

## 6B PERCENT FOR ART PROVISIONS

### 1.0 Preliminary

#### 1.1 Purpose

The Shire considers there is a need to protect and enhance the utility, amenity and identity of the public domain of places such as town/village centres, commercial nodes, main streets, entry points, squares, foreshores and parks within its municipality.

The objectives are:

- a) promotion of civic, community and cultural identity by introducing public art which makes streets, open spaces and buildings more locally distinctive;
- b) enhancing a sense of place by encouraging public art forms which reinforce and highlight European and indigenous history, cultural heritage and contemporary traditions;
- c) promotion of community reflection, inspiration, celebration and well being;
- d) improving visual amenity by use of public art to screen unattractive views and improve the appearance of places; and
- e) improving the functionality of the public domain through the use of public art to provide appropriate street furniture functions.

### 2.0 Application

#### 2.1 Public Art to be Required

The Shire of Busselton shall require eligible proposals to provide public art in accordance with the described method for determining Public Art contributions described hereunder.

#### 2.2 Proposals Eligible for Public Art Contributions

##### 2.2.1 Projects Eligible

All development proposals for multiple dwellings, grouped dwellings, mixed use, commercial, civic, institutional, educational projects or public works of a value greater than \$1,000,000 (one million dollars) shall be regarded as eligible proposals under these provisions.

The contribution amounts set out in these provisions will be adjusted in accordance with a three year rolling average of quarterly movements in the Local Government Cost Index (LGCI) for WA (ABS) commencing 1 January 2011 (so, for instance, the contribution rate would be the quoted figure, multiplied by the average LGCI for all quarters between the second quarter of 2009 and the first quarter of 2012, divided by the average LGCI for all quarters between the first quarter of 2008 and the last quarter of 2010).

##### 2.2.2 Prescribed Zones

These provisions apply to those development proposals listed in 2.2.1 above where they are situated within the Business, Restricted Business, Industry, Viticulture and Tourism and/or Tourist zones, on any land on which commercial development may be permitted, and on land which is subject to the provisions of a Development Guide Plan wherein commercial development may be permitted.

### 2.2.3 Proponents

These provisions shall apply to all proponents, with the exception of those exempt from obtaining Local Authority planning approval under other legislation. Those proponents/projects so exempted should utilise these provisions as a guide for the implementation of their respective Percent for Art obligations where applicable.

## 3.0 Method of Determining Public Art Contribution

### 3.1 Public Art Contribution Rate

The cost of any Public Art provided under these provisions shall be no less than one percent of the value of the eligible proposal.

### 3.2 Form of Public Art Contribution

Public Art required pursuant to these provisions shall be provided on site by the proponent. Alternatively, the proponent may choose to satisfy the contribution through a cash in lieu payment towards a precinct public artwork, at the rate prescribed under these provisions.

### 3.3 Location of Public Art Contribution

Public Art provided pursuant to these provisions shall be provided on site, or on crown land immediately adjacent to the site, in a location approved by Shire.

### 3.4 Separate Approval Generally Not Required for Public Art

Public Art provided under these provisions, in fulfilment of a condition of Planning Approval, shall not require a further Development Application.

### 3.5 Review

A five yearly review of these provisions will be undertaken to allow evaluation of processes and procedures and identify any required amendments. If such amendments are deemed to be necessary, a report will be referred to Shire for consideration.

### 3.6 Reference Documentation

Relevant documents to be referenced by these provisions include but are not limited to:

- Busselton Town Centre Guide Plan (2004)
- Shire of Busselton Cultural Plan (2005)
- Dunsborough Townscape Plan (2002)
- Draft Dunsborough Foreshore Plan (2007)

- Liveable Neighbourhoods (WAPC 2000)

#### **4.0 Implementation of Percent for Art Policy**

##### **4.1 Cash In Lieu**

The public art contribution may be satisfied by cash-in-lieu based on the rate described in these provisions. Such cash-in-lieu payments are to be:

- a) paid to the Shire of Busselton Public Arts Fund (Percent for Public Art); and
- b) expended in accordance with a precinct public art project, in the area within which the proposal is situated.

Individual funds contributed within an area may be accrued for more comprehensive or detailed public art projects.

##### **4.1.1 Eligible Costs**

For the purpose of expenditure of cash in lieu contributions by the Shire, costs associated with the production of an art project may include:

- a. professional artist's budget, including artist fees, Request for Proposal, material, assistants' labour costs, insurance, permits, taxes, business and legal expenses, operating costs, and art consultant's fees if these are necessary and reasonable.
- b. Fabrication and installation of artwork,
- c. Site preparation,
- d. Structures enabling the artist to display the artwork,
- e. Documentation of the artwork, and
- f. Acknowledgment plaque identifying the artist, artwork and development(s) from which funding was obtained.

##### **4.2 Equity, Safety and Universal Access**

Public art should be made accessible to all members of the community, irrespective of their age and abilities. While art in public spaces might be considered primarily a visual experience, it can provide a range of sensory experiences for people with disabilities – artwork can be tactile, aural and give off pleasant smells as well as being visual. Artwork need not be monumental, but can be at heights suitable for people in wheelchairs to touch, move through and explore. Artwork can be interactive play objects for family groups and children. Interpretive signage in an easy to read format, including Braille, will ensure that artworks are inclusive of all members of the community. Where feasible and appropriate to the site and community, the Shire of Busselton will commission artworks that can be enjoyed as an interactive experience, irrespective of age, mobility or ability. Issues of public safety will be considered and addressed during design and installation of the artworks.

##### **4.3 Definition of Public Art**

For the purposes of these provisions 'Public Art' is defined as being site-related and place-responsive art in the public domain which includes the process of engaging artists' ideas, enhances the built and natural environments and adds value to character and cultural identity through the use of a diverse range of art forms and design applications.

##### **4.4 Exclusions to Public Art**

Art projects ineligible for consideration include:

- i) Commercial promotions in any form,
- ii) Directional elements such as supergraphics, signage or colour coding,
- iii) 'Art objects' which are mass produced such as fountains, statuary or playground equipment,
- iv) most art reproductions,
- v) landscaping or generic hardscaping elements which would normally be associated with the project and
- vi) services or utilities necessary to operate or maintain artworks.

#### 4.5 Design Documentation

The artist will be required to prepare detailed documentation of the artwork at various stages of the commission, design, fabrication and implementation processes. Depending upon the project, the documentation may include concept drawings, maquettes, structural and other engineering drawings, photographic images of works in progress, photographic images of completed and installed work and a maintenance schedule.

#### 4.6 Clearance Process

- i) The approval of the Shire shall be required prior to the creation and installation of the Public Art. For this purpose, the Council may delegate authority to grant approval to the Public Art to an appropriate Officer, or duly appointed panel.
- ii) Details of works shall be submitted to and approved by the Shire of Busselton prior to issue of a building licence. The detail submitted shall be assessed against the requirements of these provisions and associated *Step by Step Guide for Developers*. The public artwork must be completed and installed prior to occupation of the development and/or issue of a Permit to Use, and maintained thereafter by the owner(s). It is recommended that the artist be contracted early in the design process to avoid any delays to final clearance. Alternatively, the Shire may accept a suitable agreement, prepared at the applicant's expense, binding the proponent to complete the works within a specified time frame and indicating that the works will be maintained by the owner for the life of the artwork. Where agreement has been reached for the contribution to be met by way of a cash in lieu payment, this shall be satisfied prior to issue of a building licence.

### 5.0 Maintenance

#### 5.1 Maintenance and Resistance to Vandalism

Artworks that are low maintenance, robust, durable and resistant to vandalism will be encouraged and this will form part of the assessment of all proposals. Artists will be required to present the Shire with a maintenance schedule at the completion of the commission.

#### 5.2 Recording

The public artwork will be registered in the Shire's Public Art Inventory once the artwork is completed.

### 5.3 Decommissioning

In the case of artworks located on Crown Land, the Shire may decide to remove an artwork because it is in an advanced state of disrepair or damage, because the artwork is no longer considered suitable for the location or for other reasons such as safety risk. In such cases, the Shire will consult with the artist, where possible, prior to making a decision to remove and prepare a documented archival record of the artwork prior to its removal.

In the case of artworks located on private property, the developer must contact the Shire and the artist at least 28 days ahead of any relocation, sale, alteration or removal of an artwork. In the case that an artist has moved and the developer cannot find them, evidence that a reasonable attempt to find the artist must be provided on request.

## 6.0 Creative Development Process

### 6.1 Creative Design Process

The proponent (or Shire where the public art is situated on Crown Land) will commission artists and coordinate and manage the process by which they work alongside architects, landscape architects, planners and engineers. Inclusion of artist(s) as part of the design team should occur as early in the design process as possible, to ensure effective contribution. Such inclusion, or the costs of a specialist art consultant, may be considered as part of the public art contribution within the general intent of these provisions and on application by the proponent.

There will be a variety of approaches resulting in some easily identifiable artworks, and others that will be merged as an integral part of construction or embodied in the external fabric of the building. Non physical artworks such as public performance, multimedia, writing and publishing programs etc may be considered within the general intent of these provisions. While there is certainly a place for sculpture and civic landmark, there is also room for colour, movement, whimsy and theatre. These provisions give equal value to the purely aesthetic and to the functional.

### 6.2 Consultation with Stakeholders

Where appropriate, an invitation should be extended to community members to participate in the artwork process. This can be facilitated through drawing sessions, cultural mapping processes to identify themes, representation on a duly appointed panel or similar processes.

Some groups in the community are not comfortable with the expression of interest and tender processes, and will not enter into them without assistance. While artists from these groups will be encouraged to apply for all publicly advertised commissions, there may be opportunities for designating specific commissions for them. In such cases, the selection processes outlined above may be modified and more assistance given to the artists submitting Expressions of Interest or Requests for Proposals.

### 6.3 Collaboration

There is an expectation that commissioned artists will work in collaboration

with other consultants engaged by the Proponent (most commonly, but not exclusively, landscape architects, urban planners and engineers) and that the conceptual and technical requirements of these professionals will be duly regarded by the artist when designing and installing the artwork.

There is an equal expectation that the artists' aesthetic judgement will be respected by other consultants engaged by the proponent. Changes to an artwork, even at concept stage, can only be made with the full knowledge and approval of the artist.

## **7.0 Artists Rights**

### **7.1 Definition of Artist**

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

- A person who has a university degree or minimum 3 year full time TAFE Diploma in visual arts, or when the brief calls for it, other art forms such as multi media;
- A person who has a track record of exhibiting their artwork at reputable art galleries that sell the work of professional artists;
- A person who has had work purchased by major public collections, including (but not limited to) the Art Gallery of Western Australia, any of the university collections or Artbank;
- A person who earns more than 50% of their income from arts related activities, such as teaching, selling artwork or undertaking public art commissions.

Sometimes it will be appropriate to be more flexible and seek people other than professional artists to carry out artwork commissions. This may apply in instances when young, emerging and indigenous artists or students may be considered appropriate. The Shire will compile a Public Artist Register, which includes details of local artists for consideration by the proponent (or Shire where the public art is situated on Crown Land).

### **7.2 Artist Contract**

The proponent will be required to forward copies of the artist's contract, maintenance schedule and artist contact details to the Shire at the commencement of the project. In the case where the proponent is the Shire, it shall satisfy itself that these requisites have been satisfied.

### **7.3 Moral Rights**

Since 2000 moral rights legislation has protected artists. In brief, an artist's moral rights are infringed if:

- Their work is not attributed or credited;
- Their work is falsely attributed to someone else; or
- Their work is treated in a derogatory way by distorting, modifying or removing it without their knowledge or consent.

In practical terms this means that all artworks should have the artist's name

on or attached it, that the Shire cannot change an artwork in any way without seeking the artist's permission; likewise, cannot remove or re-locate the artwork without seeking the artist's permission. In the case that an artist has moved and the Shire cannot find them, evidence that a reasonable attempt to find the artist must be provided on request.

The Shire will take special care to ensure that acts of restoration or preservation (of artworks) will be conducted in a sensitive manner with prior consultation with the artists. Wherever possible, preservation or restorative works should be carried out by professional conservators. Special care will also be taken with the moral rights associated with works created by more than one artist, in that it is acknowledged that collaborators on artistic creations can take different views on issues such as relocation and restoration.

#### 7.4 Acknowledgement of Artwork

In line with moral rights legislation, the proponent (or Shire where the artwork is situated on Crown Land) will install a plaque or plate near each artwork, acknowledging the name of the artist, and the name of the person, agency or company who funded the artwork.

#### 7.5 Copyright of Artwork

Once an artwork has been completed and accepted by the Shire, copyright will be held jointly by the Shire and the artist. In practical terms this means that the Shire has the right to reproduce extracts from the design documentation and photographic images of the artwork for non-commercial purposes, such as annual reports, information brochures about the Shire and information brochures about the artwork. The artist will have the right to reproduce extracts from the design documentation or photographic images of the artwork in books or other publications associated with the artist or artwork.

#### 7.6 Fees to Artists

A fee may be paid to artists invited to submit a Request for Proposal (RFP) and this may be credited to the value of the Public Art required under the Policy. The amount will be at the discretion of the proponent and in proportion to the overall artwork budget. The fee will be paid after the proposal had been submitted, deemed to comply with the requirements and the artist has attended their interview.