

11.6 Review of Local Planning Policy 29 'Public Art Private Developer Contribution'

Location	Town-wide
Reporting officer	Leigh Parker
Responsible officer	Robert Cruickshank
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none">1. Draft revised LPP29 'Public Art Private Developer Contribution'2. Existing LPP29 'Public Art Private Developer Contribution'3. Comparison of LG Percent for Art/Private Developer Public Art Contribution Policies

Recommendation

That Council:

1. Approves advertising of draft revised Local Planning Policy 29 'Public Art Private Developer Contribution' (as contained within Attachment 1) for public comment for a minimum period of 21 days in accordance with deemed Clause 4 of the *Planning and Development (Local Planning Schemes) Regulation 2015*.
2. Requests that the Chief Executive Officer provides a further report to Council summarising and responding to any submissions received during the public advertising period along with a recommendation on whether to adopt draft revised Local Planning 29 'Public Art Private Developer Contribution' with or without modifications.

Purpose

To consider proposed amendments to the existing Local Planning Policy 29 'Public Art Private Developer Contribution' (LPP 29).

To resolve whether to grant consent to advertise draft revised LPP 29 for public comment.

In brief

- Council's Urban Planning service area have completed a review of LPP 29, as part of its comprehensive project to review all 37 Local Planning Policies (LPPs).
- The review has considered the percent for art/private developer public art contribution policies of local governments from across the Perth metropolitan area as well as a small number of local governments nationally.
- Legal advice has been obtained on an initial draft of the policy which has helped to inform further changes and guide the overall form and content of the policy.
- Internal engagement with the Town's Place Planning, Urban Planning Officers and Community Development service areas has occurred. The Town's Public Art Working Group has also reviewed the draft policy.
- The major changes to the existing policy include:
 - Reducing the development cost threshold for private developments that are required to provide a 1% public art contribution from \$5 million to \$2 million;
 - Broadening the scope of the policy to all areas within the Town, with the exception of 'Industrial' zoned land and specified development types;

- Providing a discount to developers of 15% where a cash-in-lieu (rather than in-kind) contribution for public artwork is provided, to support the commissioning and installation of more substantial artworks within the same locality by the Town.
- It is recommended that draft revised LPP 29 be advertised for public comment, prior to being considered for formal adoption by Council.

Background

1. LPP 29 'Public Art Private Development Contribution' was originally adopted as an Administrative Policy (Council Policy PLNG 3) on 20 May 2008.
2. At the Ordinary Council Meeting on 9 February 2016, Council resolved to adopt the planning policies contained within the former TPS1 Policy Manual, those adopted as Local Planning Policies prepared under the R-Codes, and those adopted as Administrative Policies (otherwise known as PLNG Policies) as Local Planning Policies.
3. Council's Urban Planning service areas are currently undertaking a comprehensive review of all 37 Local Planning Policies (LPPs). The local planning policies are being progressively amended, adopted and/or revoked following their review and public advertising of any recommended changes.
4. A formal resolution of Council is required to grant consent for the public advertising of a new or revised LPP, prior to it being considered for formal adoption.
5. A review of LPP 29 has been undertaken by Council Officers, which has included consideration of:
 - (a) the effectiveness of the current Policy including any issues of interpretation, application and gaps or deficiencies;
 - (b) like Policies of other Local Governments;
 - (c) alignment with relevant State legislation, policy and/or guidelines (where applicable);
 - (d) greater clarity in the objectives of the Policy;
 - (e) improving the presentation of the Policy; and
 - (f) a decision of the State Administrative Tribunal relating to a public art contribution condition for a property within the City of Swan.
6. The following changes to the existing policy have been identified as a result of the review:
 - (a) Convert its outdated administrative policy format to be consistent with other reviewed LPPs.
 - (b) Provide an Introduction, Objective and Scope to outline and justify the basis of the policy and what it seeks to achieve.
 - (c) Reduce public art contribution threshold to \$2 million (currently \$5 million), consistent with the State Government's Percent for Art Scheme and a number of other local governments. (Refer Clause 1.1)
 - (d) Expand the scope of the Policy to apply to all areas of the Town, with specified exemptions for certain development types and the development of Industrial zoned land. (Refer Policy Scope and Clause 1.2)
 - (e) Require conceptual details of public artwork proposals to be provided at development application stage to ensure developer provided public art is considered and integrated as part of the overall development, rather than being tacked on as an afterthought following the granting of development approval. (Refer Clauses 4 and 6)
 - (f) Moving away from a reliance on legal agreements to secure public art obligations (at significant cost and administrative resources) to one based on the revised process contained within the draft policy and secured through conditions of development approval. (Refer Clauses 4.1 and 6.2)
 - (g) Inserting new provisions related to moral rights, ownership and maintenance of public artworks. (Refer Clause 4.2)
 - (h) Requiring permanent public artworks to be accompanied by a plaque recognising the artist and (where appropriate) providing the title and description of the artwork. (Refer Clause 4.2(c))
 - (i) Providing a discount to developers of 15% where a cash-in-lieu (rather than in-kind) contribution for public artwork is provided. (Refer Clause 5.1(b))
 - (j) Where cash-in-lieu payments are provided, that that they are to be expended by the Town for the delivery of public art work within the same locality as the developments they are generated by. (Refer Clause 5.2(c))

Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL02 - A community that is authentically engaged and informed in a timely manner.	Community consultation and public advertising occurring in accordance with State legislative requirements and LPP 37 'Community Consultation on Planning Proposals'.
CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably.	The review of the Town's LPPs to ensure they remain relevant, effective and consistent with current legislative requirements and State Planning Policies.

Environment	
Strategic outcome	Intended public value outcome or impact
EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	Enhanced sense of place, visual amenity and enjoyment of the public domain.

Social	
Strategic outcome	Intended public value outcome or impact
S04 - A place where all people have an awareness and appreciate of arts, culture, education and heritage.	The increased provision, enjoyment and appreciation of public artwork projects within the community.

Engagement

Internal engagement	
Community Development – Community Arts Officer	Supports the revised policy and has contributed to the refinement of its provisions throughout the drafting and internal review process.
Urban Planning	Have reviewed the draft policy and contributed to development of its form and content to ensure it is clear and relatively easy to administer and can be understood by the general public, land owners and developers.
Place Planning	Have reviewed the draft policy and support the broadening of its application throughout the Town.

Other engagement	
Public Art Working Group	Supports the revised policy and the broadening of its scope and application throughout the Town.

Legal compliance

- *Planning and Development (Local Planning Schemes) Regulations 2015*

The amendment of a Local Planning Policy is to be undertaken in accordance with deemed clauses 4 and 5 of the *Planning and Development (Local Planning Scheme) Regulations 2015* (the Regulations), including:

- a. Community consultation for a period of not less than 21 days; and
- b. Consideration of public submissions and a Council resolution to proceed with the new or amended policy with or without modifications, or not to proceed.

As per deemed clause 4(5) and clause 6(b)(ii), the adoption of a new or revised local planning policy, or the revocation of an existing local planning policy, takes effect upon publication of a notice in a newspaper circulating within the Scheme Area.

- Local Planning Policy 37 - 'Community Consultation on Planning Proposals'

Risk management considerations

Risk and consequence	Consequence rating	Likelihood rating	Overall risk analysis	Mitigation and actions
Compliance Application of Policies which could contain clearer and more comprehensive provisions in order to more effectively achieve their intent and objectives.	Moderate	Likely	Low	Consent to public advertising of draft revised LPP 29.
Compliance Application of standardised practices and procedures which are not underpinned by a Local Planning Policy or other adopted instrument within the Town's local planning framework.	Moderate	Likely	Low	Consent to public advertising of draft revised LPP 29.

Financial implications

Current budget impact	Sufficient funds exist within the annual budget to address this recommendation.
Future budget impact	If Council adopts the draft revised policy, it will result in a greater number of developments being required to provide a public art contribution (refer to Analysis section below for anticipated increase in number of applicable developments based on application data since 2013). This may result in increased contributions for public art being paid to the Town, should an applicant elect to pay a contribution in lieu of the commissioning and installation of physical artworks.

Analysis

Comparison of existing LPP 29 and draft revised LPP 29

7. An analysis comparing the outcomes of existing LPP 29 and those that potentially could have been achieved if the major changes proposed as part of draft revised LPP 29 had been in operation (namely, decreasing the development value threshold from \$5M to \$2M, and broadening its geographic application from a limited number of localities to the whole Town, excluding Industrial zoned land) has been completed. This has utilised approved development application data from January 2013 (when the Town's Urban Planning service area moved to electronic registration and processing of development applications) up to the period of preparing the subject report.

8. The outcomes of this analysis are outlined in the below table and provide a comparison of the impacts of broadening the policy's geographic application only, reducing the development threshold value only, or doing both of these things as is currently proposed under draft revised LPP 29.
9. Please note: the analysis has excluded the applications approved for Curtin University by the Western Australian Planning Commission, as they are subject only to approval under the Metropolitan Region Scheme and not the Town's local planning framework which includes LPP 29.

		Policy Application Area	
		Specified areas only (as per existing LPP 29)	Town-wide, excl. Industrial zone (as per draft revised LPP 29)
Development Value	\$5M+ developments (as per existing LPP 29)	Existing LPP 29: 16 DAs generating approx. \$7.6M of public artworks (Average of 2.3 DAs/year)	27 DAs generating approx. \$9.4M of public artworks (Average of 4.3 DAs/year)
	\$2M+ developments (as per draft revised LPP 29)	29 DAs generating approx. \$8M of public artworks (Average of 4.3 DAs/year)	Draft revised LPP 29: 53 DAs generating approx. \$10.1M of public artworks (Average of 7.8 DAs/year)

10. As seen in the above table, the revised policy provisions substantially increase the number of development proposals that would be required to provide a 1% public art contribution, increasing from an average of 2.3 to 7.8 approved development applications per year. Notwithstanding, this remains a very small proportion (2.2%) of the total applications approved by the Town or Metro Central Joint Development Assessment Panel. It is noted that this 2.2% proportion is based on the average number of development applications approved per year, since the introduction of the *Planning and Development (Local Planning Schemes) Regulations 2015* in October 2015.
11. It should also be noted that the above figures do not take into account that a significant proportion of the development approvals subject to a public art requirement do not proceed to construction due to developer and/or market constraints, economic unviability, etc. This is particularly the case for large proposals in excess of \$5M, which is the current threshold for proposals subject to a public art contribution requirement under LPP 29.

Outcomes achieved under existing LPP 29

12. Based on the Town's application data, only 16 development approvals have been subject to a public art requirement under LPP 29 since 2013. A search of Council records has been able to identify only 8 public artworks that have actually been delivered in accordance with LPP 29 in the 11 years since its adoption in May 2008. These are located at:
 - (a) 59 Albany Highway, Victoria Park (c. 2010)
 - (b) 26 Goodwood Parade, Burswood (c. 2014)
 - (c) 4-12 Riversdale Road, Burswood (c. 2014)
 - (d) 1-15 Thorogood Street, Burswood (c. 2015)
 - (e) 131-133 Burswood Road, Burswood (c. 2017)
 - (f) 118 Goodwood Parade, Burswood (c. 2018)
 - (g) 34 Goddard Street, Lathlain (c.2019)
 - (h) 646-660 Albany Highway, Victoria Park (c. 2019 - nearing completion of construction)
13. There have not been any public art cash-in-lieu contributions received by the Town since the adoption of LPP 29 in May 2008.
14. Town-funded public artwork installations far exceed both the number and value of public artworks facilitated by LPP 29 to date. Notwithstanding, LPP 29 has the potential to become a significant mechanism to facilitate public artwork within the Town if the proposed changes are implemented. Even under a conservative estimate that only

50% of approved developments proceed to construction, this would still equate to 3 to 4 public artwork installations and/or cash-in-lieu contributions being received by the Town per year, based on historical development approvals data.

15. In the last year, development approvals which have had a condition imposed in relation to a public art requirement include:
 - (a) Lot 9000 Bow River Crescent, Burswood
 - (b) 14 Leonard Street, Victoria Park
 - (c) 53 – 55 Canning Highway, Victoria Park
 - (d) 51 Seabiscuit Drive, Burswood

Comparison with other local governments

16. A table comparing the major elements of existing LPP 29 with the similar policies of 19 local governments (LGs) from across the Perth Metropolitan Area as well as the Metropolitan Redevelopment Authority (MRA) is contained in Attachment 3 to this report.
17. The Town's current policy was found to have the highest development value threshold from which a developer is required to provide public art (\$5 million), 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).
18. A majority of LGs (12) do not have a cap on the contribution requirement amount, however for those that do this was set at \$150,000 (1 LG), \$250,000 (3 LGs) or \$500,000 (4 LGs). All of the reviewed LG policies had a minimum 1% contribution requirement although a small number of LGs had a 1% requirement that later reduced to either 0.75% (1 LG) or 0.5% (2 LGs) for that portion of developments that exceed \$100 million or \$50 million, respectively.
19. A majority of LGs exclude single houses, grouped dwellings and industrial development from being required to provide a public artwork contribution consistent with the approach taken in draft revised LPP 29.

Legal advice and initial drafting of policy changes

20. Legal advice has been obtained on an initial draft of the revised policy which has helped to inform further changes and guide its overall form and content. The legal advice confirmed that the initial draft revised policy was consistent with contemporary local government public art contribution policies but recommended a number of changes to provide a further explanation and justification of the benefits that public art provides, in particular to the future residents or occupants of the development from which they are generated, as well as the proposed cash-in-lieu contribution provisions and mechanisms by which the Town would ensure private developer artwork contribution requirements are met. These changes were recommended on the basis of several recent State Administrative Tribunal decisions where local government imposed private developer public art contribution requirements were under contention.
21. While the majority of changes recommended by the legal advice have been incorporated into the final draft revised version of LPP 29 (which remains subject to further modification having regard to the outcomes of any future public advertising), a number of recommendations relating to a proposed sliding contribution requirement rather than a flat 1% contribution rate, and the initially proposed legal agreement mechanism to secure public artwork obligations, have not been incorporated into the current draft revised version of the policy.
22. An interim draft was prepared with a sliding contribution scale that had regard to the number of dwellings and/or number of future residents, staff, customers and visitors of proposed developments along with a comprehensive legal agreement requirement to secure public artwork obligations. However, upon further internal review with Urban Planning Officers, it was found that these provisions would be overly complex to administer, difficult to ascertain accurate rates of future development occupancy or customer/visitor numbers of developments, and that the legal agreement mechanism to secure artwork obligations (as is currently the mechanism under existing LPP 29) has proven costly/onerous to the Town as well as landowners/developers in terms of administrative resources, legal costs and time associated with the preparation, review and execution of legal agreements.

23. In view of the above, the draft revised version of LPP 29 has maintained a flat 1% contribution requirement, consistent with the majority of local government planning policies in WA, and relies on development approval conditions to secure public artwork obligations, rather than the additional requirement for a legal agreement secured by a caveat on the title of the property on which the approved development is located. The change to a reliance on development approval conditions will require Town Officers to be diligent in ensuring compliance with any relevant development approval conditions at building permit and built strata application stages, however this is considered preferable given the time and resources associated with legal agreements as noted previously.
24. The initial review of LPP 29 has also considered the merit of introducing a cap on the contribution amount in terms of dollar value, as it has been expressed by several developers that for very significant developments (e.g. of \$50M or \$100M) that the 1% contribution requirement would generate an inordinate and excessive public artwork requirement. This was referred to the Town's Public Art Working Group for consideration who were strongly of the view that a cap is not appropriate and that the scale and sophistication of public artworks should increase with the scale and value of the developments from which they are generated.
25. The review and proposed revision of existing LPP 29 has been the subject of significant internal review and analysis, informed by legal advice and liaison with the Town's Public Art Working Group. The proposed changes are considered to substantially enhance the existing policy, provide the policy with a well-substantiated justification, improve its application and ultimately result in significantly increased potential to facilitate the delivery of public artwork through the private development process, along with its associated amenity benefits.
26. In view of the above, it is recommended that draft revised LPP 29 proceed to public advertising. A further report will be presented to Council in the future following the conclusion of the advertising period, reporting on any submissions received, and seeking a final decision from Council as to whether or not to adopt the draft revised policy, with or without modifications.
27. Recognising the proposed lowering of the threshold for public art contributions would have a financial impact upon developers, it is intended that community consultation on the proposed revised policy will include notification to relevant development industry bodies and known developers of apartments within the Town, in addition to normal consultation methods (newspaper notice; Your Thoughts).

Relevant documents

[Town of Victoria Park – Developers Public Art Handbook](#)

[Town of Victoria Park Public Art Strategy 2018-2023](#)

[State Government's Percent for Art Scheme](#)

Further consideration

1. In response to a question raised at the Agenda Briefing Forum on 5 November 2019, the proposed 15% discount for a cash-in-lieu contribution made to the Town is based upon the same amount applied by the City of Vincent, with it being understood that this has worked well.

Comparison of Metropolitan Local Government Private Developer Public Art Contribution LPPs

Local Government/ Authority	Development Value	Contr. Amount	Max Value	Locations	Development Types
Armadale	\$1M	1%	No cap	Specified zones	Any, excluding single residential development. Industrial development required to provide monetary contribution rather than physical artwork.
Bassendean	\$1M	1%	No cap	Any location	MDs, mixed use, commercial, civic, institutional, educational or public works
Bayswater	\$1M	1%	No cap	Any private property	Commercial, non-residential or mixed use
Belmont	\$4.5M+	1%	No cap	Specified areas/ precincts	Any
Cambridge	\$1M+	1%	\$500,000	Any location	Commercial, non-residential and mixed use developments
Canning	\$4M+	1%	\$250,000	Any location	Any, but excludes SHs, GDs and Industrial uses
Cockburn	\$1M+ for non-res; \$2M+ for MDs	1%	\$250,000	Any location	Any, excluding industrial uses, SHs and GDs
East Fremantle	\$3M+	1% (then moves to 0.75% for portion over \$100M)	No cap	Any location	Any, excluding demo, SHs, GDs, <15MDs, heritage works, State Gove projects
Fremantle	\$1M+	1%	No cap	Specified areas/ precincts	Any, but excludes SHs, GDs, Industrial Uses, refurb <1000sqm, changes of use.
Gosnells	\$2M+	1%	\$250,000	Any	Any, excluding industrial development
Kwinana	\$2M+	1%	\$500,000	Any	Any
Melville	\$1M+	1%	No cap	Any location	MDs, mixed use or non-res development
Metropolitan Redevelopment Authority (MRA)	\$2M+	1% (then moves to 0.5% for portion over \$50M)	No cap	All of Central Perth Redevelopment Area	Any
Serpentine-Jarrahdale	\$1M+	1%	\$500,000	Any	Any
South Perth	\$4M+	1%	No cap. Max 50% of contribution can be used for artwork on development site.	Any	Any
Stirling (Draft)	\$2M	1% (then moves to	No cap	Any	Any, but excludes SHs, GDs, <10MDs, Industrial

		0.5% for portion over \$50M)			Zone development
Subiaco	\$1M+	Tiered values ~1%	Negotiated once exceeds \$150K for \$15M+ development	Any	Commercial and mixed use developments
Swan	\$2M+	1%	\$500,000	Any location	Any, but excludes SHs, <10 GDs, site works, small scale refurbishments, public works.
Victoria Park (existing LPP 29)	\$5M+	1%	No cap	Specified areas/precincts	Any
Vincent	\$1M+	1%	No cap	Any location	Commercial, mixed use. Residential only if 10+ dwellings, 3+ storeys and R60, DC, C or R/C zones.

SH = Single House
GD = Grouped Dwelling
MD = Multiple Dwelling