

5.2 ADVERTISING OF REVIEWED LOCAL PLANNING POLICY NO. 7.5.13 - PERCENT FOR ART

- Attachments:**
1. **Percent for Art Policy Stakeholder Engagement Summary**
 2. **Draft Percent for Art Policy**

RECOMMENDATION

That Council APPROVES draft Local Planning Policy No. 7.5.13 – Percent for Art, at Attachment 2, for the purpose of community consultation.

PURPOSE OF REPORT:

For Council to approve draft Local Planning Policy No. 7.5.13 – Percent for Art (**Attachment 1**) for the purpose of community consultation.

BACKGROUND:

The City's [Percent for Art Policy](#) (the Policy) was published on 24 August 1998 and was WA's first local government percent for art policy. Several reviews and amendments have been undertaken since then, with the latest being adopted on 5 December 2015.

The purpose of the Policy is to require larger developments to contribute one percent of their development value as Public Art or make a cash-in-lieu contribution to the City so that public art can be commissioned on their behalf.

In 2021, a review of the Policy was undertaken in accordance with the City's adopted [Policy Development and Review Policy](#). A full review of the Policy was considered necessary because:

- The review deadline of September 2018 has passed;
- The Arts Development Action Plan (ADAP) 2018 – 2020 includes an objective to review the Policy;
- State Administrative Tribunal (SAT) decisions have been made that have implications for the Policy;
- Further clarification is required on the projects that can be funded by the Percent for Art Reserve; and
- Alignment with the development of an Arts Plan is required.

On 1 October 2021 a Policy Paper was distributed to Elected Members, with further information provided via email on 16 February 2022 outlining the Policy review approach including a Communications Plan. On 21 September 2022 a Policy Paper was distributed to Elected Members including the draft Percent for Art Policy and Stakeholder Engagement Summary.

DETAILS:

The City has been collecting and using cash-in-lieu funds for Public Art for over 20 years. In this time, the City and developers have delivered a large range and quantity of Public Art. As part of this, the City has continually reviewed its internal and external processes to ensure delivery of high quality artworks.

In order to continue applying conditions on development approvals to provide Public Art contributions, the City must have a local planning policy or a provision within the Scheme as justification.

The Policy review to date has considered the following:

- The City of Vincent Planning Framework, including alignment with the Local Planning Scheme and State legislation;
- Alignment with the Strategic Community Plan (SCP);
- Alignment with the Innovate Reconciliation Action Plan 2022 – 2024;
- The SAT Decision of BGC (Australia) Pty Ltd v Metropolitan East Joint Development Assessment Panel [2018] DR 87 (full reasons not published) directing the percent for art condition be removed from the Development Application. Finding that the City of Swan's Percent for Art Policy had a cash-in-lieu section that allowed for expenditure in any part of the City of Swan rather than within proximity of the development that made the contribution (inadequate planning nexus);

- The City of Swan and Town of Victoria Park's policies that were updated as a result of the SAT Decision;
- The SAT Decision of *Lavenda Pty Ltd v Town of Vincent* [2006] DR 291 where an appeal of the percent for art condition was unsuccessful. Whilst the Policy upheld why the condition should be imposed, it could be strengthened with objectives addressing the improvement of public amenity for current and future users of the development and enhancement of the built environment aligning to the City's Local Planning Strategy objectives; and
- The discussion paper by Roberts Day, Percent for Art 2.0 (April 2020).

The development of the draft Policy as outlined through the Stakeholder Engagement Summary required key stakeholder engagement to be undertaken. A phased approach was undertaken in line with the City's Community Engagement Framework. This included a survey with targeted questions and workshops with artists, art consultants, creatives, the City's Design Review Panel and developers.

The summary of engagement and resulting policy amendments are included as **Attachment 1**.

The review of these key matters, review of the quality and timeframe of previous Public Art delivered by developers and landowners and stakeholder engagement undertaken has informed the development of the draft Policy, at **Attachment 2**.

The following key amendments are included in the draft Policy:

Objectives

As part of the review, the Policy objectives were workshopped with the Arts Advisory Group (AAG) to ensure alignment to the amended scope and purpose of the draft Policy.

The AAG have developed additional objectives more aligned to the purpose of the draft Policy. The draft Policy objectives:

1. Develop and promote community identity within the City;
2. Increase the social, heritage, cultural and economic value of the City;
3. Improve public amenity for existing or future users of developments;
4. Enhance the built environment and align with the City's Local Planning Strategy objectives; and
5. Ensure developers consider how public art integrates with the development and the public realm to produce high quality Public Art.

These objectives as part of the Policy review have been further considered against key matters in the context of the Policy and policy positions from other metropolitan local governments.

Policy Intent

The Policy is informed by the zoning provisions of the City of Vincent's Local Planning Scheme No. 2 (LPS2). The Policy was last reviewed 5 December 2015. LPS2 came into effect May 2018. This has meant that the Policy is inconsistent with LPS2 and its application to residential development.

The Policy currently applies to commercial and mixed-use developments with a total project cost exceeding the threshold value (set in the fees and charges on an annual basis – currently \$1,092,000). The Policy also applies to residential developments exceeding the threshold value provided they also meet the following criteria:

- 1.2.1 *Comprise of ten (10) dwellings or more;*
- 1.2.2 *with a height of three (3) stories or more; and*
- 1.2.3 *are Zoned District Centre, Commercial, Residential/Commercial or Residential R60 and above.*

The Policy's current application to residential development with a height of three stories or more means the Policy applies to single dwellings and small group dwellings which exceed the threshold value. This does not align with the original intent of the Policy, as confirmed through internal and external consultation.

As the Policy is aimed at larger scale developments, the draft Policy has been updated to reflect LPS2 zoning, with a new section titled 'Scope' in Part 1 of the draft Policy:

SCOPE

1. *Development proposals subject to this Policy are to set aside a minimum of one percent (1%) of the Total Project Cost for the development of Public Art. This Policy applies to:*
 - 1.1. *Proposals for Commercial and Mixed Use developments over the Threshold Value; and*
 - 1.2. *Proposals for Residential developments over the Threshold Value that also meet the following criteria:*
 - 1.2.1. *Comprise of ten (10) dwellings or more; and*
 - 1.2.2. *Are zoned Centre, Commercial, Mixed Use or Residential R60 and above.*
2. *Where this Policy is inconsistent with an area-specific local or State planning instrument, the requirements of that other planning instrument will apply to the extent of the inconsistency.*

Cash-in-lieu Framework

The Policy does not currently refer to locality or proximity, and the funds are permitted to be spent in any location across Vincent. While this may be appropriate due to Vincent's small size, legal advice provided in November 2021 states that:

'If the Public Art Policy requires the contribution to be expended within the same catchment as the development, that will assist in defusing an argument that might be made regarding inadequate nexus'.

The draft Policy includes a framework for expenditure of cash-in-lieu on Public Art within the same catchment area and provides a location map of Public Art projects for further clarity on where the funds will be expended. There are instances when the cash-in-lieu contribution may be expended in a different catchment area, as the legal advice noted:

'It is recommended that the policy reference the catchment area alongside a provision clarifying that deviation from this provision may be considered with justified reasoning provided'.

The draft Policy Percent for Art Contribution (Option 2) includes the provisions:

- 3.6 *Cash-in-lieu funds will be expended on Public Art projects in the same catchment area as the contributing development, unless otherwise agreed by the City and applicant, provided that the Public Art is consistent with the objectives of this Policy and the City of Vincent Arts Plan.*
 - 3.6.1 *Catchment areas are centred around Town Centres (highlighted in pink in Appendix 1). Any address would be considered part of the catchment area of whichever Town Centre is in closest proximity.*
 - 3.6.2 *Cash-in-lieu contributors will be notified by the City as to the Public Art project that their contribution will be expended on.*
- 3.7 *Appendix 1 to this Policy presents a map of locations for Public Art projects in the City of Vincent.*
 - 3.7.1 *Public Art projects within each catchment area will be prioritised and implemented through the City of Vincent Arts Plan.*

Public Art Infrastructure

The Arts Plan initial engagement identified demand for suitable creative venues and spaces to support the Arts Industry in Vincent. These findings are consistent with the Making Space for Culture report.

Legal Advice provided on 19 November 2021 states that encouraging or facilitating activation of public spaces through the provision of Public Art Infrastructure is a proper planning purpose and is consistent with sound town planning principles. The legal advice notes that it is important that any policy provisions which extend the notion of Public Art are drafted appropriately. The guiding principles for the provision of Public Art in the Policy are drawn from the City of South Perth's Percent for Art Policy 'Developer Contribution for Public Art & Public Art Spaces – Appendix 1'.

The Policy currently states that the City may consider 'alternative art projects including community arts programs' but does not provide clear support for a broader range of arts projects that reflect innovative outcomes, such as Public Art Infrastructure. This results in limited opportunity for the provision of a diverse range of arts experiences for the Vincent community.

The first Public Art Infrastructure project as a Percent for Art contribution is currently in its early stages. At its Ordinary Meeting on 12 October 2021, Council approved a portion of the developer Percent for Art contribution for 40 Frame Court, Leederville to be expended on the curation and management of an art gallery and cultural production/community space.

The draft Policy includes a provision for Public Art Infrastructure when outlining the categories of Public Art that the draft Policy would support:

1. *General Provisions:*

1.4.6 Public art infrastructure such as artist-in-residency spaces or other forms of public space where art or the production of art is visible and accessible to the public.

2. *Owner Applicant Project (Option 1):*

Public Art Infrastructure: Will be dealt with on an individual basis due to the unique context of each project. Ongoing management and/or programming will need to be addressed for Public Art Infrastructure. Liaison with the City's Arts Team and Arts Advisory Group will determine a reasonable and mutually acceptable means of calculating the value of Public Art Infrastructure. Possible approaches may include:

- *Calculations based upon the agreed market value of an allocated space within the development.*
- *Lump sum contributions held in trust, or similar, for the purposes of managing the public art space, delivering a program of public art events or activities, or for disbursement (e.g. for artist residencies) in a manner approved by the City.*
- *Entering into a contractual arrangement with an arts management organisation with the capacity to manage funds and program a public art infrastructure for a determined period of time.*

If the set terms are not met, the Applicant/Owner will be required to communicate that in writing to the City and it will then be determined by the City how to proceed.

Administration will guide developers interested in providing this type of contribution.

Professional Artist Definition

Feedback from targeted stakeholder engagement indicated that the current definition of a Professional Artist in the Policy is not met by a substantial number of otherwise suitably skilled and experienced Aboriginal and Torres Strait Islander Artists. The current definition requires satisfaction of at least two categories from a list of four.

The draft Policy includes a fifth category:

"Professional Artist" means a suitably qualified artist with extensive Public Art experience. A Professional Artist can be defined as a person who fits into at least two of the following categories:

- *has a tertiary qualification in the visual arts, or when the brief calls for it, other art forms such as multimedia;*
- *has a track record of exhibiting and selling art at reputable art galleries;*
- *is represented in major public collections;*
- *a person who earns more than 50% of their income from arts related activities such as undertaking Public Art commissions; and*
- *is an Aboriginal and/or Torres Strait Islander Artist.*

This aligns with the Innovate Reconciliation Action Plan 2022 - 2024, providing more opportunities for Aboriginal and Torres Strait Islander creatives and to celebrate Noongar artwork and culture in public spaces.

CONSULTATION/ADVERTISING:

Following approval to advertise the draft Policy, in accordance with the City's [Community and Stakeholder Engagement Policy](#) public notice of all new and significantly amended policies must be provided for a period exceeding 21 days in the following ways:

- notice published on the City's website;
- notice posted to the City's social media;
- notice published in the local newspapers;
- notice exhibited on the notice board at the City's Administration and Library and Local History Centre; and
- letters distributed to relevant local businesses and community groups.

If approved, advertising of the draft Policy will be undertaken accordingly. Following consultation, the revised Policy will be presented to Council for adoption.

LEGAL/POLICY:

The Policy is a 'local planning policy' created pursuant to the City's Local Planning Scheme No. 2. It applies to all developments and must be given 'due regard' pursuant to clause 67 of the Deemed Provisions by any decision maker assessing developments to which the Scheme applies.

The Policy would be reviewed every four years or more frequently if changes to strategic objectives or industry standards occur, in accordance with the Policy Development and Review Policy.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to approve the draft Policy for the purpose of community consultation.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Connected Community

*An arts culture flourishes and is celebrated in the City of Vincent.
We have enhanced opportunities for our community to build relationships and connections with each other and the City.*

Thriving Places

Our physical assets are efficiently and effectively managed and maintained.

Sensitive Design

*Our built form is attractive and diverse, in line with our growing and changing community.
Our built form character and heritage is protected and enhanced.
Our planning framework supports quality design, sustainable urban built form and is responsive to our community and local context.*

Innovative and Accountable

*Our resources and assets are planned and managed in an efficient and sustainable manner.
We are open and accountable to an engaged community.*

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any specific sustainability outcomes of the *City's Sustainable Environment Strategy 2019-2024*, however sustainability is a consideration in the assessment of percent for art proposals in terms of design, materiality and ongoing maintenance requirements.

PUBLIC HEALTH IMPLICATIONS:

This is in keeping with the following priority health outcomes of the City's *Public Health Plan 2020-2025*:

Increased mental health and wellbeing

Increased physical activity

FINANCIAL/BUDGET IMPLICATIONS:

The cost of advertising of the draft Policy will be met through the City's existing operational budget.

COMMENTS:

Artworks in the public realm not only increase vibrancy and improve the experience of the area but can also increase the mental health and wellbeing of users particularly when the artwork expresses the context, heritage and culture of the area as well as the people who live, work and play there. When people can identify with public artworks and spaces it creates a sense of belonging and connectivity.

Percent for Art Local Planning Policy 7.5.13 Review: Consultation Summary

SUMMARY OF STAKEHOLDER ENGAGEMENT

As per the Percent for Art Local Planning Policy Review Communication Plan, there has been targeted engagement with key stakeholders on the preliminary stages of the review. Detail of the engagement is listed below. Submitter feedback, administration's response and resultant amendments are included in Table 1.

Arts Advisory Group (AAG) Feedback

On 23 November 2020, 19 May 2021 and 6 July 2021, the AAG provided feedback on the review of the Policy.

Elected Member Feedback

On 1 October 2021, as per the [Policy Development and Review Policy](#), the overview of the Arts Plan and the Percent for Art Policy (the Policy) was distributed to Council Members as a Policy Paper. On 16 February 2022, further information was provided to Council Members via email regarding the Arts Plan overview and the Policy review. This included the Policy Papers, communication plans, and a short survey seeking feedback on major themes of the projects.

Legal Advice

On 19 November 2021, McLeod's Barristers and Solicitors provided legal advice regarding key questions for the Percent for Art review. This included a consideration of a percent for art and heritage element in the policy.

Targeted Stakeholder Survey Responses

From December 2021 and January 2022, Administration emailed 42 key stakeholders inviting them to respond to a survey regarding key themes identified for the Review. The key stakeholders included:

- Arts practitioners and other creatives with experience in working on arts projects in Vincent
- Developers, architects and planning consultants involved in JDAP applications in Vincent and other Peak bodies including the Urban Development Institute of Australia and Planning Institute of Australia.

Six responses were received. Four from artists and two from developers/architects/planning consultants.

Design Review Panel (DRP) Feedback

On 29 March 2022, the DRP was invited to provide a response to the Policy review. Additional feedback was provided via email and two members participated in an online workshop.

Internal Stakeholder Engagement Feedback

From October 2021 - May 2022, there has been internal engagement undertaken for the Policy review with the Local History Centre (heritage considerations), Development and Design, Place Planning (including the Arts Officer) and the Strategic Planning Team.

During December 2020, the City's Corporate Executive Team was consulted on the preliminary review of the Policy.

Arts Plan Stakeholder Engagement

In February 2022, the City appointed Hatch RobertsDay to assist with stakeholder engagement. Stakeholder engagement sought feedback on how well the Arts is represented in Vincent's existing precincts, the Arts Plan strategic objectives, participation, satisfaction and importance, priority service areas, and public art. The engagement was conducted March-May 2022 and informed the Policy review.

Table 1. Stakeholder Engagement Summary

Theme	Stakeholder Feedback	Officer Comment	Proposed Amendment
Objectives	<p>DRP feedback Feedback highlighted the need to consider that some projects will require several artists to submit a concept early on in the process and they won't usually be paid for their contribution if they are unsuccessful. It was advised that the Policy should advocate to ensure developers work collaboratively with professional artists.</p> <p>Legal Advice Legal Advice has indicated that the biggest challenge in conditioning the provision for public art (and by extension the Public Art Local Planning Policy) through the Planning Process is the question of the nexus between the proposed development and the requirement to provide public art. The requirement must be linked to a change or changes brought about by the development. A Local Planning Policy that requires the provision of public art by developers is valid due to:</p> <ul style="list-style-type: none"> • The reference to improvement of the scheme area in the Planning Development (Local Planning Scheme) Regulations 2015. • Clause 9 in City of Vincent Local Planning Scheme No. 2 2018. • The relevant provision concerning creating spaces that foster culture and livability and the provision of public art in the State Planning Strategy 2050. <p>Targeted Stakeholder Survey Feedback (creatives and developers) Feedback generally placed more emphasis on artistic quality, integrity and innovation in the Policy. To achieve quality outcomes, the artists should be involved at the start of the process.</p> <p>It was indicated that the Policy should highlight the need for a typical public art timeline/program to commence 6 months prior to a Building Permit submission.</p>	<p>It is agreed that additional objectives should be included to respond to legal advice considering recent State Administrative Tribunal matters regarding percent for art policies.</p> <p>The planning and arts team have implemented processes to ensure that Developers will be encouraged to consider art as part of their developments. They are encouraged to bring preliminary art design concepts for DRP assessments if they are choosing Option 1. The DRP have indicated they can provide public art assessments in their considerations.</p>	<p>Policy objectives amended to include:</p> <ol style="list-style-type: none"> 3. <i>Improve public amenity for existing or future users of developments.</i> 4. <i>Enhance the built environment and align with the City's Local Planning Strategy objectives.</i> 5. <i>Ensure developers consider how public art integrates with the development and public realm to produce high quality Public Art.</i>
Policy Intent	<p>Internal Engagement Feedback requested the current cash in lieu threshold be maintained and zoning requirements updated in line with the City of Vincent Local Planning Scheme No.2 (LPS2).</p> <p>Feedback indicated that the requirement for percent for art contributions to be applied to residential developments 'three storeys or more' should be removed as it captures single dwellings and is considered unnecessary. The requirement for percent for art to applied where there is 10 dwellings or more will ensure that single house developments are not captured under the policy.</p> <p>The relationship between the Policy and future Precinct Plans was queried.</p> <p>Targeted Stakeholder Survey Feedback Submissions indicated a lack of support for the application of percent for art contributions to be applied to residential developments 'three storeys or more'.</p>	<p>It is agreed that the Policy should reflect the current LPS2 zoning requirements. The Policy has been amended accordingly.</p> <p>It is agreed that the requirement for percent for art contributions to be applied to residential developments 'three storeys or more' should be removed.</p> <p>This change is consistent with the policy purpose and ensures single house or small grouped dwelling developments that exceed the threshold value but do not meet any of the other requirements are not captured under the Policy.</p>	<p>Policy Scope added as follows:</p> <ol style="list-style-type: none"> 1. <i>Development proposals subject to this Policy are to set aside a minimum of one percent (1%) of the Total Project Cost for the development of Public Art. This Policy applies to:</i> <ol style="list-style-type: none"> 1.1 <i>Proposals for Commercial and Mixed Use developments over the Threshold Value; and</i> 1.2 <i>Proposals for Residential developments over the Threshold Value that also meet the following criteria:</i> <ol style="list-style-type: none"> 1.2.1. <i>Comprise of ten (10) dwellings or more; and</i> 1.2.2. <i>Are zoned Centre, Commercial, Mixed Use or Residential R60 and above.</i> 2. <i>Where this Policy is inconsistent with an area-specific local or State planning instrument, the requirements of that other planning instrument will apply to the extent of the inconsistency.</i>

<p>Cash-in-lieu Framework</p>	<p>AAG Feedback Feedback indicated encouraging more cash-in-lieu contributions is preferable now that the City has accumulated a large public art collection. It is desirable for contributions to be pooled in reserves by the City to be expended on more impactful, strategic and diverse public artwork projects. The AAG have advised transparency should be provided through the Arts Plan on what public art projects will be funded with the contributions, as clarity on this expenditure will encourage more developers to take this route.</p> <p>Internal Engagement Feedback indicated that the provision of a framework, that includes a reference to locality, is important to ensure proper planning purpose. There is opportunity for this framework to align with draft Public Open Space Cash-in-lieu policy.</p> <p>Legal Advice Legal advice indicated that if the policy requires the contribution be expended within the same catchment as the development, that will assist in defusing any argument regarding there being an inadequate planning nexus.</p> <p>If the Policy has a framework requiring the cash-in-lieu contribution to be expended within the same catchment as the development making the contribution, then it is recommended that the Policy reference the catchment area alongside a provision clarifying that deviation from this provision may be considered with justified reasoning provided.</p> <p>Targeted Stakeholder Feedback (creatives and developers) Feedback indicated a lack of support for providing a reference to catchment in the Policy. It is believed that this will fragment the contributions, and monies collected will not allow for the development of significant pieces of public art.</p>	<p>It is agreed that additional provisions should be included around the expenditure of cash-in-lieu. The additional provisions will provide reinforcement of the planning nexus for the application of the policy while also ensuring that there is discretion for the City of Vincent to accrue funds for public art expenditure across catchment areas to ensure more substantial art projects and avoid 'fragmentation' of the contributions. Consideration of the draft Public Open Space cash-in-lieu policy has informed the development of the internal processes document to be used by the planning and arts team in addition to the policy provisions.</p> <p>A map of locations for Public Art projects in Vincent has been developed through the draft Wayfinding Plan, once adopted, this will be prioritised and implemented through the upcoming Arts Plan. It is proposed that this map also be included as Appendix 1 of the Policy. This alignment with the Arts Plan will provide greater clarity to Developers on public arts priorities and expenditure, providing more confidence in choosing the cash-in-lieu option.</p>	<p>3. PERCENT FOR ART CONTRIBUTION (OPTION 2) amended to include provisions as follows:</p> <p>3.6 <i>Cash-in-lieu funds will be expended on Public Art projects in the same catchment area as the contributing development, unless otherwise agreed by the City and applicant, provided that the Public Art is consistent with the objectives of this Policy and the City of Vincent Arts Plan.</i></p> <p>3.6.1 <i>Catchment areas are centred around Town Centres (highlighted in pink in Appendix 1). Any address would be considered part of the catchment area of whichever Town Centre is in closest proximity.</i></p> <p>3.6.2 <i>Cash-in-lieu contributors will be notified by the City as to the Public Art project that their contribution will be expended on.</i></p> <p>3.7 <i>Appendix 1 to this Policy presents a map of locations for Public Art projects in the City of Vincent.</i></p> <p>3.7.1 <i>Public Art projects within each catchment area will be prioritised and implemented through the City of Vincent Arts Plan.</i></p>
<p>Public Art Infrastructure</p>	<p>AAG Feedback Feedback indicated support for public art infrastructure as a component of the percent for art policy (initial feedback provided in November 2020 was to replace 'creative spaces' as a term with 'public art infrastructure').</p> <p>Arts Plan Engagement Feedback (creative practitioners and arts workers) Feedback indicated the provision of suitable venues and spaces, alongside financial resources were identified as the highest priority service, to support the Arts Industry. Feedback outlined that the percent for art cash in lieu funds can provide opportunities for performance spaces in Vincent.</p> <p>DRP Feedback Feedback indicated support for public art infrastructure as an option for the policy. This is considered more appropriate for large-scale developments, and 40 Frame Court may serve as a good case study.</p> <p>The DRP have highlighted the need to have discussions with community about what they want as their needs may be quite diverse making the guiding principles important. There is also a need to communicate that the benefits is that, although it is not art in and of itself, public art infrastructure will be able to produce multiple works of art for an ongoing community benefit.</p> <p>The DRP have raised concern over having an art gallery as an option as it can commercialise the contribution.</p> <p>Elected Member Feedback Two responses not supportive of the proposal and one supportive, with a preference for the policy to facilitate art in public spaces in lieu of infrastructure.</p> <p>Feedback queried the use of public art infrastructure as a community benefit incentive and the establishment of a rotating public art displays in Vincent's town centres.</p>	<p>Feedback provided through the engagement process has largely been supportive of a public art infrastructure provision in the policy.</p> <p>There is an opportunity to use 40 Frame Court Leederville as a case study for this type of public art outcome. At its Ordinary Meeting on 12 October 2021, Council approved a portion of the developer Percent for Art contribution to be expended on the curation and management of an art gallery and cultural production/community space. The Development Application was lodged August 2022 and includes a proposed management plan for the space, of which the AAG is reviewing to provide feedback. This project will become an important case study and provide valuable learnings for future opportunities.</p> <p>The Art Plan Engagement and the 'Making Spaces for Culture' report has indicated a high demand for artist co-working spaces in the City of Vincent. It is agreed that this, along with future precinct planning, will help address demand.</p>	<p>General Provisions of the Policy amended to include Public Art types:</p> <p>1.4 <i>Subject to approval by the city, Public Art may encompass diverse public art types, such as but not limited to:</i></p> <p>1.4.6 <i>Public art infrastructure such as artist-in-residency spaces or other forms of public space where art or the production of art is visible and accessible to the public.</i></p> <p>And</p> <p>2. <i>Owner Applicant Project (Option 1):</i></p> <p><i>Public Art Infrastructure: Will be dealt with on an individual basis due to the unique context of each project. Ongoing management and/or programming will need to be addressed for Public Art Infrastructure. Liaison with the City's Arts Team and Arts Advisory Group will determine a reasonable and mutually acceptable means of calculating the value of Public Art Infrastructure. Possible approaches may include:</i></p> <ul style="list-style-type: none"> • <i>Calculations based upon the agreed market value of an allocated space within the development.</i> • <i>Lump sum contributions held in trust, or similar, for the purposes of managing the public art space, delivering a program of public art events or activities, or for disbursement (e.g. for artist residencies) in a manner approved by the City.</i> • <i>Entering into a contractual arrangement with an arts</i>

	<p>Targeted Stakeholder Survey Feedback (creatives and developers) Feedback indicated support for the proposal, encouraging more ephemeral art, public space infrastructure and arts infrastructure (galleries, laneway lightboxes, outdoor performance spaces etc) outcomes by including these as types of public art in the Policy.</p> <p>Further support of the proposal to include public art infrastructure provision in the Policy provided it is used as part of community benefits in exchange for bonus plot ratio, height incentives etc.</p>		<p><i>management organisation with the capacity to manage funds and program a public art infrastructure for a determined period of time.</i></p> <p><i>If the set terms are not met, the Applicant/Owner will be required to communicate that in writing to the City and it will then be determined by the City how to proceed.</i></p>
Updated definition of Professional Artist	<p>Arts Plan Engagement Feedback (creatives practitioners, art consultants) Feedback indicated that the current definition of a Professional Artist in the Policy prevents a substantial number of appropriately skilled and experienced Aboriginal and/or Torres Strait Islander Artists from being commissioned for these projects.</p> <p>Targeted Stakeholder Survey Feedback (creatives and developers) Feedback outlined that the current policy provides limited opportunity for Aboriginal artists without qualified training or experience to be eligible for projects.</p>	<p>It is agreed that the Professional Artist definition in the Policy should be amended to include appropriately experienced Aboriginal and/or Torres Strait Islander Artists. This aligns with both the Art Development Action Plan 2018-20 and Reconciliation Action Plan's aims to provide more opportunities for First Nations Artists and celebrate Noongar artwork and culture in public spaces.</p> <p>The current definition calls for the satisfaction of at least two categories from a list of four. It is proposed that a fifth category be included, as outlined adjacent, since many Aboriginal and/or Torres Strait Islander Artists learn their crafts and arts practice directly from family members or cultural elders rather than educational institutions. Proposed artists fulfilling the requirements would still be assessed for appropriate skill and experience for specific works proposed in each percent for art application.</p>	<p>Professional Artist definition amended to include fifth category:</p> <p><i>"Professional Artist" means a suitably qualified artist with extensive Public Art experience. A Professional Artist can be defined as a person who satisfies at least two of the following categories:</i></p> <ul style="list-style-type: none"> <i>has a tertiary qualification in the visual arts, or when the brief calls for it, other art forms such as multimedia;</i> <i>has a track record of exhibiting and selling art at reputable art galleries;</i> <i>is represented in major public collections;</i> <i>A person who earns more than 50% of their income from arts related activities such as undertaking Public Art commissions; and</i> <i>Is an Aboriginal and/or Torres Strait Islander Artist.</i>
Updated definition of Public Art	<p>AAG feedback Feedback indicated support for the expanded definition of public art to improve public art outcomes.</p> <p>Arts Plan Engagement Feedback Feedback indicated variety is important to achieve a broad range of Percent for Art outcomes, provided through both cash-in-lieu and in-kind. An opportunity to facilitate performance spaces and the like through the policy would be valuable.</p> <p>DRP Feedback Feedback provided support for the broadened definition to encourage a diverse range of artwork. Support was provided for the expanded definition, but it was emphasised that the process should be simple for developers to deliver.</p>	<p>It is agreed that the broader definition will achieve a broad range of high-quality outcomes.</p> <p>As per the current policy, there remains scope for public art projects that involve mentoring opportunities between Professional Artists and emerging artists.</p>	<p>Public Art definition amended as follows:</p> <p><i>"Public Art" means an enduring, temporary or ephemeral work of art, created by a Professional Artist that has been commissioned specifically for its location and to be made accessible within the public realm.</i></p> <p><i>Enduring – Public Art that lasts at least 20 years, such as but not limited to sculptural, free-standing, functional, decorative, integrated or iconic works.</i></p> <p><i>Temporary – Public Art that is only intended to last up to 5 years, such as but not limited to an installation.</i></p> <p><i>Ephemeral – Public Art that is usually event based and only lasts for a very short time. Public Art types under this category could include but are not limited to performance art, projection, audio and/or visual media.</i></p>
Budget Requirements for Application for Public Art Approval	<p>AAG Feedback Feedback provided in 2021 outline the importance of ensuring that professional artists, engaged to provide public art for Owner/Applicant choosing Option 1, are appropriately compensated for their labour. It is recommended that a 15% minimum is included in the budget provided as part of the Application for Public Art Approval.</p> <p>Feedback provided in 2022 indicated that there will be improved public art outcomes if the professional artist is appropriately compensated for their art design concept. Developers may not understand the costs of professional artist services and it's important that this is communicated as an objective in the revised Policy.</p> <p>The provision of a 15% minimum requirement for the professional artist fee may be problematic. This is because it may impact on other forms of fees required for the project including project</p>	<p>It is agreed that there should be a key breakdown of fees in the budget for professional artist design concept fee, fabrication, installation and project management or art consultant fees which can then be considered in the application assessments.</p> <p>The assessments will be looking to ensure that Professional Artists are adequately compensated for their services and this will ensure improved public art outcomes.</p> <p>As public art projects are quite varied in terms of the services required, there will be no percentage minimums or capped maximums. This aligns with the feedback provided by the AAG on 8 June 2022.</p>	<p>Policy amended to include the following:</p> <p>Public Art Assessment Criteria section:</p> <p><i>01 Concept: the Public Art is designed by a Professional Artist that shows strong vision, innovation, and excellent craftsmanship. The application should demonstrate how the breakdown of fees will achieve a high quality Public Art outcome.</i></p> <p>Budget and Procurement section:</p>

	<p>management, fabrication and installation. Some professional artists provide all of these services and calculate their contribution differently from a professional artist who is only involved in the design part of the project. The scope of the artist and art consultant and how much they're taking on may result in the design fee being less than 15%.</p> <p>Suggestions relating to budget allocations and artist and consultant fees:</p> <ul style="list-style-type: none"> • Requiring artist fees to align with National Association for Visual Arts recommended rates could be encouraged and considered as part of the assessment of the application, however noting that these are currently outdated and require updating. • Ensure there is a policy objective that ensures good public art outcomes through valuing professional artist fees. • Reconsider the current maximum amount to be attributed to public art consultant fees as this can be quite varied. Some public art consultant fees may be 10-20% of the project but more often is at 10-15%. • Consider a requirement that contributions over \$80,000 contribution should include an arts consultant. Use 'industry standard' for art consultant fees. • Some projects will not require a consultant for a variety of reasons – don't want the project to go to the management/administration costs necessarily as it may impact on the artist fees for particular projects. • Focusing on requiring applications to include a clear a breakdown of artist, fabrication, consultant/management fees or art consultation fees in the application for artwork approval. 	<p>The City can play an advocacy role to ensure Artists are appropriately compensated for their work.</p>	<p><i>In the application for Percent for Art Approval, the 1% Public Art contribution amount should be clearly demonstrated with a breakdown of fees, particularly in regards to the Professional Artist fees for the design concept, fabrication, installation and project management or art consultant fees.</i></p>
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Percent for Art Policy

Legislation / local law requirements	This Policy has been prepared under the provisions of Schedule 2, Part 2 and 3 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> .
Relevant delegations	16.1.1 Determination of various applications for development approval under the City's Local Planning Scheme
Related policies, procedures and supporting documentation	Public Art Policy 3.10.8 (2017)

PART 1 – PRELIMINARY

INTRODUCTION

Art plays a vital role in creating a vibrant and thriving city. Art helps to create a sense of belonging and it contributes to identity through insight, reflection, and allowing a space for the expression of ideas. Public Art can encourage social, cultural and economic activity and be positive for existing or future residents, employers and investors.

Developers are responsible for contributing to the key strengths and characteristics of the areas in which they develop. The City of Vincent ("the City") encourages and supports innovative and high-quality Public Art that improves the public amenity and the City's built environment.

PURPOSE

The purpose of the Policy is to:

- Establish a framework to require commissioned Public Art as part of public and private development projects within the City of Vincent; and
- Provide guidance around the collection and expenditure of cash-in-lieu of Public Art.

OBJECTIVES

1. Develop and promote community identity within the City;
2. Increase the social, heritage, cultural and economic value of the City;
3. Improve public amenity for existing or future users of developments;
4. Enhance the built environment and align with the City's Local Planning Strategy objectives; and
5. Ensure developers consider how public art integrates with the development and the public realm to produce high quality Public Art.

SCOPE

1. Development proposals subject to this Policy are to set aside a minimum of one percent (1%) of the Total Project Cost for the development of Public Art. This Policy applies to:
 - 1.1 Proposals for Commercial and Mixed Use developments over the Threshold Value; and
 - 1.2 Proposals for Residential developments over the Threshold Value that also meet the following criteria:
 - 1.2.1 comprise of ten (10) dwellings or more; and
 - 1.2.2 are zoned Centre, Commercial, Mixed Use or Residential R60 and above.
2. Where this Policy is inconsistent with an area-specific local or State planning instrument, the requirements of that other planning instrument will apply to the extent of the inconsistency.



DEFINITIONS

“Applicant” means the person or entity who submitted the Application for Development Approval to the City for the relevant development.

“Application for Public Art Design Approval” means the application the Owner/Applicant submits if they are choosing to make the Percent for Art contribution themselves (Option 1).

“Arts Advisory Group” means a group that operates in an advisory capacity to advocate and promote arts in the City and to provide expert advice and recommendations to the City on arts projects. The Arts Advisory Group (AAG) operates within the context of this Policy and the AAG Terms of Reference.

“Art Consultant” means the person or organisation nominated by the Owner/Applicant to be responsible for the Public Art commissioning process under Option 1.

“City of Vincent Arts Plan” means a plan that provides objectives and strategies for arts investment in the City of Vincent over five years.

“Owner” means the owner of the land upon which the relevant development is proposed to be built. The Owner may also be the Applicant.

“Professional Artist” means a suitably qualified artist with extensive Public Art experience. A Professional Artist can be defined as a person who fits into at least two of the following categories:

- has a tertiary qualification in the visual arts, or when the brief calls for it, other art forms such as multimedia;
- has a track record of exhibiting and selling art at reputable art galleries;
- is represented in major public collections;
- A person who earns more than 50% of their income from arts related activities such as undertaking Public Art commissions; and
- Is an Aboriginal and/or Torres Strait Islander Artist.

No Professional Artist under consideration for a Percent for Art commission may have a familial relationship to the Owner/Applicant or have financial interest in the development.

“Public Art” means an enduring, temporary or ephemeral work of art, created by a Professional Artist that has been commissioned specifically for its location and to be made accessible within the public realm.

Enduring – Public Art that lasts at least 20 years, such as but not limited to sculptural, free-standing, functional, decorative, integrated or iconic works.

Temporary – Public Art that is only intended to last up to 5 years, such as but not limited to an installation.

Ephemeral – Public Art that is usually event based and only lasts for a very short time. Public Art types under this category could include but are not limited to performance art, projection, audio and/or visual media.

“Public Realm” means all public spaces including thoroughfare or streets, public car parks, reserves/public open space, civic squares and other areas used by and accessible to the community.

“Threshold Value” means the amount determined by the Council at the commencement of each financial year setting the minimum amount for which developments are required to contribute to Percent for Art. The amount is determined annually and set out in the City’s Prescribed ‘Fees and Charges’.

“Total Project Cost” means the approximate total cost of the proposed development, as indicated on the Application for Development Approval.



PART 2 - POLICY PROVISIONS

1. GENERAL PROVISIONS

- 1.1 Where this Policy applies, specific requirements will be stipulated in a condition of Development Approval.
- 1.2 Public Art must be commissioned by a Professional Artist and located on either private or public property such that it is highly visible to, or accessible within the public realm.
- 1.3 The Owner/Applicant is required to provide signed, written confirmation to the City stipulating the choice of:
 - 1.3.1. Option 1: Owner/Applicant coordinates and delivers Public Art; or
 - 1.3.2. Option 2: Owner/Applicant pays percent for art contribution.
- 1.4 Subject to approval by the City, Public Art may encompass diverse public art types, such as, but not limited to:
 - 1.4.1 building features and enhancements such as bicycle racks, gates, benches, fountains, neon, glass art or playground structures which are unique and produced by a Professional Artist;
 - 1.4.2 2D works such as murals, tile artworks, mosaics or bas-relief applied to building surfaces and walkways. Murals may be painted or incorporate a variety of materials;
 - 1.4.3 3D works which can be freestanding or supported;
 - 1.4.4 multimedia, including any combination of media such as sound, video projection or lighting;
 - 1.4.5 community projects resulting in tangible Public Art, i.e. community murals; and
 - 1.4.6 Public art infrastructure such as artist-in-residency spaces or other forms of public space where art or the production of art is visible and accessible to the public.
- 1.5 The City may also consider alternative Public Art that does not satisfy clause 1.4 where it includes:
 - 1.5.1 landscape art that is integrated into the property (in addition to any required landscape plan), if it is created by or led by a Professional Artist;
 - 1.5.2 ephemeral or temporary Public Art provided it is adequately demonstrated that it will provide activation opportunities for the area; and/or
 - 1.5.3 Professional Artist supported Public Art projects that include mentorship or upskilling for emerging artists who do not have extensive Public Art experience.
- 1.6 Public Art must not consist of:
 - 1.6.1 business logos, wording or names related to the development or Owner/Applicant;
 - 1.6.2 Public Art that is not in clear public view;
 - 1.6.3 Public Art or elements of the Public Art which are mass produced;
 - 1.6.4 "off the shelf" or reproduced Public Art; and
 - 1.6.5 landscaping or architectural elements which are required as part of the development, as per the relevant planning framework (unless integrating an artistic component or otherwise approved by the City).



2. OWNER/APPLICANT PROJECT (OPTION 1)

2.1 Where an Owner/Applicant chooses an Art Consultant* to manage the process or decides to coordinate the Public Art project themselves the following process must be followed:

01 Inform the City

Before submitting an Application for Development Approval, discuss the initial concept, location, and potential Artist(s) with the City. If seeking Design Review Panel (DRP) advice, provide information on the Public Art concept as part of the DRP assessment.

02 Preliminary Discussions

Have preliminary discussions with building designer and any other relevant parties about potential locations and types of Public Art.

03 Sign Written Confirmation

Provide signed, written confirmation, stating that Option 1 has been selected. Submit this prior to submitting a building permit. If applicable, art consultant should be engaged at or before this stage to manage the remainder of the process.

04 Define Public Art Opportunity

Prepare an Artwork Brief and coordinate the procurement of a Public Art concept by a Professional Artist. (Please note Artists are to be paid for concept designs). The Owner/Applicant must enter into a contract with their approved chosen Professional Artist, before they submit an application for Public Art Design Approval to the City.

05 Submit Application

Submit application for Percent for Art Approval to the City of Vincent which will be provided to the Arts Advisory Group for comment. The Public Art concept is one of a number of requirements of the application which can be found on the City's website.

06 Assessment and Approval

The application is assessed against the criteria. If approved, notification will be provided in writing. Once the application is approved the project obtains full project approval from the City. If not approved the reasoning will be discussed and a revised application will be required.

07 Artwork and Attribution Plaque

Professional Artist(s) complete detailed design, then artwork is fabricated (if applicable) and installed. A plaque must also be installed next to the Public Art to acknowledge the artist and the City of Vincent. A template can be found on the City's website.

08 Submit Artwork Completion form

The Public Art must be completed, with a notice of Public Art completion form submitted to the City, including a budget report for the full amount of the contribution, prior to the City's granting of a building occupancy permit.

*It is highly recommended that an Art Consultant be appointed to manage Public Art projects for developments that have larger percent for art contributions of \$80,000 and over.

ASSESSMENT CRITERIA

01 Concept: the Public Art is designed by a Professional Artist that shows strong vision, innovation, and excellent craftsmanship. The application should demonstrate how the breakdown of fees will achieve a high-quality Public Art outcome.

02 Context: the Public Art is site specific and considers the relevant themes, architectural, historical, geographical and/or sociocultural context of the site and community identity.

03 Public Access: the Public Art is highly visible to the public realm and positively impacts the visual amenity of the development.

04 Public safety: the Public Art is designed, constructed and installed with best practice risk management and the Public Art does not present a hazard to public safety.



05 Longevity: with the exception of ephemeral and temporary categories of art, the Public Art is designed to be structurally sound and resistant to theft, vandalism, weathering, and excessive maintenance to ensure reasonable life of the Public Art.

06 Special conditions: Public Art must adhere to any special conditions applied by the City, including but not limited to:

Temporary or Public Art: Must demonstrate that the Public Art will deliver a significant arts and cultural activation that provides short-term and long-term outcomes for the local community. It should provide measurable outcomes that the activation will increase audience accessibility to an engaging arts and cultural experience.

Public Art Infrastructure: Will be dealt with on an individual basis due to the unique context of each project. Ongoing management and/or programming will need to be addressed for Public Art Infrastructure. Liaison with the City's Arts Team and Arts Advisory Group will determine a reasonable and mutually acceptable means of calculating the value of Public Art Infrastructure. Possible approaches may include:

- Calculations based upon the agreed market value of an allocated space within the development.
- Lump sum contributions held in trust, or similar, for the purposes of managing the public art space, delivering a program of public art events or activities, or for disbursement (e.g. for artist residencies) in a manner approved by the City.
- Entering into a contractual arrangement with an arts management organisation with the capacity to manage funds and program a public art infrastructure for a determined period of time.

If the set terms are not met, the Applicant/Owner will be required to communicate that in writing to the City and it will then be determined by the City how to proceed.

BUDGET AND PROCUREMENT

The 1% Public Art contribution amount can cover the following expenses:

- Professional Artist's budget, including artist fees material, assistants' labour costs, insurance, permits, taxes, business and legal expenses, and operating costs.
- Fabrication and installation of Public Art.
- Art Consultant's fees.
- Site preparation.
- Documentation of the Public Art.
- Attribution plaque.

In the application for Percent for Art Approval, the 1% Public Art contribution amount should be clearly demonstrated with a breakdown of fees, particularly in regards to the Professional Artist fees for the design concept, fabrication, installation and project management or art consultant fees.

The procurement approach will be dependent on the objectives of each project, the budget and the developer's procurement requirements. The main procurement approaches are listed below:

- **Direct acquisition or engagement**
This approach may be appropriate where a particular Public Art or the work of a particular Professional Artist is sought. This process may also be preferred for smaller budget projects. In this case the proposed Professional Artist needs to be approved by the City as an initial step.
- **Limited competition**



In a limited competition approach, the /Owner/Applicant selects and invites artists to submit proposals in response to an Artwork Brief. This may be appropriate if the artist is required to work in collaboration with an architect, landscape architect and/or an urban designer.

- **Open competition**

This model requires a public call for Expressions of Interest to provide a schematic response to the Artwork Brief. Shortlisted Professional Artists are invited to develop and present concept designs for a fee, and a preferred Professional Artist is selected.

3. PERCENT FOR ART CONTRIBUTION (OPTION 2)

- 3.1 Where the Owner/Applicant chooses the cash-in-lieu option, they will receive a 15% discount on the Percent for Art contribution.
- 3.2 Cash-in-lieu funds are to be paid to the City (or payment plan entered into) prior to the granting of a building occupancy permit.
- 3.3 If the Development Approval expires or is amended to remove the respective condition the cash-in-lieu contribution will be refunded to the Owner/Applicant.
- 3.4 All Public Art cash-in-lieu payments will be collected by the City and combined into a reserve for the purpose of Public Art.
- 3.5 Public Art projects funded by the cash-in-lieu reserve is to be expended in the public realm and in alignment with the objectives of the City of Vincent Arts Plan.
- 3.6 Cash-in-lieu funds will be expended on Public Art projects in the same catchment area as the contributing development, unless otherwise agreed by the City and applicant, provided that the Public Art is consistent with the objectives of this Policy the City of Vincent Arts Plan.
 - 3.6.1 Catchment areas are centred around Town Centres (highlighted in pink in Appendix 1). Any address would be considered part of the catchment area of whichever Town Centre is in closest proximity.
 - 3.6.2 Cash-in-lieu contributors will be notified by the City as to the Public Art project that their contribution will be expended on.
- 3.7 Appendix 1 to this Policy presents a map of locations for Public Art projects in the City of Vincent.
 - 3.7.1 Public Art projects within each catchment area will be prioritised and implemented through the City of Vincent Arts Plan.

4. OWNERSHIP, COPYRIGHT AND MORAL RIGHTS

- 4.1 Ownership of Public Art commissioned under this Policy will generally depend upon the location of the Public Art:
 - 4.1.1 Where situated on private property, the Owner is responsible for the ongoing maintenance and upkeep of the Public Art; and



- 4.1.2 Where situated on public property, the Public Art is owned and maintained by the City, regardless of who coordinated the Public Art. In addition, ownership of the Public Art during the design and installation of the Public Art is subject to agreement between the Professional Artist and the Owner/Applicant or, where the Owner/Applicant chooses the cash-in-lieu option, the Professional Artist and the City.
- 4.2 The City will have the right to reproduce extracts from the design documentation of the Public Art and photographic images of the Public Art for non-commercial purposes, such as annual reports, information brochures, and information on the City's website.
- 4.3 Australian Copyright Law requires all original Public Art to be attributed to the Artist. A didactic plaque must be installed, by the Owner/Applicant, next to the Public Art to acknowledge the Professional Artist. Artists are also to be acknowledged when images of their work are published.

OFFICE USE ONLY	
Responsible Officer	Manager Policy & Place
Initial Council Adoption	24 August 1998
Previous Title	Local Planning Policy 7.5.13 Percent for Public Art
Reviewed / Amended	2022
Next Review Date	2025



APPENDIX 1

LOCATIONS FOR PUBLIC ART PROJECTS IN THE CITY OF VINCENT

Percent for Art cash-in-lieu contributions are collected and combined into a reserve, to be expended on Public Art projects at the locations shown in this map.

