Comments noted.</p> <p>Council Officers share Mirvac's principle of applying a fair, consistent and equitable approach. Mirvac are invited to prepare alternative provisions for private developer public artwork contributions within the Burswood Lakes Structure Plan area for the Council's consideration, along with appropriate justification, should they believe there is merit to such an approach.</p>