



Public Art Policy

Classification:	Council Policy
Version Number:	1
Review Frequency:	Once in the Term of Council
Last Reviewed:	May 2020
Review Due:	May 2024
Responsible Officer:	Chief Executive Officer
Applicable Legislation:	
Related Policies/Procedures:	<ul style="list-style-type: none"> • Community Plan 2019-2029 • Procurement Policy

1. PURPOSE:

- 1.1 The purpose of this policy is to outline the principles that govern the development, acquisition, management and disposal of public art in the Kingston District Council.

2. LEGISLATIVE CONTEXT:

Kingston District Council's 2019-2029 Community Plan

Theme 1 – “A Thriving Destination”

A vibrant town centre

- Provide in demand facilities and services to the community and visitors
- Create and maintain a vibrant retail hub in the centre of Kingston

Theme 2 – “Best Practice Planning”

Preserve the heritage & character of the district

- Tell the historical story of the Kingston as a major southern port
- Tell the indigenous story of Kingston

Theme 4 - "Strong Communities"

Promote & encourage the arts and increase the diversity of arts & cultural opportunities within the Council area

- Consider arts and cultural aspects when undertaking urban and social planning
- Provide services, programs and facilities for the community to participate in a broad range of arts and activities
- Celebrate our cultural diversity
- Recognise that our communities are living and creating on Aboriginal Lands, and that we are committed to working together to honour their living cultures

3. SCOPE:

This policy relates to:

- Public artwork developed and maintained by the Kingston District Council
- Private land developers, commercial operators, artists, community groups and private individuals or groups that are developing public artworks on Council owned or managed land or within the public realm
- Public art integrated within the design of new buildings or open space precincts.

4. DEFINITIONS:

<i>Public Art</i>	Refers to works of art in any media that have been planned and executed with the specific intention of being sited or staged in the physical public domain and accessible to the public. Detailed definitions and examples of the different types of public art have been included in the appendix
<i>De-accession</i>	Is the process of removing and disposing of public art works.
<i>Moral Rights of Artists</i>	Moral rights are rights individual creators have in relation to copyright works they have created. Creators have the right to be attributed (or credited) for their work; not have their work falsely attributed and not have their work treated in a derogatory way.
<i>Developing Party of Commissioning Agent</i>	The individual or organisation that instigates and leads the development of a public artwork within the public realm in conjunction with artists.
<i>Public Realm</i>	Any publicly owned streets, pathways, right of ways, parks, publicly accessible open spaces or any public civic buildings and facilities.
<i>Public Art Reserve</i>	A ledger maintained within Council's accounting systems that enables funds for the development of Public Art to build up over time. This allows for the allocation of larger amounts of funds to be invested in Public Art through regular smaller contributions, which may not represent enough to create substantial works in their own right.

5. COUNCIL'S ROLE IN PUBLIC ART:

The Kingston District Council understands the benefits of public art and is committed to the development of public art that enhances landscape including open spaces, parks, reserves, roadsides and within the built environment throughout the Council area. From a policy perspective, Council has many roles in relation to public art, it is both manager and regulator but also a facilitator and creator that may develop public art either independently or in collaboration with other stakeholders.

5.1 *Council as Public Art Manager*

Management of public art involves the ownership and/or legal responsibility to care for public art. This may include but is not limited to scheduled maintenance, repairs, insurance, copyright, de-accessioning, relocation or any other decisions relating to the use and care of the artwork.

Management of public art is the responsibility of the owner/commissioning agent unless a management agreement is put in place. Kingston District Council is responsible for the management and care of Council owned/commissioned public art that is listed on its asset register. Arrangements can be made with Council to manage artworks on behalf of other parties, but this is at the discretion of Council. For example, a community group may develop a public artwork in a public park (with appropriate permissions in place) and enter into an arrangement with Council that sees the Kingston District Council manage the artwork on their behalf. Some parties, during the development phase may also enter into an agreement with Council that sees the ownership of the artwork transfer to Council along with management responsibilities (see 5.1.1 below for further information).

5.1.1 *Ownership of Public Art*

In all cases, the party responsible for developing the artwork is the owner for the life of the artwork unless a transfer of ownership takes place by mutual agreement. A transfer of ownership may involve Council, or another party and any transfers should be noted on Council's Asset Register. If the developing party includes multiple partners, ownership of the artwork must be nominated during project development and indicated on any planning applications that have been submitted to Council. A memorandum of understanding (MOU) may be established detailing each party's responsibilities in relation to the ongoing management of the artwork. For example, if a public artwork is created on the wall of a building by someone other than the property owner, the ownership of the artwork and management responsibilities need to be resolved prior to commencement of the artwork development.

Council reserves the right to take responsibility for the management of existing public artworks on Council property that were developed by other parties prior to the adoption of this policy, where the ownership and management arrangements were not addressed. For example, if a service club created an artwork 20 years prior and Council has managed the artwork including insurance, maintenance and repairs in that time, Council will be considered the owner of the artwork.

5.2 *Council as Public Art Regulator*

The development of public art by the Kingston District Council or external developing parties will be subject to Planning and Design Code. Detailed applications must be submitted for the installation of public art within the public realm to Council, either as an independent project or as part of a larger development. Council will regulate this process accordingly and provide approval for the construction and installation of the artwork if it meets the necessary planning and building standards.

The installation, repair or removal of public art on public land must adhere to Council's policies and processes, particularly in relation to safety. Council may provide advice and will regulate matters relating to traffic, engineering standards and workplace health and safety requirements during the build and installation of the artwork within the public realm.

5.3 *Council as Public Art Facilitator/Developer*

The Kingston District Council may, as part of its role as a local government authority choose to develop public art within its community. This could be led by Council independently or in partnership with other stakeholders. For example, Council may choose to develop artwork in conjunction with schools or community groups that beautify the landscape but also acknowledge local culture, history, icons or stories or it may work with local businesses or recreational groups to develop public art that enhances retail strip, civic spaces or parks and gardens. The objectives in relation to the development of public art over the next ten years are outlined in the Kingston District Council Public Art Strategy (Section 1), but there may also be drivers beyond this document that see Council develop public art.

As a developer or commissioning agent of public art, Kingston District Council will adhere to the requirements outlined in part 6 of this policy. It will ensure planning and building approvals are in place and the project is delivered in accordance with best practice principles for developing public art, commissioning artwork and working with artists.

6. ACQUIRING AND COMMISSIONING PUBLIC ART:

When developing public art either independently or in collaboration with others, Kingston District Council will adhere to all relevant Council policies and procedures including building, planning, workplace health and safety and procurement.

Council will develop public artwork that aligns with existing or new Council documents including but not limited to strategies and plans relating to arts and cultural development, events, economic development, tourism, place-making and open space and recreation planning. For example, Council may develop public art based on a regional tourism strategy or in collaboration with a local school in accordance with education strategies.

6.1 *Developing Permanent Public Art*

When developing new permanent public art, Kingston District Council will utilise an “Open Procurement Process”, for at least 50% of its public art projects over a five-year period. This approach ensures both fair and equitable opportunities for artists to secure commissions for public art projects, enables greater involvement from the community and ensures quality and diversity for the public art collection. Council may also from time to time choose to mentor a young and/or emerging artist(s) through this process to facilitate the development of public art skills within the local region.

An “Open Procurement Process” may include the following elements (or combination of):

- Preparation and circulation of brief
- Request for expressions of interest from interested artist(s)
- A transparent competitive selection process that results in a shortlist
- Development and submission of a concept design(s) by shortlisted artists
- A transparent competitive selection process that results in the selection of a proposal and an artist
- Appropriate contract or agreement for commission
- Construction or fabrication and installation

The remaining half of public art projects undertaken Kingston District Council over a five-year period, which result in permanent artworks, may be developed through any of the following processes (being considered and consistent with Council’s Procurement Policy):

- Direct invitation – A specific artist or group of artists is invited to respond to Council’s brief and create a permanent artwork
- “Select” process – A small number of artists, are invited to express interest in Council’s brief and compete with a small number of artists for selection
- Community Arts and Cultural Development – Council directly contracts a lead artist to work with community members to collaboratively create an artwork in a participatory and community-centred process
- Direct Purchase – Council purchases an existing artwork for installation in the public realm

- **Acquisitive Prize** – An exhibition of artworks that compete for a cash prize and the inclusion of their work within Council’s public art collection

Permanent public art includes sculptures as well as integrated and functional public art or memorial in nature.

6.1.1 *Artist Contract and Commissioning Fees*

Kingston District Council will enter into contracts with artists and pay fees for the development of public art in accordance with national industry standards. Advice pertaining to current fees and contracting standards may be sought from Arts South Australia or the National Association of Visual Arts (NAVA). Arts Law may also be able to provide templates in relation to commissioning contracts.

Generally when proposing a public artwork, the artist will incorporate a range of fees including cost of construction / fabrication, installation, transport, insurance as well as an artist’s fee that covers the artist’s role in interpreting the brief and conceiving and designing the work as a professional practicing artist – not dissimilar to an architect that designs a building or home.

It is important to note that the commissioning and contracting of artists to create artwork is not dissimilar to other normal contracting and procurement processes that are undertaken by Council. The expectations in relation to the construction / fabrication of a structure and quality of the outcome are detailed in the contract along with timelines, costs and any sub-contractors that may be used.

6.1.2 *Other Considerations*

When developing public art projects Kingston District Council will consider a range of things detailed in the list below and indicate the expectations of the artist and of Council as the Commissioning Agent in relation to management and/or inclusion of these items/needs. This includes but is not limited to:

- **Community Consultation and Engagement**

This includes the role of community members or specific stakeholders and the level of participation that is anticipated during the conception, design, fabrication and/or installation of the artwork.

For example, the artist may be expected to engage with specific stakeholders to collect or research stories that inform the design or alternatively they may be expected to recruit community members who will participate in the making of the artwork or specific components. For example, community members may help an artist to design and install a mosaic pathway.

Council may choose to undertake community consultation and engagement on behalf of or in collaboration with the artist.

- **Site Preparation**

This may include substantial earthworks or the installation of a concrete pad(s) where the artwork will be installed.

- **Transport and Installation**
This needs to be negotiated with the artist within the context of Council's capacity to provide in-kind support for the transport and installation of the artwork.
- **Traffic Management**
This may be required during the development, installation and/or launch of the artwork.
- **Timelines/Schedules of Other Construction Work**
If the location of the work is part of a broader construction or development any relevant deadlines or happenings that either need to be adhered to or avoided should be articulated.
- **Lighting and Landscaping Around the Artwork**
This includes consideration of the public safely interacting with the work both night and day, ease of mowing / maintaining the artwork and the potential need or value of being able to see the work after dark.
- **Engineering Standards and Reporting**
Artwork will need to meet appropriate engineering standards and specialist expertise may be required to verify that the work is will be strong and safe for its anticipated life expectancy.

6.1.3 *Arts Focus Group*

Kingston District Council will form an Arts Focus Group on an "as needs" basis, to undertake a range of tasks associated with the development and management of public art within the Council. Membership will be by invitation to community members, with the group convened as required at the discretion of the Chief Executive Officer. The group will help with the selection of public artworks or to provide advice to Council regarding the management or de-accessioning of Public Art. The membership of the group may vary depending on the nature of the project with members expected to support and advise in the following instances:

- The selection of public art through any of the mechanisms outlined in section 6.1 of this policy.
- The deaccessioning of public art as per Section 8.2 of this policy.
- For other duties as required relating to implementation of the Public Art Strategy.

The group will aim to make recommendations that have been reached by "overall consensus", with members encouraged to agree unanimously on the advice or recommendations it provides to Council. Recommendations made by the Arts Focus Group will be forward to Council for their review and will be acted upon at the discretion of Council.

The Arts Focus Group will include Kingston District Council staff including but not limited to representatives from the Administration and Works Teams. Other members of the group will be appointed depending on what further representation or expertise is needed. For example, if the project involves the installation of an artwork in a retail area, local business owners may be represented on the group, or if the artwork involved a particular style of art such as projections or

textile, an artist with expertise in this area may be selected to be part of the group.

Members of the group will generally act in a voluntary capacity with payment of sitting fees considered by Council depending on the expertise and role of Art Focus Group members. For example, professional artists and community members who take time out from their practice / work and lose income as a result, may be remunerated for their time. This will be at the discretion of Council and evaluated within the context of Arts Focus Group expectations.

6.2 *Commissioning Temporary Public Art*

Council may contract artists to create temporary or ephemeral public art for a specific purpose or event. An artist or arts group may be directly selected or invited to submit proposals that respond to the requirements of Council in relation to the event or purpose. This may be for a specific event or festival or relate to an educative or promotional activity.

6.3 *Unsolicited Public Art*

External parties including individuals, community organisations or other private or commercial entities, may offer unsolicited public art to Council outside of any planned commissioning or acquisition processes. This may include a proposal to create a permanent or temporary public artwork or to donate or sell an existing artwork for installation by Council or other party in the public realm.

Upon receipt of unsolicited public art proposals, Kingston District Council will consider the proposal and assess if acquisition of the work is in keeping with Council's current public art strategy, collection development or other relevant program and services.

Council will consider the following in relation to unsolicited artworks:

- The nature and relevance of the artwork in relation to community needs and values
- The alignment of the artwork in relation to Council's existing public art collection
- Cost of installation and management of the work for the duration of its life and the availability of funds in Council's budget to accommodate these needs
- Partnership opportunities, particularly for the development of new public artworks
- The significance of the artwork or artist and the benefit for Council and/or the community if the work is acquired

Council may either accept or decline the donation and/or proposal and make recommendations in relation to the artwork for the party donating / offering the work to Kingston District Council. The Arts Focus Group may assist with the assessment.

7. **FUNDING PUBLIC ART:**

7.1 *Grants and Funding*

A range of public and private funds are available throughout Australia that can support Public Art projects. To reduce the cost to Council and/or

potentially increase the overall budget for the project, funding and/or sponsorship will be sought by Kingston District Council to support Public Art Projects wherever possible. This will leverage Council's contribution to the project, which includes cash and in-kind contributions. During the project development stage, Council will indicate if the development of specific artworks is contingent on the receipt of external funding or donations prior to proceeding.

7.2 *Percent for Art Scheme*

A percentage contribution or allocation of at least 2% of the gross construction/implementation costs for capital projects undertaken by Kingston District Council may be allocated to incorporate public art elements within the specific project.

When developing Master Plans for Council assets the development of integrated and permanent public art will be included within the strategies where appropriate.

8. **REPAIR AND DE-ACCESSIONING PROCESS:**

Over time, for a range of reasons, permanent public artwork will need to be repaired or removed, which is referred to as de-accessioning. Reasons for repair or removal may include:

- Deterioration of the artwork as a result of natural aging or weathering
- Damage resulting from natural causes such as a disaster or major weather event
- Damage caused by vandals or as a result of an incident
- A change in community standards or expectations. E.G. a work that includes a water feature that is no longer deemed appropriate given water conservation standards
- A change in the official land use or informal change in the way the community interacts in a space or place. E.G. a traffic corridor is changed or redeveloped

8.1 *Repair of Damaged Artwork*

If an artwork is damaged or in a state of disrepair, Kingston District Council staff will make a full assessment of the damage and formulate a report with suitable recommendations to repair, relocate or remove the artwork and estimated funds required to do so. If Council staff do not have the appropriate expertise, outside contractors will be sought to undertake the assessment and prepare a report in collaboration with Council Staff. Council may then choose to convene its Arts Focus Group and refer the matter to them for additional advice or determine a suitable course of action. Several options may be considered including repair, removal or relocation. In determining a course of action, the following considerations should be included in the report:

- The nature and severity of the damage and complexity of the process for repair. For example, the repair may involve the use of replacement materials that are unavailable or difficult to source and issues relating to the use of alternatives and the impact on the artwork's aesthetic needs to be considered.

- The likelihood of further deterioration or repeated damage regardless of repair. For example, if the work is in a location where the crime rate is increasing, and the work is expected to be repeatedly damaged or the region has become prone to regular floods, relocation or de-accessioning may be considered.
- Access to the artist and their skills to inform, lead or conduct the repair work (refer “right of repair” below).
- The monetary and community value of the artwork in the context of the cost of repair including access to insurance. For example, the actual value of the artwork may be \$50k but the cultural or community value is far greater, and repair may cost almost the same amount as the work originally cost.
- Community expectations. For example, the work may be very popular and highly regarded by the community or it may be very old and no longer considered relevant or desirable.

8.1.1 *Right of Repair*

When an artwork is damaged, and the decision is made to repair the artwork, based on Council’s assessment, the Kingston District Council will make every effort to contact and liaise with the artist in relation to repair of the work. Referred to as the “Right of Repair” this process provides the artist with an opportunity to provide a quote to Council for the repairs and for this to be considered in the assessment report’s recommendations to Council. The role of the artist in repairing the artwork may include, the artist undertaking or managing the repairs personally, supervising the repairs in conjunction with Council staff, providing advice to Council in relation to materials and construction or suggesting a selection of other suitable artists or crafts-people who have the necessary skills to undertake the repairs. The right of repair will not be granted automatically to the artist with the artist’s current circumstances, the quoted cost and the needs of Council taken into consideration

If the artist is deceased or declines the “right of repair”, the Kingston District Council will seek advice from other artists, crafts people and/or specialist tradesman with the necessary skills to undertake the repairs and/or provide advice.

8.2 *De-Accessioning Artwork*

8.2.1 *Standard De-Accessioning Process*

The following process will be undertaken prior to officially de-accessioning an artwork.

- a) A recommendation for de-accessioning of an artwork is made by Council Staff, a community member or an organisation for one of the following reasons:
 - The artwork is irreparable, or restoration is not viable
 - The artwork is causing an unacceptable risk to public safety
 - The site is being redeveloped and relocation is not appropriate/possible
 - The environment is no longer suitable for the artwork and relocation is not appropriate/possible
 - The artwork is no longer relevant or valued by the community
 - The artistic merit of the work has diminished

- The ownership of the artwork cannot be ascertained, and Council are unable to effectively manage the artwork in an ongoing capacity for a range of reasons
- b) Council will convene their Arts Focus Group to support and inform the de-accessioning process. The group will provide independent and expert advice in relation to the artwork in question and the de-accessioning process.
- c) In collaboration with the Arts Focus Group, Kingston District Council will undertake the necessary community consultation to establish community expectations in relation to the artwork. The consultation will be targeted and include all relevant stakeholders. For example, residents or businesses that are in the vicinity of the artwork, any party involved in the development of the artwork including the artist and or the artist's descendants and community members who identify with the work will be consulted. At a minimum consultation will include publicly advertising Council's intention to review the work and the possibility of de-accessioning, inviting the community to make comment. If the work is a memorial or was created to honour an industry, individual, group or historical event then relevant organisations will be invited to inform discussions regarding the de-accessioning of the artwork. For example, if it is war related, the RSL or Vietnam Veterans Association would be involved or if it relates to pioneering stories the local historical or agricultural society might be involved.
- d) In collaboration with the Arts Focus Group, Council staff will formulate a De-accessioning Report and forward to Council for consideration. The Report will include:
- Reason for de-accessioning along with evidence to support the decision
 - The process undertaken to evaluate the artwork and its relevance
 - Relevant Damage Assessment Reports
 - The history and provenance of the artwork including its original purpose and the parties involved with its development
 - Results of the community consultation
 - Re-location or long-term storage options that have been considered
 - Potential financial impact including the cost of repair, ongoing maintenance, removal, storage and relocation that influenced the decision
 - A timeline for de-accessioning and the practical requirements for this
- e) If Council chooses to accept a recommendation to de-accession the artwork the decision will be publicised through local media and the community will be provided with 28 days to object to the decision in writing. If no objections are made, the work will be removed as per Council's report.
- f) If objections are received, Council will consider these at its earliest convenience and review the decision considering any further information that has been provided before making a final decision.

- g) If the artwork is deemed to pose an unacceptable risk to public safety, measures may be taken by Council to secure the artwork until the matter has been addressed and a course of action determined. This may include cordoning off the artwork or removing it temporarily until a decision to repair, replace, re-locate or de-accession has been made.

8.2.2 *Release Dates*

All public art installed in by Kingston District Council will have a release date, which is included in the Artist Brief and commissioning or purchasing contracts with artists. A release date is the date that Council is obligated to display the work until, unless there are other mitigating circumstances that affect the quality or integrity of the artwork and or the site or there are other issues as indicated in 7.2.1 a). Release dates for permanent public art are generally between 10 and 30 years and will be influenced by the size and nature of the work, the materials used to fabricate the work and the environment it is positioned within. For example, a work made from limestone situated adjacent to the beach may deteriorate more quickly than a work made in bronze.

Council may choose to commission or install temporary or semi-permanent works that have a limited lifespan and the release date for these would be much less. For example, a large-scale 3D weaving artwork may be commissioned and installed in location to commemorate an event or anniversary. The artwork may only be expected to last for 12 – 24 months and release date would be incorporated to reflect this timespan.

9. **AVAILABILITY OF THE POLICY:**

This policy will be available for inspection at the Council's principal office, 29 Holland Street Kingston SE, during ordinary business hours and on Council's website: www.kingstondc.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon such payment of the fee set by Council.