

Re-siting or removing public art works

Policy and guidelines



Acknowledgements

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Policy statement, policy objective

Policy statement

Cities constantly evolve, people and places change. Good urban design helps create attractive, liveable, and functional cities for residents, workers and visitors alike. Auckland City is committed to the development of high quality public space that people use, value and enjoy.

Public art works enhance and enrich public spaces and the liveability of our city, providing visual interest to an urban area. They help reflect Auckland's unique identity and contribute to a 'sense of place'. Public art works are also a reflection of our cultural heritage and help foster an understanding of our history.

Public art works often have particular relevance to their site and the history of the area. Auckland City seeks to retain the integrity of art works and the relationship to the sites for which they were created, in keeping with the artist's, donor's or lender's original intentions, and consistent with the rights afforded by contractual agreements and copyright legislation.

There is recognition, however, that from time to time, as the city changes and evolves there may be reasons to review the location or retention of a public art work. To this end Auckland City needs to be well prepared and have a rigorous and transparent review process in place.

Removal of public art works should be considered only after careful and impartial evaluation and undertaken only when no other option exists. It should involve the same degree of careful review as a decision to commission a work of art; informed by professional judgement and the interests of the public, and should proceed according to carefully developed policies and procedures.

Auckland City has a long-term stewardship role and must weigh up multiple responsibilities to a wide range of stakeholders including artists, donors or lenders, the community as well as the city's collective cultural heritage. Public art has a long history of controversy and it is essential that decision-making remains independent of political pressures, fluctuations in artistic taste, popularity or public opinion.

The final decision with respect to the re-siting or removal of public art works will rest with council or their delegated body (currently the Arts Culture and Recreation Committee) who will consider all of the issues within the context of wider public outcomes for the city.

Policy objective

This policy aims to achieve:

- a) A clear, transparent and rigorous process for decision-making relating to the re-siting or removal of public art works.
- b) Respect for moral rights of the artist and integrity of the public art work and its site.
- c) Compliance with Auckland City's contractual obligations relating to the public art work.
- d) Consistent and ongoing good management of Auckland City's public art collection.
- e) A positive contribution to high quality urban design.

Policy scope

Policy scope

The policy includes:

All public art works sited outdoors and owned by Auckland City or on long term loan to Auckland City through a bailment agreement fall within the scope of the policy. These works have been assigned an individual accession number in the public art collection.

The policy does not include:

1. Public art works of a temporary nature.
2. Moveable artworks displayed inside council owned buildings.

These will be managed by separate collection/asset management processes.

3. Design elements which form a component of a larger project (eg building or landscape) but have not been identified or commissioned as stand-alone public art works.

An artist may have been engaged as part of a collaborative project team to provide input during the conceptual phase of a project. This input may have affected decisions about the use of space, materials or colours, or may result in architectural ornamentation (railings, light fixtures, floor surfaces etc). In this scenario it is not possible or appropriate to separately identify or accession the artistic contribution into the public art collection as an individual work, hence it is not appropriate or possible to consider this contribution explicitly for removal or re-siting.

4. Publicly accessible art works that are privately owned
- for example art works in corporate foyers or those works developed through the District Plan Floor Space Bonus Scheme.

If developers wish to consider re-siting or removing an art work created through the District Plan Floor Space Bonus Scheme, Auckland City must be contacted to discuss existing consent and floor area implications.

5. Art works in the collection of Auckland Art Gallery Toi o Tamaki sited indoors or outdoors within the Gallery's land designation.

Art works in the Gallery's collection but permanently sited beyond the Gallery's land designation will be subject to this policy in as far as reviewing their re-siting or temporary removal, however, matters involving transfer of ownership or disposal will be subject to the Gallery's Collection Policy.

Definitions

Accession

The process by which public art formally enters the public art collection. Each art work receives an accession number as a means of recording the contents of the collection.

Art Gallery Enterprise Board

Provides high level governance to Auckland Art Gallery Toi o Tamaki including the oversight, review and development of policy. Its delegations include to deaccession or otherwise dispose of works of art on the recommendation of the director.

Artist

The artist who created the public art work.

Arts, Culture and Recreation Committee (ACRC)

Elected councillors with delegated authority to approve deaccessioning of public art works.

Arts planner

The arts planner, community planning group, Auckland City Council (or equivalent council officer with delegated authority to manage the public art collection).

Bailment agreement

A written agreement between Auckland City and a lender governing the long term loan of a public art work to Auckland City.

Deaccession

The formal review, decision-making process and documentation that leads to the removal of art works from a collection. Deaccessioning terminates ownership of, and responsibility for the art work. For the purposes of this policy the term removal is used in place of the term deaccession.

Disposal

The actual discard or transfer of possession of a removed public art work. Methods of disposal include sale, gift or destruction.

Donor

Any person or entity who has donated a public art work, or funds for the specific purchase of a public art work, to Auckland City.

Lender

Any person or entity who has loaned Auckland City a public art work, for instance, under a bailment agreement.

Moral rights

Means the moral rights afforded to artists under the New Zealand Copyright Act 1994 (or any equivalent legislation), which, at the date of first publication of this policy, included the right to object to derogatory treatment of their art work and the right to be identified as the artist of the work in question.

Public art

(definition from Auckland City Central Area public art Policy and Guidelines) The term "public art" is defined in the widest possible sense as artistic works created for, or located in part of a public space or facility and/or physically accessible to members of the public. Public art includes works of a permanent or temporary nature located in the physical public domain.

The wider view of public art includes:

- art works created for specific locations.
- temporary exhibits/exhibitions/events/performances, art work installations located in a public space.
- art works produced through involvement of the community.
- the integration of art and architecture to enhance the design of urban or public spaces.
- collaboration of artists, architects or urban designers to create unique physical environments or features which integrates art into the urban fabric of the city.

Public art collection

Public art works that have been formally accessioned into the collection managed by Auckland City. Does not include art works accessioned into the collection of Auckland Art Gallery Toi o Tamaki.

Definitions

Public Art Sub-committee (PASC)

Elected councillors and co-opted members with delegated authority to:

- coordinate art works located within public spaces.
- make decisions on donated art works, approval of art works obtained through the district plan floor space bonus, and public art projects.
- accept, or purchase or commission where budgetary provisions have been made and approved, works of art, including approving artists' fees, siting, commissions and other costs. This excludes matters handled by the Art Gallery Enterprise Board.
- prioritise and identify the expenditure of public arts funding.
- co-opt external expertise when required.

As council administrations change from time to time these functions may be delegated to an alternative body. In this policy document "Public Art Sub-Committee" or "PASC" means the then-current body carrying out this function.

Public art work/s

Public art that has been formally accessioned in to the public art collection. These works have identifiable authorship, or if authorship is unknown the works are clearly conceived as distinct works of art.

Public space

All public spaces which the public has physical access to or can view; this includes, but is not limited to; parks, streets, squares, promenades, public plazas, and facades of council owned buildings.

Removal

Where a public art work is taken out of the public space. A public art work may be removed temporarily, or permanently. A temporary removal may involve dismantling the public art work and putting it in storage, pending a decision on its future. A permanent removal takes the public art work out of the public space and the public art collection.

Re-siting

Moving the public art work from one site to another site.

Sculpture build agreement

A written agreement between Auckland City and an artist governing the commission of a public art work by Auckland City.

Criteria for initiating a re-siting or removal review process

A public art work may be considered for a re-siting or removal review if one or more of the following conditions apply. While these criteria may prompt a review process, they are not the criteria upon which a final decision on whether to re-site or remove a public art work is based.

- I. Continued display of the public art work undermines the artist's intention.
- II. Significant and/or substantial changes in the pattern of use, community, character or design of the environment where the public art work is located necessitates a re-evaluation of the relationship of the public art work to the site.
- III. The public art work site or part of the site is to be redeveloped, demolished or sold and it is not possible to incorporate the public art work into the redevelopment without compromising the integrity of the public art work or incurring excessive costs.
- IV. The public art work requires a high level of maintenance and/or conservation rendering excessive asset management expenses.
- V. The public art work possesses serious or dangerous faults in design or workmanship and repair or remedy is impractical, not feasible or will undermine the integrity of the public art work.
- VI. The public art work endangers public health and safety and remedy is impractical, not feasible or will undermine the integrity of the public art work.
- VII. Auckland City is unable to reasonably guarantee the condition or security of the public art work in its present location, or the public art work is irreparably damaged, due to reasons beyond the control of Auckland City.
- VIII. Auckland City is no longer able to meet the terms of acquisition, the terms of bailment or the terms contained in any agreement governing Auckland City's lease or purchase of the public art work.
- IX. The public art work in Auckland City's opinion, is a forgery, is inauthentic or violates (or may violate), any law or by-law, including copyright law.
- X. The public art work has been lost or stolen (and formal removal from collection records is required).
- XI. The public art work is not (or is rarely) displayed because it lacks a suitable site.
- XII. The public art work has been in storage for five years or more.
- XIII. Auckland City's bailment agreement with the lender is terminated or expires.

What is the sequence of action undertaken to re-site or remove a public art work?

1. A re-site or removal may be proposed by artists, donors, lenders, politicians, council officers or members of the public.
2. A re-site or removal proposal worksheet must be completed, indicating under which one or more of the review criteria the proposal falls. A general statement outlining why the applicant believes the re-site or removal review is necessary is also required.
3. The proposal is received by the arts planner who responds in writing to acknowledge receipt of the request and to outline the review process and timeline. Auckland City will aim to complete the review process in three to six months.
4. The agreement (if any) entered into by Auckland City with the artist, donor or lender of the public art work must be located to ensure that the arts planner and PASC are made aware of all legal obligations owed by Auckland City in relation to the public art work.
5. Members of the PASC and the relevant community board will be notified immediately upon receipt of the proposal.
6. If, in the arts planner's opinion, it is clear that the re-site or removal proposal does not fall under any of the review criteria stipulated, the arts planner will make a recommendation to the PASC that the request is dismissed.
7. If the PASC accepts the recommendation to dismiss the request, the arts planner will notify the applicant and the relevant community board of the outcome. The PASC may reject the recommendation and instruct the arts planner to proceed with the Re-site or removal review process.
8. If, in the arts planner's opinion, the proposal falls under one or more of the review criteria, the arts planner will make a recommendation to the PASC that a re-site or removal review process be initiated. If the recommendation is approved by PASC, the following procedure is undertaken: *
9. The relevant community board is notified and has an opportunity to make submissions or recommendations to the PASC.
10. If the public art work is in the collection of Auckland Art Gallery Toi o Tamaki, the gallery director and the Art Gallery Enterprise Board will be notified. A gallery staff member will be nominated to participate throughout the review process.
11. Every reasonable effort shall be made to inform the artist, donor or lender (where applicable), or the designated heir(s) or legally recognised representative(s) of these parties, that a re-site or removal review process is underway, and of their opportunity for involvement.
12. If the public art work or art work site has significance to iwi the arts planner will work with Auckland City's Pae Herenga Tangata to ensure that the relevant iwi representative is contacted and appropriate protocol is followed throughout the review process and subsequent outcome.
13. A communication plan is developed by Auckland City's communication and marketing arts representative together with the arts planner. The communication plan should include:
 - Identification of issues, risks and recommended responses
 - Key messages
 - A recommended Auckland City spokesperson
 - Timing and communication strategies.Depending on the nature of the proposal a range of communication tools may be used including; memos to internal and external stakeholders and elected representatives, media releases, background media papers and fact sheets, website and call centre information, City Scene articles, display material for local libraries and the like.
14. A plan for the level of consultation with external stakeholders required is developed by Auckland City's consultation manager together with the arts planner. The level of consultation required is identified by undertaking a stakeholder impact analysis and should be appropriate to the nature and scale of the proposal and significance of the public art work. While public opinion may be taken into consideration throughout the review and decision making process, in all cases the final decision will rest with the ACRC. See Appendix I for an outline of consultation options.

* With the exception of a 'minor re-site'. A minor re-site is where an upgrade or project is planned and an existing public art work may potentially benefit from being moved slightly within the overall upgrade. PASC must agree that the proposal falls under the 'minor re-site' category and the artist, donor or lender (where applicable) must be agreeable to the proposed re-site. If this is the case then the re-site may proceed in accordance with the procedure outlined in a) re-site art work, thus avoiding the need for a report to PASC.

15. The arts planner or other relevant council officer shall prepare background information for the re-site or removal review. This should include where possible (but is not limited to) the following information:

- Written description and images of the public art work.
- Original acquisition method / selection process.
- Artist's, donor's or lender's agreement or comparable legally binding document with Auckland City, or where no written agreement exists, a summary of the general terms of understanding between Auckland City and the artist, donor or lender.
- Legal restrictions / requirements or conditions of acquisition, a legal opinion if necessary.
- Any restrictions as noted in the district plan e.g. a scheduled heritage item.
- Artist's statement.
- Donor's statement.
- Lender's statement.
- If the public art work or art work site has particular significance to iwi a statement from a relevant iwi spokesperson should be sought through Pae Herenga Tangata.
- A statement from any other bodies who had significant involvement in the original acquisition process may be included.
- An opinion from an external expert (either an individual or body) with known expertise in the relevant area commenting on the significance of the public art work.
- An independent, professional assessment of the value of the work.
- Statements from council groups or officers with a recognised interest in the public art work.
- Community feedback on the public art work (to the extent and in the manner identified in the consultation plan).
- Information on the current condition of the public art work including a detailed budget for all aspects of conservation, maintenance, repair, installation, operation, insurance, storage and any other costs.
- Estimated cost of removal including any apparent issues or restrictions relating to removal. If the re-site or removal accommodates the applicants interest or project, (either internal or external) reasonable costs of the re-site or removal will be covered by this project budget.

- Estimated cost of storage.
- Viable alternative options to removal including options for re-siting the public art work.

16. A summary report is written for the PASC and will include the arts planner's recommendations.

17. The report will be presented to the PASC.

18. The artist (or artist's representative) will be invited to present in person to the PASC during public forum.

19. Based on the information provided in the arts planner's report and submissions made to the PASC and with regard for the objectives for public art as outlined in the Central Area Public Art Policy, the PASC will recommend to the Arts, Culture and Recreation Committee (ACRC) that the re-site or removal request is either dismissed, or that the public art work is:

Retained in the public art collection and:

- a) Re-sited to another public location;
- b) Removed and put into storage; or
- c) Lent to another organisation,

or Removed from the public art collection and:

- d) Offered back to the donor;
- e) Offered back to the lender;
- f) Gifted to another organisation;
- g) Sold; or
- h) Destroyed.

The PASC's recommendation will take into account first and foremost any legal obligations owed by Auckland City to the artist, donor or lender (where applicable). Where the public art work is owned by Auckland City, a written agreement with the artist may oblige Auckland City to first offer the public art work to the artist to purchase in the event of a removal.

If the public art work is in the collection of Auckland Art Gallery Toi o Tamaki, the PASC will refer the recommendation to the Art Gallery Enterprise Board. A jointly agreeable outcome will then be developed by the arts planner and nominated gallery staff.

20. ACRC is the final decision making body and will either approve or decline the PASC's recommendation.

21. To implement any of the options a) to h) the following guidelines should be observed:

a) Re-site public art work

- The artist is invited to participate in the re-siting decision-making process, and in particular, the artist's opinion as to the suitability of the new site will be obtained. If the artist considers that the new site will result in a derogatory treatment of the public art work, the PASC will consider an alternative site or option.
- Where the public art work is on loan to Auckland City, the lender's prior written consent to the re-site must be obtained.
- Where the public art work has been donated to Auckland City, the PASC may, if reasonably possible, ask the donor for its opinion as to the suitability of the new site.
- The new site shall be identified through the standard procedure for siting and prioritising public art works (see *Public Art Toolkit, siting and prioritising process*), taking into consideration any relevant adopted policy and plans such as the CBD public art work development plan.
- Standard procedures undertaken in siting a new stand alone public art work (see *Public Art Toolkit, site analysis and consultation*) must be undertaken in the re-siting process, including consultation with the community where the public art work is to be re-sited.
- The proposal is reviewed by the urban design panel if it falls under the scope of the panel.
- PASC has final approval of the site.
- Where at all possible, a new site should be identified prior to the public art work being removed from the original site.
- When the public art work has been re-sited the artist may be invited to provide a new statement of intent for the art work file, outlining the relationship of the public art work to the new site.

b) Store public art work

- If there is a strong desire to retain the public art work but no appropriate site is identified or immediately available the committee may consider short term storage of the public art work. Storage of public art works is generally to be discouraged as it is not in keeping with the aims of the *Central Area Public Art Policy and Guidelines* "to make art works available to and increase the understanding and enjoyment of art works by the community".
- Where the public art work is on loan to Auckland City, the lender's prior written consent to storage of the work must be obtained.

- Where the public art work has been donated to Auckland City, the PASC may, if reasonably possible, ask the Donor for its opinion as to the suitability of the new site.
- The public art work must be stored in a manner consistent with recognised museum standards appropriate for the nature of the art work.
- Public art works in storage for five years or more should be reviewed.

c) Lend public art work to another organisation

(only applies to public art work owned by Auckland City, does not apply to public art work on loan to Auckland City)

- The long term loan of a public art work is not generally considered to be a satisfactory option. However if a particular opportunity arises to place the public art work in a public facility that is able to appropriately care for the work and enable it to be enjoyed by a wider public then it may be considered by the PASC.
- The artist is invited to participate in the re-siting decision-making process, and in particular, the artist's opinion as to the suitability of the new site will be obtained. If the artist considers that the new site will result in a derogatory treatment of the public art work, the PASC will consider an alternative site or option.

d) Offer public art work to donor/s

(only applies to public art work owned by Auckland City and donated by a donor)

- Where a public art work (or funding for a specific purchase) has been donated to Auckland City by more than one donor, Auckland City will offer the public art work to all donors (provided that Auckland City has contact information for each donor) and will allow all donors a reasonable time period to respond to Auckland City's offer. Where only one donor responds within the specified time limit, Auckland City will return the public art work to that donor. Where more than one donor responds to Auckland City within the specified time limit, Auckland City will enter into discussions with these donors to find an appropriate outcome.

e) Return public art work to lender

(only applies to public art work on loan to Auckland City)

- The lender (who may or may not have elected to be involved in the review process) is advised of the PASC's recommendation and the lender's consent to returning the public art work back to the Lender, and termination of the bailment agreement, should be obtained.

Procedure

f) Gift work

(only applies to public art work owned by Auckland City, does not apply to public art work on loan to Auckland City)

- The work may be offered to another organisation or facility that operates for public benefit, preferably for public display. Auckland City requires the recipient to invite the artist to be involved in the process of re-siting the public art work including obtaining the opinion of the artist as to the suitability of the new site.
- A deed of gift will be signed by Auckland City and the recipient to formalise transfer of ownership and record any mutually agreed conditions. These may include obligations to ensure consistency with the terms of the original acquisition.
- In limited circumstances the public art work may be offered as a gift back to the artist (or their designated heir(s)). This will occur at the discretion of the PASC.

g) Sell public art work

(only applies to public art work owned by Auckland City, does not apply to public art work on loan to Auckland City)

- Auckland City will, in its discretion, decide who the relevant source of the public art work is. That relevant source shall be offered the right of first refusal to purchase the public art work for fair market value. In some instances, this may be determined by the terms or circumstances of the original acquisition.
- Every effort must be made to ensure the sale is fair and open, sale by public tender or auction is preferred.
- Council employees, elected representatives and immediate family members may not purchase or benefit from the sale of the public art work.
- Any proceeds from the sale will be returned to the citywide art works budget for future commissions.
- If the work is sold to someone other than the artist, the PASC will decide in its discretion whether to distribute a percentage of any profits made from the sale of the public art work, to the artist (provided the artist can be contacted by reasonable means).

h) Destroy public art work

(only applies to public art work owned by Auckland City, does not apply to public art work on loan to Auckland City)

- Destruction of the work is only sanctioned when all other options have been thoroughly evaluated.

In all options a) to h) Auckland City is responsible for dismantling the public art work and packaging it in a state ready for removal. Dismantling, packaging and moving the public art work must be undertaken with the active involvement of qualified visual arts professionals, including but not limited to a conservator, registrar or collections manager. Where custody is to be transferred to another party through sale, gifting, lending or return to source, the recipient will be responsible for transporting the dismantled and packaged public art work from its site unless agreed otherwise.

22. If a re-site or removal is deemed to necessitate special consideration due to timeliness or other circumstances, an expedited review process may be undertaken. Nothing in these guidelines shall limit Auckland City's ability to take appropriate action to protect public health and safety in the event of an emergency.
23. Following the ACRC's decision, the applicant, the artist, donor or lender (where applicable), and any other bodies involved in the review process, shall be informed in writing of the outcome.
24. The arts planner will ensure that the ACRC's decision is implemented and that appropriate council staff oversee the process, if necessary coordinating the physical removal of the public art work and any interpretative signage and siteworks, (including the reinstatement of the site) and the subsequent relocation, gift, loan, sale or destruction of the public art work. It is essential that appropriate protocol is observed for any one of these outcomes and that the artist, donor or lender is invited to be involved in any associated ceremonies.
25. Upon practical completion of the disposal the public art work shall be noted as removed from the collection by the ACRC, terminating Auckland City's ownership of, and responsibility for the public art work. The public art work shall then be divested of its accession number.
26. The entire re-siting and/or removal review process and outcome shall be thoroughly documented and filed in Auckland City's corporate filing system.

Appendix I

Re-siting or removing public art works – consultation options

This spreadsheet is based on the IAP2 Public Participation Spectrum and Auckland City's Consultation Guidelines located in Standard Project Framework (SPF)

Level of public interest With consideration for the scale of the project and the significance of the public art work, undertake a Stakeholder Impact Analysis (see SPF) to determine the level of impact / public interest in the outcome	Level of public participation Determine the level of public participation required	Consultation and communication tools Decide which combination of tools / techniques is most appropriate, for example:	What can the public expect?
Low	Inform Provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities, and/or solutions	<ul style="list-style-type: none"> • Auckland City Website • City Scene article • Media Releases • Fact sheets • Call centre information 	Public is kept informed throughout the decision making. ACRC is the decision maker
Medium	Consult Obtain public feedback on analysis, alternatives, and/or decisions	<ul style="list-style-type: none"> • Opportunities for public comment • Focus groups • Surveys • Public meetings 	Public is kept informed, listened to, concerns acknowledged and feedback is provided on how public input influenced the final decision. ACRC is the decision maker
High	Involve work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered	<ul style="list-style-type: none"> • workshops • Deliberate polling 	Public's concerns and aspirations are reflected in the alternatives developed and feedback is provided on how public input affected the final decision. ACRC is the decision maker

