

Local Planning Policy No. 4.4

PERCENT FOR ART

1. HEAD OF POWER

This Policy has been adopted pursuant to *Planning and Development (Local Planning Schemes) Regulations 2015*, Schedule 2 (Deemed Provisions), Clause 4 and applies to development across the whole of the City.

2. PURPOSE

The City of Busselton Cultural Plan 2005 identified the need to develop a Percent for Art Policy. The City of Busselton Local Cultural Planning Strategy 2011 (LCPS) builds on the relevant recommendations of the Cultural Plan and states the following objectives for the Percent for Art Provisions:

- 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 wellbeing;
- 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.

These Percent for Art Provisions were originally adopted in 2008 and respond to the City's desire 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.

3. INTERPRETATION

Public Art

For the purposes of these provisions 'Public Art' is defined as being site-related and place-responsive art in the public domain. It 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.

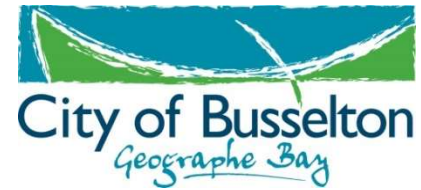
Exclusions to Public Art

Art projects ineligible for consideration include:

- commercial promotions in any form;
- directional elements such as supergraphics, signage or colour coding;
- 'art objects' which are mass produced such as fountains, statuary or playground equipment;
- most art reproductions;
- landscaping or generic hardscaping elements which would normally be associated with the project; and
- services or utilities necessary to operate or maintain artworks.

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Professional 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 multimedia; 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;
- an artist who is a member of Artsource and / or holds public liability and professional indemnity insurance.

Sometimes it will be appropriate to be more flexible and seek people other than professional artists to carry out artwork commissions. In addition to the above, the City supports art teachers and students from recognised educational institutions taking on and fulfilling the obligations, subject to meeting general criteria.

4. POLICY STATEMENT

4.1 Public Art to be Required

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

4.2 Proposals Eligible for Public Art Contributions

4.2.1 Proposals Eligible

All development proposals with a value greater than \$1,000,000 excluding:

- Permanently occupied (i.e. lawfully able to be permanently occupied) residential development, including single house, grouped dwellings, aged persons dwellings and multiple dwellings;
- Extractive Industry; and
- Agricultural development, excluding wineries, cellar doors, restaurants or similar development on rural land that is not directly associated with agricultural pursuits (i.e. the actual growing of crops or rearing of livestock).

4.2.2 Prescribed Zones

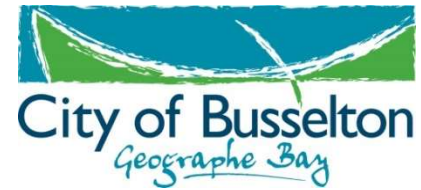
These provisions apply to those development proposals listed in 4.2.1 above where they are situated within the municipality of the City of Busselton.

4.2.3 Proponents

These provisions shall apply to all proponents, except those exempt from obtaining local authority planning approval under other legislation. Those proponents so exempted should utilise these provisions as a guide for the implementation of their respective percent for art obligations where applicable.

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4.3 Method of Determining Public Art Contribution

4.3.1 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.

For any eligible proposals comprising a permanently occupied residential component, including but not limited to, mixed use development, aged persons dwellings and/or retirement villages, the Public Art Contribution Rate is to be based only on the value of the non-residential component, central/communal facilities, and the proportionate value of supporting infrastructure works, such as the costs of fill, drainage, wastewater, water, electricity, telecommunications, pedestrian and vehicular access ways, parking and landscaping.

4.3.2 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 precinct public artwork.

In cases where the proponent chooses a cash in lieu payment as their preferred method of satisfying their obligation, the funds collected from their contribution shall be expended by the City on public artwork in the Precinct in which the funds were collected. Cash-in-lieu contributions in the Busselton (east) Precinct may be paid directly into the charitable trust established for the Settlement Artwork Project.

4.3.3 Precincts

There are four Percent for Art Precincts; Busselton (east), Yallingup, Vasse and Dunsborough (west). The precinct map is attached as Appendix A.

Funds collected within the Busselton Precinct will be expended on the Settlement Artwork project until completion and then after within the Town Centre and / or Foreshore.

Funds collected within the Dunsborough, Yallingup and Vasse Precincts will be expended on an artwork within their respective precinct Town Centre and / or Foreshore.

The City may from time to time, in consultation with the community, determine a specific theme or project, towards which the cash in lieu contributions for public artwork is directed, or otherwise the cash in lieu contributions for public artwork shall be collected and expended in the manner set out above.

4.4 Implementation of Percent for Art Policy Provisions

4.4.1 Location of Public Art

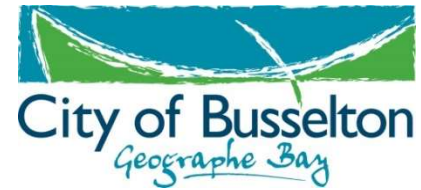
Public Art provided pursuant to these provisions shall be provided on site, or on crown land immediately adjacent to the site, in a location approved by the City.

4.4.2 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.

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4.4.3 Cash In Lieu

Although it is desirable that the proponent fulfil their Percent for Art obligations through on-site artwork, their obligation may be satisfied by a cash-in-lieu contribution based on the rate described in these provisions. Such cash-in-lieu payments are to be paid to the City of Busselton Public Arts Fund (Percent for Public Art) and expended in accordance with sections 4.4.2 and 4.4.3 above.

4.4.3.1 Eligible Costs

Costs associated with the production of an art project may include:

- 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;
- fabrication and installation of artwork;
- site preparation;
- structures enabling the artist to display the artwork;
- documentation of the artwork; and
- acknowledgment plaque identifying the artist, artwork and development(s) from which funding was obtained.

4.4.4 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 City 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.

4.4.5 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. Such documentation shall demonstrate the structural viability and suitability of the materials and fabrication processes for the proposed location.

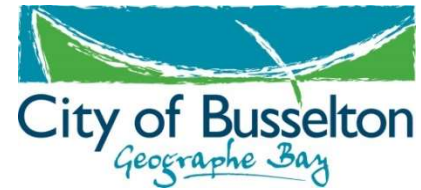
Depending upon the project, the documentation may include concept drawings, maquettes, structural and other engineering drawings, photographic images of works in progress, photographic images of completed and installed work and a maintenance schedule.

4.4.6 Clearance Process

The approval of the City 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.

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Details of works shall be submitted to and approved by the City of Busselton prior to issue of a building permit. 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 City 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 permit.

4.5 Following Completion of Artwork

4.5.1 Maintenance Schedule

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. Proponents will be required to present the City with a maintenance schedule at the completion of the commission.

4.5.2 Decommissioning

In the case of artworks located on Crown Land, the City 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 City 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 City 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.

4.6 Creative Development Process

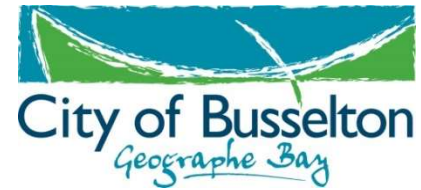
4.6.1 Creative Design Process

The proponent (or City where the public art is situated on City managed land) will consult with the City's Cultural Development Officer to identify appropriate locations, themes and materials from which the proponent will develop an Artists' Brief. This document will be used to select and commission a professional artist to design, fabricate and install the artwork. The proponent may, at their discretion, coordinate and manage the process by which the artist works as part of the design team, alongside architects, landscape architects, planners and engineers. Alternatively, they may engage the services of a specialist art consultant whose fees may be considered as part of the public art contribution within the general intent of these provisions and on application by the proponent

4.6.2 Consultation with the Community

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Where appropriate, an invitation should be extended to community members to participate in the artwork process. This can be facilitated through, but not limited to, drawing sessions, cultural mapping processes to identify themes, or representation on a selection panel.

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.

4.6.3 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.

4.7 Artists Rights

4.7.1 Artist Contract

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

The artist's contract or letter of agreement should, in general, follow the provisions of the ArtsLaw Centre of Australia pro forma Design and Commission Agreement or other similar contractual document such as the WA State Government Percent for Art Agreement.

4.7.2 Moral Rights

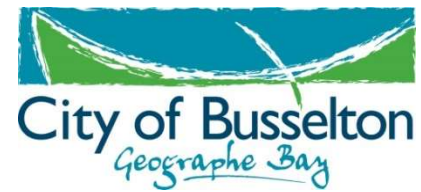
Since 2000, moral rights legislation has protected artists. In brief, an artist's moral rights are infringed if:

- 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 to it, that the City 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 City cannot find them, evidence that a reasonable attempt to find the artist must be provided on request.

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The City 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.

4.7.3 Acknowledgement of Artwork

In line with moral rights legislation, the proponent (or City 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.

4.7.4 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.

Reference Documentation

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

- City of Busselton Local Cultural Planning Strategy 2012
- Busselton Town Centre Guide Plan 2004
- City of Busselton Cultural Plan 2005
- Dunsborough Townscape Plan 2002
- Liveable Neighbourhoods WAPC 2009

5. REVIEW DETAILS

Review Frequency	2 yearly		
Council Adoption	8/10/2014		C1410/250
Previous Adoption	10/3/2010		C1003/069

* Policy number changed from LPP 6B to LPP 4.4 on the 11th May 2020. The change is administrative only, no resolution by Council required.

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FIGURE 1 - PRECINCTS

