

(ITEM 90/22) REVIEW OF THE PLANNING FRAMEWORK - DELIVERY OF PUBLIC ART IN PRIVATE DEVELOPMENTS - ENDORSEMENT FOR PUBLIC EXHIBITION

File No: 22/32829

REPORT BY MANAGER CITY PLANNING

Summary

A review of the planning framework for the delivery of public art in private developments has been undertaken to ensure that the requirements are not only legally binding, but also include clear objectives and provisions to ensure that applicants understand when the provisions of public art is triggered and what is required to be submitted as part of any development application.

This report recommends amendments to section 5.11 of the Burwood DCP and provides additional guidance for applicants with the introduction of the Burwood Public Art Guidelines for Developers.

Operational Plan Objective

A.32 Undertake a comprehensive review of the Development Control Plan (DCP) 2013 and prepare a user friendly and interactive DCP

P.37 Plan for and implement public art programs that support local identity, culture and connection

Background

Council, at its meeting on 29 June 2021 resolved to adopt the revised Public Art Policy and Hoarding Policy. The Public Art Policy includes requirement for public art in private developments. It specifies the locations where these provision apply and specifies the Capital Investment Value (CIV) threshold that trigger the requirements for the delivery of public art in private developments.

Subsequent to the amendments to the Public Art Policy, amendments were made to Burwood DCP to include provisions (section 5.11) that reference the Public Art Policy and the requirement for the provision of public art in private developments. These amendments to the Burwood DCP were adopted by Council at its meeting on 26 October 2021.

Council, at its meeting on 23 August 2022 considered a Mayoral Minute (MM11/22) in relation to public art on hoardings and site fencing. The mayoral minute stated:

The General Manager review the existing Burwood Council Hoarding Policy and associated procedures to ensure that all sites within the Burwood Town Centre are captured by the policy and that site fences or other similar construction site boundary structures are also required to have art work installed. The findings of the review should be reported to Council following the investigation.

Council resolved that a review of the existing Hoarding Policy and associated procedures with respect to the delivery of public art be undertaken to ensure that all sites within the Burwood Town Centre are captured and that site fences or other similar construction site boundary structures are also required to have art work installed. The resolution required that once the review has been undertaken, that a report on the outcomes be presented to Council.

Public Art in Private Developments

Public art when integrated into development can enhance a sense of place and activate public spaces. The provision of well-considered and designed public art in new developments is an

opportunity to celebrate the cultural identity and diversity of Burwood, as well as recognise and promote the indigenous identity of the place.

In order to ensure that public art is delivered in private developments, it is critical that the planning framework provides clear objectives and controls, and that the development community is aware of the requirements and obligations to deliver private art as part of their development, where the requirements are triggered. It is proposed that the following be undertaken to ensure that the development industry is clear on what Council's requirements are in relation to the delivery of public art in private developments.

Amendment to Section 5.11 of Burwood DCP

A review of the requirements in Section 5.11 of the Burwood DCP has been undertaken to include clear objectives and provisions to ensure that applicants understand when the provisions of public art is triggered and what is required to be submitted as part of any development application to ensure consistent assessment and ensure the delivery of public art in private developments.

The DCP provisions align with the requirements of Council's Public Art Policy, however reference to the Public Art Policy has been removed from the DCP provisions. A Policy is not a "head of consideration" under the provisions of the Environmental Planning & Assessment Act 1979 and as such the provisions in the DCP relating to the requirement for the provision of public art in private developments may be challenged.

To ensure that the requirements are clear and that there is no conflict with the planning framework for the assessment of development applications, reference to the Public Art Policy has been removed.

In summary, the amended DCP provisions include:

- Capital Investment Value (CIV) triggers
- Minimum of 1% of the total cost of the development is to be allocated to the public art budget.
- Reference to the Burwood Public Art Guidelines for Developers
- Requirement for the submission of the Public Art Plan

A copy of the amended section 5.11 is included at Attachment 1.

Draft Burwood Public Art Guidelines for Developers

As outlined above, the provisions in the DCP have been amended to include reference to the Burwood Public Art Guidelines for Developers.

The draft Guidelines have been prepared and outline the expectations and steps to assist developers, art consultants, artists, architects, and landscape architects in the provision of public art in major developments.

The draft Guidelines reference the Public Art Plan. The Public Art Plan is a well-presented scoping document that is the essential starting point for a public art project and is used to brief the artist/s. It is the responsibility of the Developer to produce and submit a Public Art Plan with the lodgment of the Development Application. The Public Art Plan is subject to the development approval process and will be assessed according to criteria as set out in the draft Guidelines.

The draft Guidelines also outline the developer's responsibilities during the construction phase. Where the artwork is a condition of approval, Council requires that the artwork be completed and installed prior to the site being used or occupied. Council will also require the submission of a Final Public Art Report.

The Final Public Art Report is to satisfy Council that the public art has been delivered and the public art commitments have been fulfilled. This will enable the Occupation Certificate to be released.

The Final Public Art Report should provide information about the artworks and artist, the fabrication and installation of the work, the documentation and engineers' drawings, the maintenance requirements, any additional relevant information regarding ownership, and copyright of the work.

The Guidelines also includes reference to 6.14 of the Hoarding Policy which relates to the requirement for artwork on constructions site hoardings.

A copy of the draft Guidelines is included at Attachment 2.

Hoarding Policy

A review of Council's Hoarding Policy will be undertaken separately to address Council's resolution of 23 August 2022 and recommended updates to the Policy will be reported to Council as part of the post exhibition report on the amendments to the Burwood DCP relating to the public art provisions.

Consultation

Relevant staff within Council have been involved in the review of the amendments to the DCP and the development of the draft Guidelines.

During the exhibition of the amendments to the DCP and the draft Guidelines, further internal engagement will be undertaken with Building & Development and Community Development teams and any refinements will be reported to Council as part of the post exhibition report.

The amendments to the DCP and the draft Guideline will be exhibited on Council's Participate Burwood platform in accordance with the requirements of the Regulation and Council's CPP.

Any submissions received during the exhibition period will be considered as part of the post exhibition report.

Planning or Policy Implications

The proposed amendments to Burwood DCP are required to be publicly exhibited for a minimum 28 days in accordance with the *Environmental Planning and Assessment (EP&A) Regulation 2021* and Council's Community Participation Plan. A further report will be presented to Council following the completion of the exhibition period.

There are no legal requirements to publicly exhibit the draft Burwood Public Art Guidelines for Developers, however it is recommended that they be exhibited concurrently with the amended DCP provisions to ensure transparency and to allow feedback to be received with respect to the requirements proposed by the Guideline.

Financial Implications

No Financial implications

Conclusion

To date the operation of the Public Art in Private Developments has been operating satisfactorily and has been consistently applied. However feedback through Council's legal advisors has identified some areas that could be challenged in relation to the policy. Whilst this has not occurred to date, the proposed amendments would strengthen the application of the policy.

Recommendation(s)

1. That the draft amendments to Burwood DCP as included at Attachment 1 to this report be endorsed for the purposes of public exhibition and that they be exhibited in accordance with relevant Legislation and Council's Community Participation Plan.
2. That the draft Burwood Public Art Guidelines for Developers (the Guidelines), as included at Attachment 2 to this report be exhibited concurrently with the amendments to Burwood DCP.
3. That following the exhibition of the DCP and the Guidelines, a report be brought to Council advising of any submissions and making recommendations on the finalisation of the draft DCP provision and the Guideline.
4. That the post exhibition report includes a review of Council's Hoarding Policy in response to Council's resolution of 23 August 2022.

Attachments

- 1 Public Art in Private Developments - DCP Controls (Existing & Proposed)
- 2 DRAFT Public Art Guidelines - Council Report