



<b>Name</b>	<b>Public Art Management</b>
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<b>Responsible Section</b>	Community Development – Placemaking & Activation
<b>Responsible Department</b>	Community Development
<b>Date Last Endorsed</b>	11 July 2023
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<b>Applicable Legislation</b>	Copyright Act 1968 Children and Young People (Safety) Act 2017
<b>Related Governance Documents</b>	Placemaking Framework Arts & Cultural Strategy Memorial Policy Memorial Guidelines Public Art Policy Graffiti Management Policy Asset Management Policy Procurement Policy
<b>City Plan Theme</b>	Placemaking, Leadership, Economy

## PURPOSE/OBJECTIVE

The Public Art Management Guidelines (PAMG) aims to deliver against the Arts & Cultural Strategy Goal 2.3 Develop a Public Art Asset Management Plan and policies to ensure a strategic and managed approach to the development and care of public art.

City of Port Adelaide Enfield (Council) is a custodian of a portfolio of public art works and cultural materials with significance to the PAE community. The Arts & Cultural Strategy also requires Council to strategically build upon these assets to continually meet placemaking objectives.

The Public Art Management Guidelines defines a set of procedures and considerations:

- To guide best practice in commissioning public art or acquiring cultural material;
- To maintain our public art to agreed service levels which maximise community value throughout a works useful life.

These Guidelines are aligned with Council’s Arts & Culture Strategy (2020-25), Placemaking Model, Asset Management Policy (TS16.2021), Graffiti Management Policy (CD07.2020) and Monument Policy (CD37.2021).

## SCOPE

These Guidelines cover artworks in the public realm under the direct or presumed custodianship of Council and as well as Council's moveable art collection. The Guidelines do not assess or address the needs of heritage items in Councils local studies collection or heritage artifacts in the public realm.

## PUBLIC ART POLICY CONTEXT

The Public Art Policy provides a policy context for the procedures and recommendations defined in these Guidelines. Any Policy revisions should reference and take in to account the recommendations of these Guidelines.

## PUBLIC ART MANAGEMENT PROCEDURES

### Commissioning and Acquisition

#### *Acquisition Methods*

Public art in the city of PAE may be realised through:

- The provision for public art within council's capital works programs;
- Partnerships with external parties including developers and all tiers of government;
- Council developed cultural programs and placemaking projects;
- Community initiatives supported by Council;
- Donation or long-term loan.

Public art may be commissioned by:

- Open tender: Expression of Interest (EOI) – a Public Art Project Brief is distributed widely inviting artists and creative producers to submit a proposal in response to the project objectives and criteria. From the proposals, a shortlist of two or three should be invited to further develop a concept design for a specified fee. A Selection Panel will assess the concept designs against a set of criteria;
- Limited tender: a Public Art Project Brief is distributed to a limited number of artists and creative producers inviting them to submit either a proposal or concept design in response to the project objectives and criteria. If shortlisted to concept design stage, that artist(s) will be paid a specified fee. A Selection Panel will assess the concept designs against a set of criteria;
- Direct commission: usually a single artist or creative producer is invited to develop a concept design in response to a Public Art Project Brief for evaluation and approval. This approach is beneficial if the project seeks a very specific aesthetic or cultural outcome, continuity with existing works within the locality, or requires unique technical expertise. A direct commission may be suitable in the delivery of Council developed cultural programs. In this instance, a professional artist would be contracted to develop and facilitate public art outcomes in collaboration with community members to meet a particular set of community needs. The objectives, outcomes and requirements of the program will be outlined in the commissioning contract. The commissioning process requires the development of a concept design for approval by relevant stakeholders.

## Donations

Prior to accepting a new acquisition through donation or long-term loan, Council will consider the following factors:

- Enduring artistic merit and quality of the work;
- Council's ability to resource the whole of life costs including installation and ongoing maintenance;
- Public safety and durability of materials;
- Relevance of the artwork to potential site, including cultural sensitivity and unique character of place;
- Degree to which the artwork contributes to the breadth, diversity and relevance of the public art collection – such as medium, artists and representation of local creatives.

## ***Assessment Criteria***

Whilst projects may have specific criteria that needs to be addressed, these should be added to the following standard criteria to guide the selection process in a fair and transparent way:

- The proposal responds meaningfully, either conceptually or aesthetically, to site, including cultural sensitivity and function of public space;
- The proposal meets the project brief;
- The proposal provides evidence of experience and technical expertise with the proposed materials and/or processes;
- The artist(s) demonstrates the ability to work within the timeframe and budget;
- Public safety and the durability and maintenance requirements of proposed materials is considered;
- Community and/or stakeholder engagement informs the design process;
- The artist(s) lives or works within the LGA;
- The proposal considers First Nations cultural perspectives;
- The proposal considers sustainability of materials;
- The proposal considers vandalism and graffiti minimisation.

## ***Standard Commission Process***

A Public Art Project Brief should be developed to guide the tender process in a fair and transparent way. The Brief outlines the key details of the project and provides guidelines for artists to address in their proposals. The Brief aims to encourage proposals that:

- Respond to the unique character and significance of the proposed site;
- Ensure community engagement is considered;
- Are considerate of First Nations cultural perspectives;
- Support opportunities for local artists where possible;
- Ensure public safety, maintenance and durability of materials is considered.

## Public Art Project Brief

The Public Art Project Brief details critical project information that will subsequently inform the Commissioning Agreement. The Brief will vary in detail depending on the complexity and scale of the commission, however should include:

- Introduction to the project and Council;
- Project aim and scope including objectives, audience, themes;
- Project schedule;
- Project budget including concept development;
- Commissioning process;
- Community engagement requirements, including First Nations consultation if relevant;
- Practical considerations such as site requirements, materials and fabrication;

- Stakeholders including project advisory panel and/or selection panel;
- Assessment criteria and expectations for relevant commissioning stage;
- Relevant site drawings and/or information.

### Selection Panel

- A selection panel should be established as part of the commissioning process;
- The role of the panel is to review the proposals and concept designs against a set of criteria that is outlined in the Public Art Project Brief. The selection panel will determine which artist(s) is contracted to deliver the public art outcome(s);
- Depending on the scale and complexity of the commission, a selection panel should consist of a representative of, as a minimum:
  - Placemaking and Activation team
  - PAE Project Lead

A selection panel may also include:

- A Ward Councillor;
- Relevant community stakeholder;
- A conservator with relevant expertise;
- An artist or creative producer with experience relevant to the project.

### Commission Agreement

For simpler commissions such as murals, an email outlining scope, approach, timeline, fee and payment schedule, copyright, and terms of variation could suffice as a concept design development agreement. More complex commissions with detailed concept requirements will need a commissioning agreement in place.

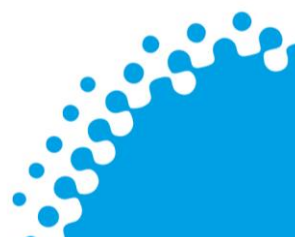
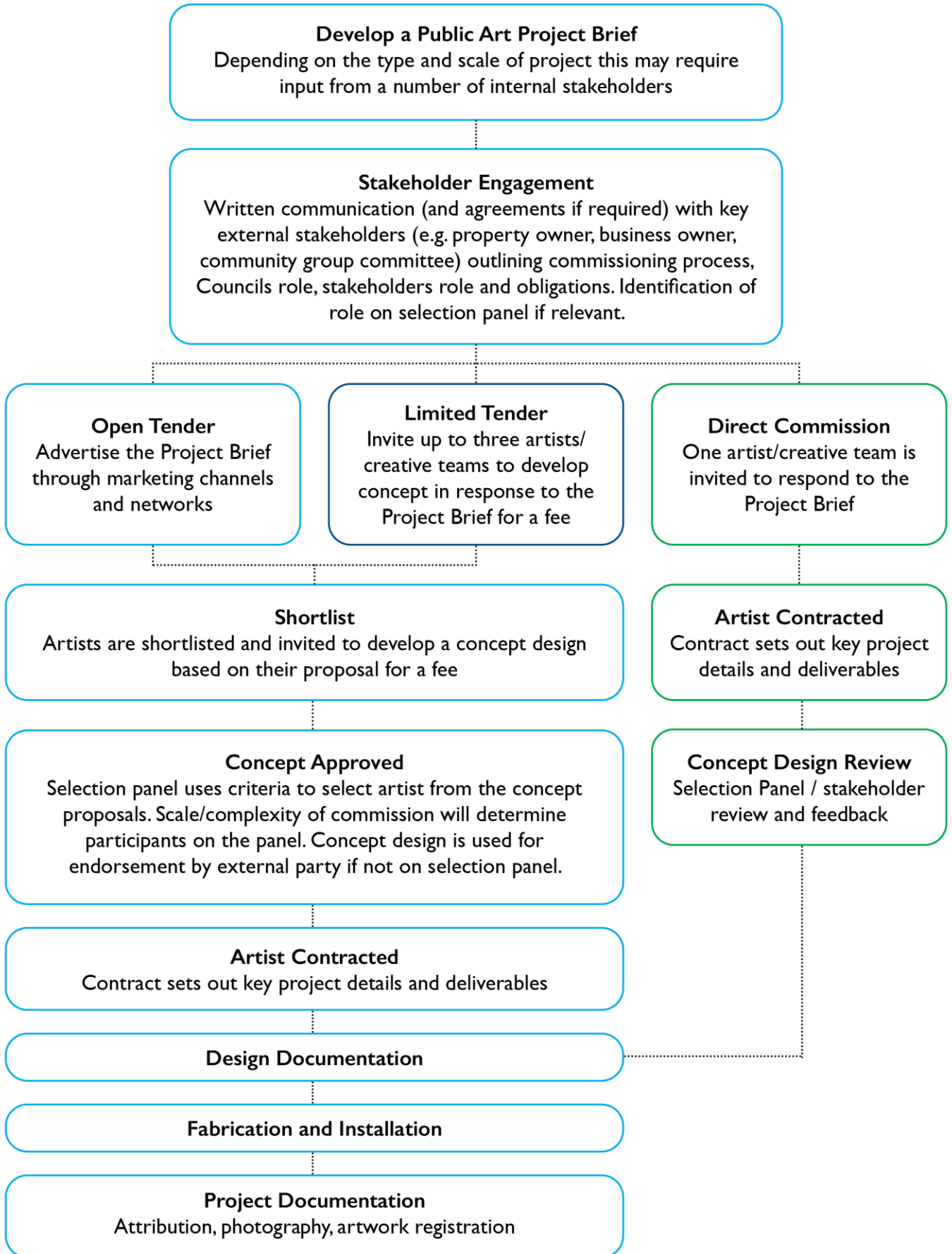
The Commission Agreement, for the design development, fabrication and installation stages, between the Commissioner and the Artist/Creative Team outlines common terms and conditions which need to be agreed upon before the project progresses beyond the concept stage. The Commissioning Agreement template details the process for design approval, timeframes, variations to the design, payment schedules, moral and copyrights, deaccessioning process, termination and dispute process. Attribution requirements may be detailed in the Agreement or during the development of the work. Elements of the template should be tailored to capture the specifics of each project.

### ***Standard Commission Process***

An open tender or limited tender process facilitates a transparent, fair and merit-based commissioning process. Direct commissions may be more suitable in realising project-specific and/or cultural development program outcomes.



# Commission Process



## ***Non-Council Led Commissions***

### Stobie poles

Council will support the community to develop artwork on Stobie Poles by providing guidance on the SA Power Networks permissions process and the efficient administration of Council's design approval process. Proposed designs can not include content that may offend, advertising, and commercial or political messaging.

### Process for Stobie poles

1. Community member applies to SA Power Networks (SAPN) for permission to paint their stobie pole.
2. Community member notifies Council via <https://www.cityofpae.sa.gov.au/explore/arts-and-culture/paint-ya-pole> that they intend to paint a stobie pole and have approval from SAPN. They attach the design or description of the intended artwork for review.
3. Designs are reviewed by the Placemaking and Activation team. Once approval is granted, Council will supply the Community member with a template letter to notify neighbours of their intention to paint their pole.

### Grants

Placemaking grants are made available to the community to develop and deliver public art outcomes that can demonstrate benefit to the community and contribution to PAE as a liveable city. To further support successful grant applications, the PAE Placemaking and Activation team provide advice and recommendations to individuals and groups on the commissioning process and connecting with creatives.

### Artwork on private property

Murals are permissible on private, public facing buildings and fences providing they are not on a heritage listed building or within a Heritage or Character Overlay area. Works outside of these conditions may require Development Approval from Council.

## ***Maintenance Manual***

The commissioning process will require the artist to supply a maintenance manual specific to the artwork. Indicative maintenance requirements should be outlined as part of the concept stage. Completed manuals will be added to the artwork entry in Council's asset management system (IPS).

At a minimum, the manual should include:

- Details of materials used including protective coatings;
- A cleaning and re-coating (if relevant) schedule and approach;
- Contact details for artist so that attempts may be made to contact them for maintenance or deaccessioning questions.

## **Design Considerations**

### ***Public Safety***

All artworks in the public realm must consider public safety and comply with relevant Australian Standards. General considerations may include, but are not limited to:

- Visibility;
- Structural stability;
- Accessibility;
- Protrusions;
- Climbable elements;

- Edge/corner treatment;
- Uneven, obstructed or slippery walking surfaces.

### ***Engineering Certification***

Additional consideration in budget and timeline should be given if the artwork requires consultation with an engineer to determine certification requirements for structural stability including load bearing and fixing methods. This includes specific requirements where the works are located within or nearby a roadway.

### ***Materials and Coatings Considerations***

The Project Brief and Commission Agreement should state the desired minimum ‘**useful life**’ of the artwork. This will vary greatly depending on the location, materials and individual components of the proposed artwork.

The selection panel should carefully consider the materials identified in each proposal for **sustainability**, and where appropriate, suggest alternative materials or methodology to assist in achieving Council’s Net Zero Emissions Plan. Council is committed to becoming a low carbon, water sensitive and climate resilient City, requiring our assets to embrace sustainability principles. Where there is uncertainty around the impact of proposed materials or methodology, Council’s Sustainability Coordinator should be consulted as part of the assessment process.

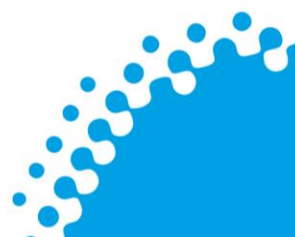
The selection panel should also carefully consider the **materials** identified in each proposal for durability, long term maintenance implications, and ease of access to service all elements of the artwork. Time and budget should allow for investigating appropriate protective coatings. Where there is uncertainty around the need or impact of protective coatings, a Conservator should be consulted. For larger-scale commissions, it is advisable to involve a Conservator at the assessment stage.

As well as general environmental exposure, many areas of the Port Adelaide Enfield region are waterside. Locating works in close proximity to salt water in particular should consider corrosive resistant materials.

Some high-level material considerations:

- **Stone and concrete** – Harder stone such as basalt or granite is preferable over porous stone. Some stone surfaces would benefit from protective coatings and a Conservator should be consulted. Similarly, consider using protective coatings on concrete elements due to the potential of efflorescence, water ingress and staining;
- **Metals** – Stainless steel, coated steel, bronze or alloys are preferable. Ensure reactive metals are not used together to avoid potential galvanic corrosion. When weathering steel is proposed, consider its location due to the difficulty in removing graffiti;
- **Glass and Ceramic** – For safer use of glass and ceramic in public spaces opt for high strength toughened glass, and slip-rated (complying with AS 4586:2013) ceramic tiles in paved areas;
- **Technology and moving elements** – Consider the longevity of proposed technology and the likelihood that its inclusion would reduce the “useful life” expectancy of the work. Artworks involving light, sound and moving parts need to clearly identify maintenance schedules and service access;
- **Timber** – Unless intended by the artist, timber elements will require treatment to reduce or slow weathering and deter termite activity.

### ***Vandalism/Graffiti Minimisation***



When commissioning artwork consideration for minimising the impact of graffiti and vandalism should be given by:

- Using graffiti resistant materials;
- In the case of murals, applying anti-graffiti coatings. Budget should be allocated for this as part of the commissioning costs;
- Locating artworks in well-lit areas with good passive surveillance;
- Assessing designs for elements that encourage climbing, skateboarding or hidden areas.

## **Obligations under the Copyright Act 1968**

### ***Moral Rights***

Under the Copyright Act 1968, an artist's moral rights are personal rights that connect creators to their work. Moral rights are distinct from economic rights and cannot be bought, sold or given away. In Australia, moral rights arise automatically and are not required to be "asserted", and remain until copyright expires.

Moral Rights can be generalised as follows:

- The right to attribution – a "reasonable" form of identification is to be applied to the artists' work and reproduced images. At a minimum, the attribution should include Artist name, artwork title, artwork date. The Artist may choose not to have an attribution. If the work involves the use of Indigenous Cultural and Intellectual Property (ICIP), the custodial interest of the community may also be included. The Artist may also request for attribution to be removed;
- The right against false attribution;
- The right of integrity – to protect their work from unauthorised alteration that may harm the artist's reputation.

In the case of public artwork, moral rights require building/place owners to undertake reasonable steps to contact the artist or estate, notifying them of intended relocation or removal and provide them with a three-week period within which to record their work insitu.

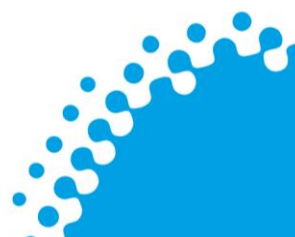
### ***Title and Copyright***

Title transfers to the commissioner upon completion of the work. In general, completion is assumed following installation of the work and the full commission fee has been paid.

Copyright in the design and artwork remains with the artist unless a specific agreement is drawn up between the artist and the commissioner. The standard Commissioning Agreement provides the commissioner the right to photograph and reproduce the artwork for promotional and documentation purposes with respect to the artists moral rights.

In relation to artwork in the public domain, it is worth noting that the Arts Law Centre of Australia determines that:

*...section 65 of the Copyright Act 1968 (Cth) allows anyone to make reproductions of sculptures and certain other artworks permanently on display in a public place, including for commercial purposes, without payment to the artist or infringing the artist's copyright. This means that if the artwork is subject to clause 65, the commissioner will be able to use the images for purposes other than those specified in the Agreement. (Arts Law Centre of Australia 2016, Information sheet – Public Art: Design and Commissioning)*





## ***Indigenous Cultural and Intellectual Property in the Arts (ICIP)***

Australia Council for the Arts *Protocols for using First Nations Cultural and Intellectual Property in the Arts* sets out principles and protocols for working with Aboriginal artists and communities on projects that include Aboriginal cultural heritage. The protocols provide a framework for creating a respectful space in which Aboriginal people and communities can feel culturally safe sharing their ICIP and ensuring their rights are protected.

The document provides guidance on meaningful consultation, obtaining consent, enabling Indigenous self-determination in projects containing ICIP, and culturally appropriate attribution among other important considerations.

To follow is a summary of the principles that inform the recommended protocols set out by Australia Council for the Arts. It is advisable however that any Project Manager conceiving and delivering a project involving ICIP should read and familiarise themselves with the full scope of the document. The document also includes a helpful checklist of considerations.

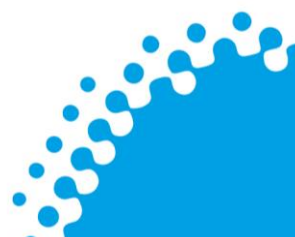
(Extract from *Protocols for using First Nations Cultural and Intellectual Property in the Arts*, 2019, pg. 26, item 1.3.1)

Principles for respecting Indigenous Cultural and Intellectual Property:

- Principle 1 Respect – The rights of Indigenous people and communities to own, protect, maintain, control and benefit from their cultural heritage should be respected.
- Principle 2 Self-determination – Indigenous people have the right to self-determination and to be empowered in decisions that affect their arts and cultural affairs.
- Principle 3 Communication, consultation and consent – Indigenous people have the right to be consulted and give their free prior informed consent for the use of their cultural heritage.
- Principle 4 Interpretation – Indigenous people have the right to be recognised and represented as the primary guardians and interpreters of their cultural heritage.
- Principle 5 Cultural integrity and authenticity – Maintaining the integrity of cultural heritage is vital to the continued practice of culture.
- Principle 6 Secrecy and confidentiality – Indigenous people have the right to keep secret and sacred their cultural heritage. Confidentiality concerning aspects of Indigenous peoples' personal and cultural affairs should also be respected.
- Principle 7 Attribution – Indigenous people have the right to be respectfully acknowledged and attributed as the traditional owners and custodians of their cultural heritage.
- Principle 8 Benefit sharing – Indigenous people and communities have the right to benefit from their contribution and for the sharing of their cultural heritage, particularly if commercially applied.
- Principle 9 Continuing cultures – Indigenous cultures are dynamic and evolving, and the protocols within each group and community will also change. Consultation and free prior informed consent are ongoing processes.
- Principle 10 Recognition and protection – Indigenous people have the right to protection of their cultural heritage and intellectual property rights in that cultural heritage. Laws, policies and contracts should be developed and implemented to respect these rights.

### ***Resale Royalty Right***

The artists' resale royalty scheme is managed by the Copyright Agency and requires that an artist is paid a resale royalty of 5% of the sale price if an artwork is sold for \$1,000 or more. This is applicable throughout the artist's life and for 70 years after the artist's death.



## **Maintenance and Deaccessioning**

As a custodian of a portfolio of public art works and cultural materials with significance to the PAE community, Council has a duty of care, reinforced through endorsed policies, to maintain our Public Art Collection to agreed service levels. A strategic approach to maintenance will:

- Maximise community value throughout a works lifecycle;
- Reduce public safety risks associated with the deterioration of artworks in the public realm;
- Reduce reputational risks associated with public perception of neglect and Councils lack of valuing cultural materials;
- Support adequate resourcing to meet minimum maintenance standards throughout a works lifecycle;
- Maintain cultural and artistic integrity throughout a work's lifecycle.

### ***Maintenance Process***

Proactive maintenance:

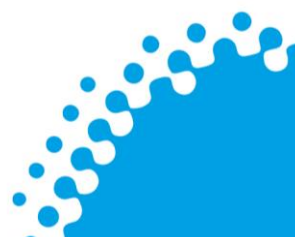
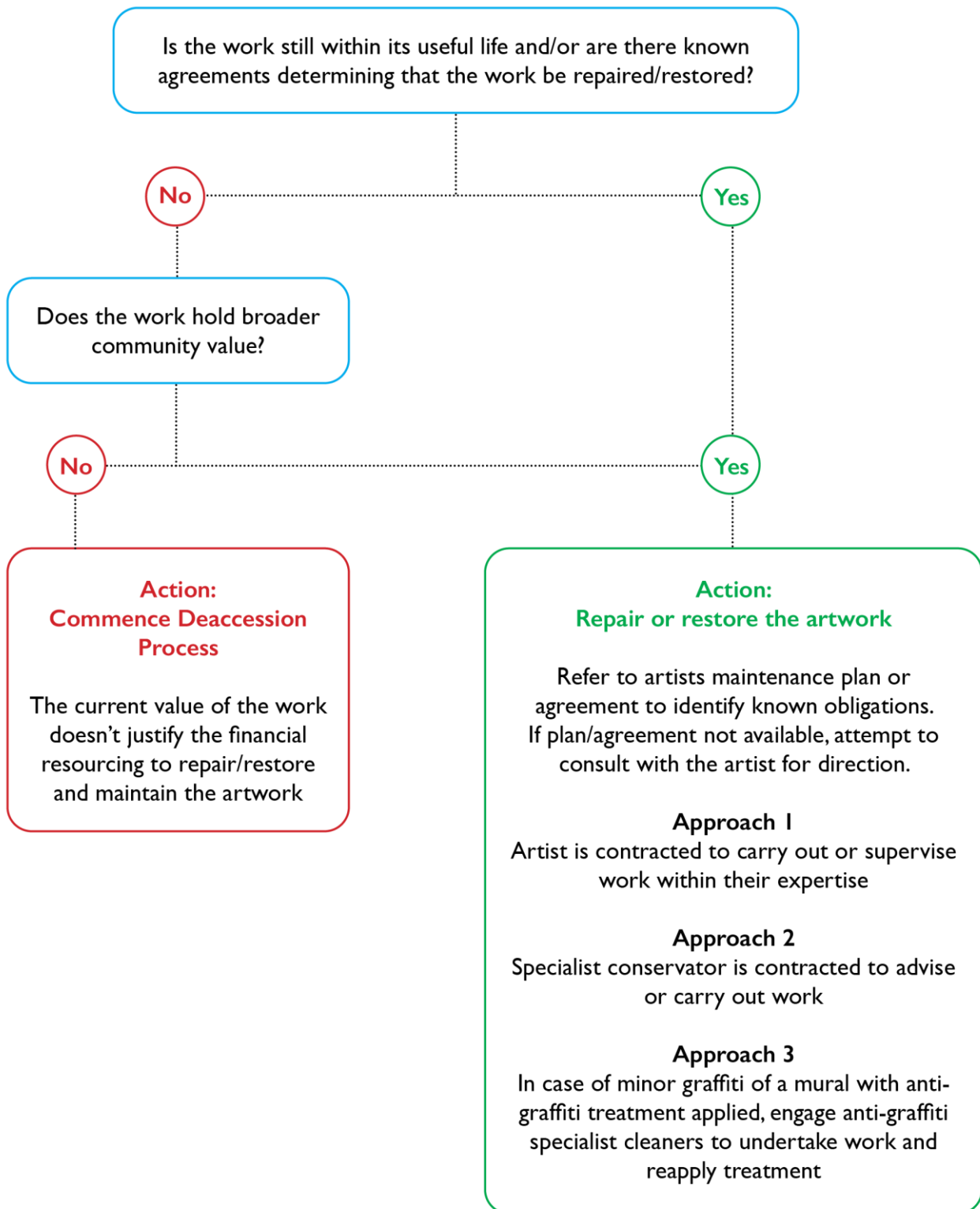
- IPS is updated with maintenance schedules at the time of commissioning based on the artists manual. Any maintenance activity should be guided by the artists manual;
- Outdoor team undertake periodic inspections and report any concerns about conditions to the Placemaking & Activation team. Where required the Repair Process will be followed;
- Placemaking team undertake an annual condition audit for visible signs of damage or deterioration. Where required the Repair Process will be followed;
- Placemaking & Activation team undertake a one-off audit of known existing works without protective coatings and apply where appropriate.

### ***Repair Process***

Any visible deterioration, graffiti or vandalism should be reported to the Placemaking & Activation Team (PAT). PAT are responsible for assessing the work and providing direction to relevant Council staff or contractors on appropriate remedial action.

When a condition assessment undertaken by PAT indicates repair or restoration is required, the following decision matrix should inform the direction taken. In the case of the moveable collection a conservator should always be engaged to undertake the repair or restoration of the artwork. Following National Association of Visual Arts (NAVA) Code of Practice, in the initial instance, artists should be consulted with and given the opportunity to repair damaged works themselves within their expertise, or to advise on the options to be considered in order to maintain the artists original intent with the work.

# Repair Process



## ***Deaccession Process***

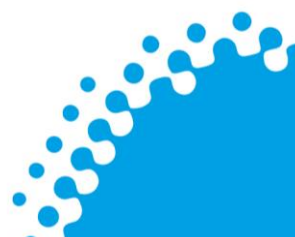
Deaccessioning considerations and processes should be outlined in the commissioning contract and loan agreements. These terms may stipulate or refer to:

- Process for attempting to contact the artist prior to changes inline with the Copyright Right Act 1968 requirements;
- Process for considering necessary changes, such as deaccession, relocation, or modification;
- Intended lifespan of the work and review of expected lifespan if concerns arise regarding the condition of the work, safety, development or changing community sentiment.

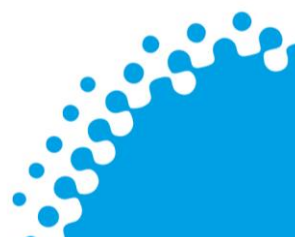
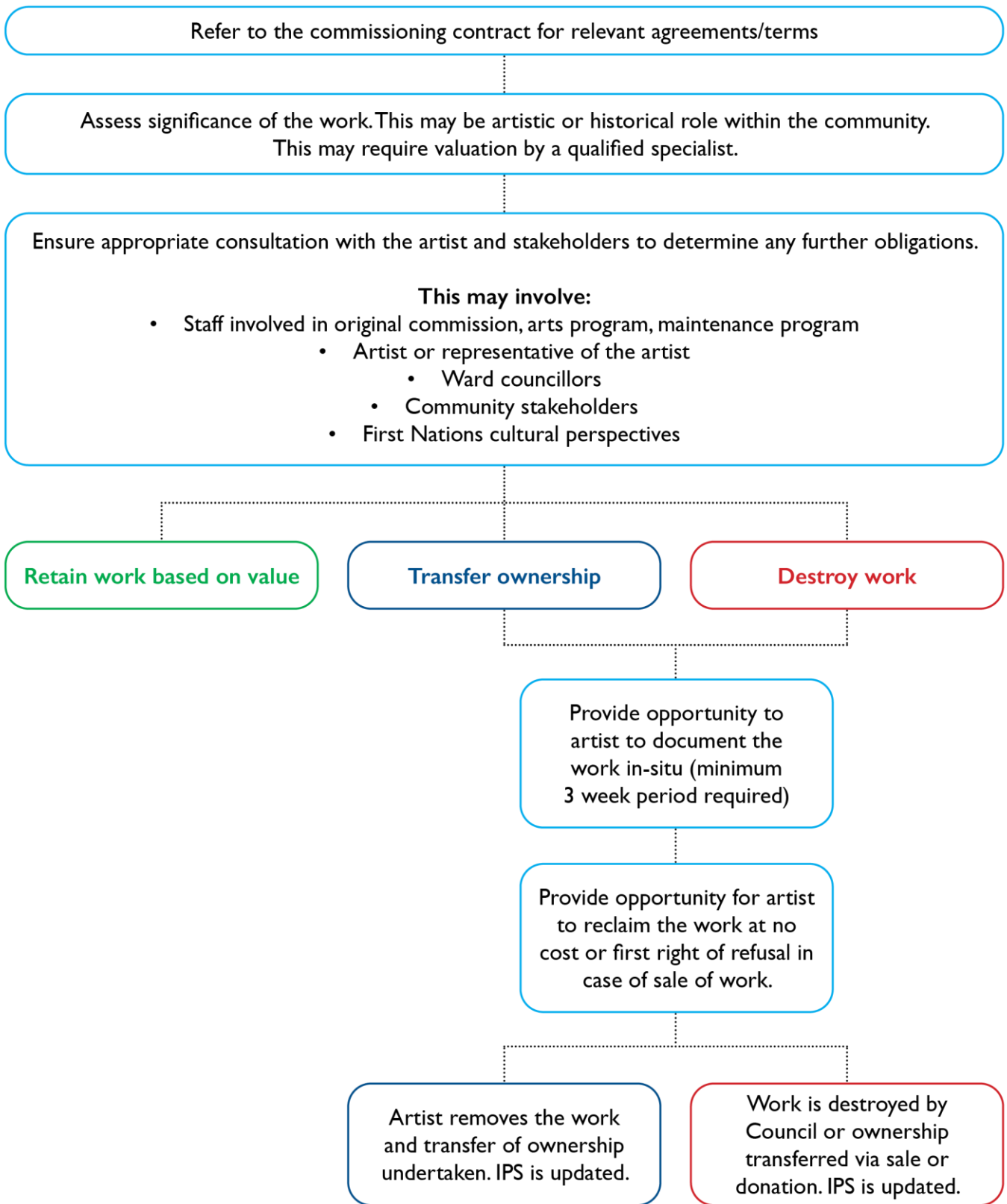
NAVA's Code of Practice recommends:

- The artist/creator or their estate should be offered first refusal in the event of deaccession;
- Deaccession should take place in accordance with the deaccession terms agreed upon with the artists at the time of commission/purchase;
- If the work is to be deaccessioned, the artist (or their estate) should be provided with opportunity to document the work in its current location;
- If a work is to be destroyed, the artist should be given opportunity to reclaim the work at no cost.

To formally deaccession an artwork from the collection, the following steps should be undertaken:



# Deaccession Process



## RESOURCES

Resources, national protocols & Codes of Practice informing these Guidelines:

- Code of Practice, National Association of Visual Arts;
- Protocols for working with Indigenous Artists, Australia Council for the Arts;
- Protocols for working with children, Australia Council for the Arts;
- Arts Law Centre of Australia.

## APPENDICES

- Public Art Policy;
- Public Art Project Brief;
- Commissioning Contract;
- Object Sheet (IPS).

## DEFINITIONS

**Accession** is the process of acquiring a work into a collection.

**Asset Management** is the process of commissioning, documenting and preserving public art in order to maintain artistic integrity of the work throughout its lifecycle, with the objective of providing the required level of service in the most cost effective manner.

**Commissioner** is the person or organisation paying for the artwork to be made.

**Community Art** is art in the public realm in which the creation of the work consisted of a substantial component of community involvement; this may be in the development or production stages.

**De-accession** is the process of formally withdrawing an artwork from the collection. In the case of public art this would involve removing it from public display and may be in response to poor quality of the work, end of lifespan, development changes or broader community considerations.

**Functional/Urban Art** bespoke design in the public realm with a practical purpose such as lighting, seating, bollards, signage, rubbish bins, fencing.

**Integrated design** usually refers to an artist working within a multidisciplinary design team such as architects, planners, urban designers and landscape designers to develop elements within or creatively inform the holistic design of public space.

**Moveable art** refers to artworks not fixed to or created specifically for 'place'. For example, this might include framed paintings or smaller sculptural pieces.

**Monument/Commemorative** artwork or plaque that celebrates/honours a specific individual or historical occurrence. These types of productions are subject to the Memorials Policy (CD37).

**Mural** is a two-dimensional artwork (commonly painting, aerosol, or pasteups) on public walls or surfaces that have approval from relevant asset owners. Where permission was not granted, the defacement will be considered graffiti and the Graffiti Management Policy (CD07) will apply.

**Placemaking** often a collaborative and holistic approach to transforming and/or revitalising places linked to the cultural life and identity of the community and usually involves community's voice in shaping the space. Art is usually an integral part of this type of development.

**Public Art** usually conceptualised and created by an artist(s) or creative producer(s), can be stand alone or consist of bespoke elements (non-generic and/or commercially manufactured) integrated into the public realm, such as streetscapes, reserves or architectural projects.

Its purpose may be:

- Site specific – designed specifically for and in responsive to a particular site;
- Functional – bespoke design solutions within the public realm that serve a practical purpose such as seating, lighting, furniture, pavement or landscaping elements;
- Commemorative – created to acknowledge a specific event or person significant to the local community and relevant to place.

Its longevity can be:

- Permanent – long lasting usually 10+ years;
- Temporary – in-situ for a specified period. In most cases temporary works would not require proactive maintenance resourcing, however the commissioning process outlined in the Guidelines should inform best practice;
- Ephemeral – presented in the public realm for a very limited period, and may including performance, sound, or physical work using non-durable materials. The commissioning process outlined in the Guidelines should inform best practice;

**Public Art Collection** consists of moveable works donated to or purchased by Council, with identified cultural or financial worth to the community.

**Sculpture** usually an artwork that is three-dimensional.

