

Submitter #	Submission	Officer Comment
1	<p><u>Objection</u></p> <p><b>Introduction and objectives of the LPP26</b></p> <ol style="list-style-type: none"> <li>1. Draft LPP26 seeks to dilute and weaken the very fabric of Public Art within the City, by a potential oversupply of Public Art just for the sake of it.</li> <li>2. The Policy is applied in an extremely broad manner, requiring all developments where the estimated cost of development exceeds \$500,000.</li> <li>3. Exemptions applied to public art, result in a very select and niche category of developments being excluded from the Policy.</li> <li>4. We generally support the introduction and objectives of the Policy, however the application of the Policy to developments within industrial areas is not appropriate.</li> <li>5. The introduction of LPP26 clearly states that “when applied to appropriate development, Public Art is an effective mechanism to ensure good planning outcomes”. In its current form, we strongly disagree that LPP26 is being applied to appropriate development. This will consequently deliver poor planning outcomes,</li> </ol>	<ol style="list-style-type: none"> <li>1. The public art condition will only be applied where it meets the ‘Newbury Test’. The condition therefore must have a planning purpose and a demonstrated need and nexus between the development proposed and the requirement of the condition. Section 4 – Objectives has been strengthened in the Policy to include amended criteria to assist with meeting this test. The City will not apply the condition unless this legal test been met.</li> <li>2. It is acknowledged that the \$500,000 threshold is not uniformly applied by other local governments. That said, the Policy has been continuously applied by the City November 2019, with no demonstrable objection from developers.</li> <li>3. The exemptions applied are generally consistent with other local governments.</li> <li>4. Irrespective of the land use, the public art condition will be applied if there is a demonstrated need and nexus between</li> </ol>

		<p>the development proposed and the requirement of the condition.</p> <p>5. The advertised Policy has been further strengthened in response to submissions to ensure it has sufficient weight and provide a reliable basis to impose the public art condition.</p>
	<p><b>Policy Application</b></p> <p>1. The wording of LPP26 states the Policy 'should' only be applied to light industry, general industry, and industrial developments that meet any of the abovementioned criteria.</p> <p>2. Given the criteria are so broad, it realistically relates to all industrial development applications within the City. New industrial developments within the City very rarely have no street frontage. This objective is therefore applying a Public Art contribution to the vast majority (if not all) of new industrial developments within the City, whether they are located in proximity to residential development or have high exposure to the public realm or not.</p> <p>3. A condition imposed on an industrial development may be invalid as it is unlikely to meet the Newbury Test.</p>	<p>1. Noted, Table 1 of the draft Policy has been removed and replaced under Part 3 – Application with exclusions to the Policy.</p> <p>2. The public art condition will only be applied if there is a demonstrated need and nexus between the development proposed and the requirement of the condition.</p> <p>3. It is acknowledged that for planning conditions to be legally valid, It must meet the Newbury Test and therefore have a planning purpose and need and nexus between the development proposed and the requirement of the condition. Section 4 – Objectives has been strengthened in the Policy to assist with meeting this test.</p>

	<p><b>Monetary Contribution</b></p> <ol style="list-style-type: none"> <li>1. The monetary threshold of \$500,000 is too low, rendering many developments economically unfeasible.</li> <li>2. Many of the industrial developments are located with the City's developer contribution areas which requires developers to contribute towards infrastructure.</li> <li>3. Developer contributions are properly costed through SPP 3.6, it is unclear why the provision for public art is not subject to the same careful considerations.</li> <li>4. The Policy and how it should be applied has not been carefully considered. Further research and justification is required to determine how public art can be best implemented rather than applying the Policy in a broad brush approach.</li> </ol>	<ol style="list-style-type: none"> <li>1. It is acknowledged that the \$500,000 threshold is not uniformly applied by other local governments. That said, the Policy has been continuously applied by the City since November 2019, with no demonstrable objection from developers.</li> <li>2. Noted.</li> <li>3. The State Government encourages the inclusion of public art in the built environment through the Percent for Art Scheme as set out in the Guidelines published in 2019. The City's Policy has undergone an extensive review through its various iterations. The Current Policy represents the culmination of the review process.</li> <li>4. The Policy does not apply a broad brush approach to the provision of public art. The public art condition will not be applied where the applicant can demonstrate that public art is not necessary having regard to the objectives of the Policy.</li> </ol>

	<p><b>Need Nexus and Condition Validity</b></p> <ol style="list-style-type: none"> <li>1. Policy statement 1d of LPP26 stipulates “The City will add a condition to any planning approval or approval of a project budget, requiring a contribution in accordance with this Policy”. We disagree that any condition of development approval requiring a Public Art contribution for an industrial development within an industrial zone would be a valid condition, as it does not reasonably relate to the development.</li> <li>2. While we acknowledge that the desire for Public Art may be a planning consideration, a contribution would need to be applied to suitable developments in suitable locations (for example, settings that have the potential to provide a public benefit). Alternatively, one may consider obtaining a contribution from developers serves more of a political or economic purpose, rather than a planning purpose.</li> </ol>	<ol style="list-style-type: none"> <li>1. The revised Policy now states under Part 3 – Application, that subject to specific exclusion, the Policy applies to all applications for development. Irrespective of the land use, the public art condition will only be applied if there is a demonstrated need and nexus between the development proposed and the requirement of the condition. In this regard Industrial development is considered no different to other forms of commercial development which the Policy applies to.</li> <li>2. The Policy articulates the planning purpose for public art.</li> </ol>
	<p><b>Newbury Principles</b></p> <ol style="list-style-type: none"> <li>1. Conditions of development approval are required to meet the tests of validity of a condition.</li> <li>2. A condition imposed on a industrial development within an industrial zone may very well be invalid as it is unlikely to meet the Newbury Test.</li> </ol>	<ol style="list-style-type: none"> <li>1. Noted.</li> <li>2. The public art condition will only be applied where it meets the ‘Newbury Test’. The condition therefore must have a planning purpose and a demonstrated need and nexus between the</li> </ol>

		development proposed and the requirement of the condition
	<p><b>Planning Purpose</b></p> <ol style="list-style-type: none"> <li>1. The provision of public art on industrial zoned land is generally in no way necessary for the orderly and proper planning of the subject site or wider locality.</li> <li>2. The Policy does not link the requirement to provide public art with how the proposed development creates the need for such art. Therefore, any requirement for public art would not serve a proper planning purpose as the trigger for the requirement is based on monetary value in lieu of a planning purpose.</li> <li>3. We refer to the case of BGC (Australia) Pty Ltd and the JDAP (DR 87 of 218) where the SAT resolved that the City of Swan’s public art condition was invalid as the planning conditions on the development must relate to the specific development, have a proper planning purpose and result in a planning outcome.</li> <li>4. Given the Policy does not link the requirement to provide public art with identification as how the development creates the need for such art, the Policy does not have a proper planning purpose.</li> </ol>	<ol style="list-style-type: none"> <li>1. As noted previously, irrespective of the land use, the public art condition will be applied if there is a demonstrated need and nexus between the development proposed and the requirement of the condition.</li> <li>2. The draft Policy establishes the planning purpose, how the Policy will be applied and those development applications that are excluded and through the objectives the criteria which gives rise to the need for public art.</li> <li>3. Noted.</li> <li>4. Part 1 of the Policy establishes the planning purpose for public art.</li> </ol>

	<p><b>Fair and reasonably relate to the development applied for</b></p> <ol style="list-style-type: none"> <li>1. Any condition and method to apply public art must be able to be justified against the nature of the development and the effect the development will have on the surroundings.</li> <li>2. In the circumstances of industrial development, there is generally no nexus between the proposed development and the provision of public art.</li> <li>3. Although fronting public roads, industrial developments will generally not be visible to anyone other than those accessing the industrial area for a specific reason, within industrial areas there is generally no public realm where the community gathers and therefore there would be no benefit from the provisions of public art within industrial areas.</li> <li>4. By requiring any development of a certain construction cost to provide public art in any zone, the Policy fails to establish any nexus, does not establish any basis for considering whether public art is necessary or desirable in a given location, and as such does not provide a proper planning purpose.</li> <li>5. The Policy acts as a economic policy in that it seeks to extract a development contribution without</li> </ol>	<ol style="list-style-type: none"> <li>1. Noted.</li> <li>2. Irrespective of the land use, the public art condition will only be applied if there is a demonstrated need and nexus between the development proposed and the requirement of the condition. In this regard Industrial development is considered no different to other forms of commercial development which the Policy applies to.</li> <li>3. It is reasonable to argue that there will be visitors to developments within a industrial zone, particularly if the industrial premises has a shop front (service industry) or used as a depot for receiving goods. Furthermore, the provision of public art is beneficial for staff employed at the site.</li> <li>4. The policy does not apply a broad brush approach to the provision of public art. The public art condition will not be applied where the applicant can demonstrate that public art is not necessary having regard to the objectives of the Policy.</li> </ol>
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	<p>going through the process under the Act for a developer contribution plan.</p> <p>6. The position of the Policy is inconsistent with the principles of orderly and proper planning because the contribution does not fairly relate to the development.</p>	<p>5. The State Government encourages the inclusion of public art in the built environment through the Percent for Art Scheme as set out in the Guidelines published in 2019. The City's Policy has undergone an extensive review through its various iterations. The Current Policy represents the culmination of the review process.</p> <p>6. In Part 3 – Application, the Policy sets out how the Policy will be applied and Part 4 – Objectives the criteria to establish the need and nexus.</p>
	<p><b>The Condition must be reasonably</b></p> <p>1. It would be unreasonable for the City to require payment for public art, for example, where industrial developments will be rarely visible from the public realm.</p> <p>2. There is little merit in requiring Public Art in locations that would add a negligible benefit to the amenity of the site or surrounding locality. This is unequivocally the case such for industrial developments in industrial zones. Public Art should not be required for the sake of providing art in a broad sense, but rather sought in locations where it can create amenity and have its value maximised.</p>	<p>1. As noted, in previous comments, it is reasonable to argue that the public realm does apply to industrial development, particularly if the industrial premises has a shop front (service industry) or used as a depot for receiving goods which will require member of the public to attend the site. Furthermore, the provision of public art is beneficial for staff employed at the site.</p>

	<p>3. The City’s district centre, mixed use, and commercial zones are examples that may be considered appropriate. These are places where there is high foot traffic, places for people to linger, and can add to the overall sense of place for that locality.</p> <p>4. Public Art provisions should not be used to counter poor design outcomes. These should be achieved through development and design control, which is already the case within the City. The Forrestfield/High Wycombe Industrial Area Design Guidelines (2019) and the MKSEA Design Guidelines already seek to guide appropriate design and development outcomes within select industrial areas.</p>	<p>2. The policy does not apply a broad brush approach to the provision of public art. The public art condition will not be applied where the applicant can demonstrate that public art is not necessary having regard to the objectives of the Policy. The Public Art Master Plan will identify areas that benefit from the provision of public art.</p> <p>3. Noted.</p> <p>4. Part 5 c) – Policy Provision will enable the applicant to provide a public art contribution by way of design excellence through the building design, either approved by the City or through review by the City’s Design Review Panel.</p>
<p>2</p>	<p><b>Objection/Comment</b>  <b>Planning Need</b></p> <p><i>1. A planning need can be demonstrated where a proposed development would result in an increase in the number of staff solely through the installation of public art.</i></p> <p>There is no industrial development in the City of Kalamunda that would attract an increase in the number of staff solely through the installation of public art</p>	<p>1. A planning need is demonstrated where the development gives rise to a sufficient basis for public art, including high volumes of staff, occupants and/or visitors.</p>

	<p>Staff levels are determined by the management of the property's tenant based on economic requirements. Individual employees are attracted by job description, wage level and location of the premises, not because of an art piece in front of the building. Industrial sites generally discourage visitors because of Worksafe regulations</p>	
	<p><b>Policy Objectives</b></p> <ol style="list-style-type: none"> <li>1. Para 2 "Application of Policy" shows only how the policy is to be applied to industrial development and not to other developments.</li> <li>2. The "Application of Policy" is not consistent with the text in the "Introduction."</li> <li>3. The "Introduction" states that the provision of public art is required when the proposed development generates a planning need for it. The criteria in para 2 a): The development is proposed on a lot that has a street frontage including dual street frontage. As, almost without exception, all industrial properties have a street frontage, this does not constitute a "planning need" for public art relating to any particular development.</li> <li>4. Para 2 b): The development is proposed on a lot that adjoins either a primary regional road (red) or</li> </ol>	<ol style="list-style-type: none"> <li>1. The revised Policy has removed Table 1, and under Part 3 – Application, identified the exclusions to the Policy with all remaining development being subject to the Policy.</li> <li>2. Noted, the revised Policy has removed the Introduction and replaced with Part 1 – Purpose.</li> <li>3. Table 1 of the Policy has been removed. The public art condition will only be applied if there is a demonstrated need and nexus between the development proposed and the requirement of the condition.</li> <li>4. Refer comments above.</li> </ol>

	<p>other regional road (blue). This does not take into account that a road such as Roe Hwy (red road) has a substantial width of vegetation planted by MRWA, especially to screen adjacent properties from the view of passing traffic. 4m high sound walls build along some sections of Roe Hwy will completely hide from view, anything built behind them. Kalamunda Wedge Industrial Area Design Guidelines states that all “existing trees and vegetation on the Welshpool Rd (blue road) verge must be retained” and an additional 4m or 8m wide strip of landscaping be planted within the development, adjacent to the boundary. “All service yards and storage areas must be suitably screened from Welshpool Rd to ensure a high level of visual amenity while travelling along this road. Landscaping must be of a sufficient density that will screen the materials to be stored.” None of this shows a planning need for any individual development to require Public Art to compensate for an unsightly development adjoining these red and blue roads.</p> <p>5. Para 2 c): The development is located within 100m of a residential zone. This criterion does not consider that developments may be within 100m but not accessible, or within view, of those houses. Houses in Carbine Dr Wattle Grove that have a rear wall facing Welshpool Rd are within 100m of the rear of properties in the Kalamunda Wedge</p>	<p>5. Refer comments above.</p>
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	<p>development. There will be 4 strips of vegetation between the residential boundary and the industrial building. 2 verges, a median strip and the development's landscaping. Developments in Sultana Rd West require an 8m wide landscape strip along the length of the street frontage of their property to shield them from public view. This does not show a planning need for art on these developments</p>	
	<p><b>Policy Statement</b></p> <ol style="list-style-type: none"> <li>1. Para 2 ii: By providing public art in a publicly accessible area within the vicinity of the site. As industrial areas generally do not have public open spaces, the only public place available is on street verges. MRWA policy is that there should not be anything on road verges, (signs, cars for sale, etc) that take a driver's attention from the road. Public art, surely, is intended to capture the attention of passers by and therefore will be in contravention of MRWA policy and be a road safety issue.</li> <li>2. Para 2 iii and para 3: Cash- in-lieu. Cash-in-lieu to be accrued and spent in some other area of the City has no correlation to the planning need of a specific development or developments in different industrial areas. This cash-in-lieu can only be described as a tax or levy which is not a planning need for any specific site.</li> </ol>	<ol style="list-style-type: none"> <li>1. Part 5 c) of the Policy identifies how public art can be provided. If cash in lieu contribution is offered, then the public art will be provided in accordance with the recommendations of the Master Plan. As with any signage on the road verge matters of sightlines and general road safety will have to be taken into consideration regarding the location.</li> <li>2. Part 5.3 of the Policy identifies the criteria for cash in lieu funds in accordance with the Public Art Master Plan.</li> </ol>

	<p><b>Definitions</b></p> <p>1. Para 4: Public Art is artwork planned and executed in a publicly accessible area, specifically created to be experienced in the public realm. Para 5: Publicly Accessible Area is a space physically or visually accessible to the wider public. Though the Contribution Methods para 2a)i, of the policy says the applicant can integrate public art on site as a development component, industrial developments are not usually publicly accessible. This is due to industrial laws, Worksafe regulations and the need for PPE and safety inductions before entering any site. Some sites such as bond stores and research facilities are permanently locked to all but employees. By these definitions an industrial development site is not a site for Public Art.</p> <p>2. Para 6: Public Art Fund. If a development owner chooses to commission their own art work, it must be installed prior to occupancy and include a plaque, whereas cash-in-lieu has no time frame requirement for its use by the City and no requirement to display who paid for it or which sites created the planning need for cash-in-lieu. The funds collected can be used anywhere within the City of Kalamunda. This shows no relativity to the particular site that generates this planning need. This shows a clear disincentive to commission one's</p>	<p>1. On the advice of the City's lawyers the definitions have been removed from the Policy as they serve no real purpose. The location of the public art on site will have regard to the issues raised regarding work safe practises.</p> <p>2. Where cash in lieu funds are provided as the method of contribution, the funds will be expended in accordance with the Public Art Master Plan. Following the receipt of the funds and the commencement of the use, the City will commission the works as quickly as possible subject to sufficient funds being available to do so.</p> <p>3. Irrespective of the land use, the public art condition will only be applied if there is a demonstrated need and nexus between the development proposed and the requirement of the condition. In this regard Industrial development is considered no different to other forms of commercial development which the Policy applies to.</p>

	<p>own work on the site that actual relates to the planning need for that site.</p> <p>3. Apart from having a street frontage, adjoining a red or blue road or being within 100m of a housing zone, this policy shows absolutely no circumstances where a real planning need for a public art contribution can be demonstrated in an industrial area. The City have written Design Guidelines for both Stage 1 and Kalamunda Wedge industrial development areas. There is no doubt these will be applied to all future industrial areas. These guidelines use words such as “which creates an attractive, functional and sustainable industrial area,” and to “encourage design features, construction quality and landscaping of a high standard” and “to avoid unsightly and poorly planned developments.” “The design of buildings shall promote a high quality industrial area through building articulation and presentation to the street, achieved through a diversity of building designs and materials to avoid a rigid, uniform outcome.” Development objective is “To achieve an attractive development outcome.” “Loading areas are to be screened from view from both primary and secondary streets.” “Fencing shall compliment the visual aesthetics and overall character of the development.” “Development will contribute to a high amenity and cohesive public realm streetscape to establish the Estate character and vision.” If the</p>	<p>The adopted design guidelines for Forrestfield Stage 1 establish appropriate design criteria to ensure appropriate built form and landscaping outcomes. Public Art if applied through the building design can improve the design outcome where there is a planning need to do so.</p> <p>4. As with any condition of development approval, if the applicant is not satisfied with the inclusion of the public art condition this can be appealed to SAT.</p> <p>5. Noted, in response to the SAT decision in <i>BGC</i>, the Policy has been strengthened against future challenges to ensure it has sufficient weight and reliable basis for imposing public art conditions.</p> <p>6. Noted, refer above comments.</p> <p>7. Noted, refer above comments.</p> <p>8. Noted, refer above comments.</p> <p>9. Noted, refer above comments.</p>
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	<p>City adheres to these guidelines there will be no planning need for any further enhancement by way of public art.</p> <p>4. This policy does not show any process of appeal or consultation short of the SAT process. Just as the beauty of art is in the eye of the beholder, so the planning need for art in any development is at the whim of the planning officer of the day. There is no justice in that.</p> <p>5. In 2018, BGC challenged a similar City of Swan Art Contribution Policy in the State Administrative Tribunal. The Tribunal ruled in favour of BGC and removed the Art Contribution condition. The Tribunal accepted the argument that in law, to be valid, planning conditions must relate to the specific development, have a proper planning purpose and result in a preferable planning outcome. The tribunal also accepted that Public Art had “no proper planning purpose” and said: “It’s irrelevant that the condition is supported by the planning framework because it is not a valid condition.”</p> <p>6. In the same SAT hearing, key arguments examined included whether the condition was imposed for a proper planning purpose. In relation to this, the Tribunal found that the Public Art Policy did not link the requirement to provide art with a proper</p>	<p>10. Noted, refer above comments.</p>
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	<p>identification of how the development created the need for such art. On this point the SAT found the application of Public Art Policy had no proper planning purpose.</p> <p>7. Another of the key matters considered by the Tribunal was whether the Art Contribution condition reasonably referred to the proposed development. The SAT found that even if additional workers would have their amenity improved by the installation of Public Art, the value of that Public Art being 1% of the estimated construction value was based on an entirely arbitrary formula that did not fairly and reasonably relate to the development. The SAT was not satisfied that the condition reasonably related to the proposed development.</p> <p>8. The last key argument was whether on its merits the imposition of the condition was the preferable planning outcome. On this point the SAT found that as there was no connection between the proposed development and the need to provide public art or a contribution towards public art and therefore the preferable planning outcome was to delete the condition.</p> <p>9. In her ruling, the Presiding Member, Ms Eddy said the policy did not link the art rule with how the development created the need for such art. She also stated that a policy to develop artists did not</p>	
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	<p>“fit logically” with cash-in-lieu payments. “This is a policy aimed at obtaining public art without the City having to fund it. That is not a planning purpose.”</p> <p>10. As a Public Art Contribution Policy relating to industrial developments has already been ruled on by the State Administrative Tribunal, no amount of tinkering with the wording or “catch all” phases in the City of Kalamunda Public Art Contribution Policy 26 will produce a planning need for Public Art relating to industrial development, especially if the development conforms to the City’s Industrial Design Guidelines. These Guidelines were written to ensure that no development within the City’s industrial areas would have a “negative amenity impact”.</p>	
<p>3</p>	<p><b>General Comment</b></p> <ol style="list-style-type: none"> <li>1. unclear of what would result in an increase of "more staff and visitors"</li> <li>2. unclear as to who would provide the public art? the developer? a fund?</li> <li>3. any development SHOULD Be in character with the locality</li> </ol>	<ol style="list-style-type: none"> <li>1. it would depend on the nature of the land use development. For example, if the industrial premises has a shop front (service industry) or used as a depot for receiving goods which will require member of the public to attend the site. Furthermore, the provision of public art is beneficial for staff employed at the site.</li> </ol>

		<ol style="list-style-type: none"><li>2. Part 5 c) sets out the contribution methods available to a contributing development. In each case it is the developer who would be responsible for public art contribution.</li><li>3. Noted.</li></ol>
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