

4. ARTWORKS IN PUBLIC PLACES POLICY – FURTHER INFORMATION

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The purpose of this report is to provide further information related to clause 3, Artworks in Public Places Policy, in relation to:

- Contract objectives
- Community Board recommendations

OPERATIONAL PROCEDURES

The Legal Services Manager comments:

The comments below are related to the operational procedures, which need to follow on from the policy issues raised in the report. However, I believe it important to bring to elected members' attention to two important issues relating to artworks in public places.

I have been involved in negotiating artworks in public places contracts on behalf of the Council for some 12 years, and in that time I have endeavoured to achieve two objectives in those contracts:

- (a) that copyright in the artwork is vested in the Council; and*
- (b) that the Council retains the right to relocate an artwork at its discretion.*

With regard to the copyright issue, the Copyright Act 1994 provides that as a starting point copyright in a commissioned artwork rests with the commissioner, namely, the Council. The parties may however come to a different arrangement whether by agreement as to joint ownership of copyright, or having the copyright vested in the artist.

I believe that it is appropriate for copyright to remain with the Council as provided by the Copyright Act, as it ensures that the Council has the ability to use the intellectual property rights of the artwork in the future as it sees fit. For example, if the artwork was not vested in the Council, then important issues can arise as to reproduction rights of the artwork in the form of postcards, videos, and today, the Internet.

I have noticed in the last 5 or 6 years that there has been increasing pressure from artists to have the copyright vested in them. If the Council were to agree to this, then the Council would need to obtain a licence or permission from the artist to use the artwork in certain ways. The inherent difficulty with that approach is that those uses have to be identified at the time the contract is negotiated and clearly, with changes in technology, it can be difficult to anticipate those uses over the lifespan of an artwork. For that reason I have always preferred to have the Council own the copyright and as copyright owner, the Council is then free to deal with the artwork.

A number of artists seem to have a concern that the Council will become involved in three-dimensional reproductions of the artwork but in my experience that has never occurred with the Council and if that was a concern by artists, then the Council could in the commissioning agreement agree that it would not engage in that activity.

My advice to the Council is that it continues to own the copyright in works that it commissions.

With regard to the relocation issue, in contracts I have taken the position that the Council has the right to relocate the artwork. This is on the basis that should there be an adverse public reaction to a particular artwork, then the Council can, as owner of the artwork, shift it to another location or not display the artwork at all. Again in recent times there has been increasing resistance by artists to this approach, and they now seek contractual limitations on the Council's ability to relocate an artwork. Clearly the extent of these limitations is a matter for the Council to settle upon and I understand one of the aims of the policy is to minimise the risk of there being an adverse public reaction to public artworks. However, such a risk, even if a very low one, will always exist and therefore a key issue in the development of a policy, is the extent to which the Council is prepared to tie its hands in terms of relocation of a public artwork.

I would also note in passing that development of the operational procedures will need to involve a mechanism whereby the Council lawyer negotiating the contract can obtain instructions from the Council as to contractual issues that may arise during the course of the negotiations.

COMMUNITY BOARD RECOMMENDATIONS

The attached sheet summarises the recommendations received from the six Community Boards.

- Recommendation:** That Artworks in Public Place contracts incorporate provisions for:
- (a) Copyright in artwork to be vested in the Council; and
 - (b) The Council to retain the right to relocate an artwork at its discretion.