

Report on the Co-operation Agreement with Leeds Culture Trust to deliver the Hibiscus Rising Artwork as part of the LEEDS 2023 Year of Culture.

Date: 8 November 2022

Report of: Executive Manager, LEEDS 2023 Partnership

Report to: Chief Officer, Culture and Economy

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

As part of the LEEDS 2023 Year of Culture, a piece of public artwork known as Hibiscus Rising is to be created by the artist Yinka Shonibare and will be installed in Meadow Lane Green Space within the new Aire Park development. This report supports a delegated decision to sign a co-operation agreement between Council and Leeds Culture Trust (the 'Trust'). The co-operation agreement sets out the various obligations of each party to deliver the new artwork.

Recommendations

- a) The Chief Officer for Culture and Economy is asked to agree the content of a co-operation agreement with the Trust which sets out the respective roles and responsibilities to deliver the artwork by Yinka Shonibare as part of the LEEDS 2023 Year of Culture.

What is this report about?

- 1 This report supports a decision to sign a cooperation agreement between the Council and the Trust to establish a new landmark piece of public art to be created by the artist Yinka Shonibare. The artwork shall be designed to commemorate the life of David Oluwale and to provide representation and aspiration to the community he came from. The artwork will be commissioned by the Trust as a signature project in the LEEDS 2023 Year of Culture. The Council will grant a licence for the artwork to be installed on Council-owned land in the Meadow Lane green space within the new Aire Park development. At the end of the Year of Culture, after which the Trust will wind up its activities, ownership of the artwork will be transferred to the Council by way of a deed of gift, upon which the Council will be responsible for its on-going maintenance
- 2 This decision follows a Delegated Decision on ownership and maintenance of a new public artwork in memory of David Oluwale in Aire Park on 20 May 2022 and approval from Executive Board on 22 June 2022 to enter into an agreement with the Trust to set out the respective obligations between the parties with regard to delivering the project.

What impact will this proposal have?

- 3 The artwork will help to promote equality, diversity, cohesion and integration within the local community and the wider city. The artwork will also help to address the issues raised in the recent statues review and strengthen the representation of Leeds' diverse communities. The events programme to be led by LEEDS 2023 will have a cohesive impact on communities and give aspiration to the communities of African heritage by stimulating discussion of the issues which David Oluwale's life and death represent for Leeds today. Disabled access to the artwork and the wider Aire Park area will be ensured as part of the groundwork planning so that there is equal access to all communities to enjoy the artwork up close.
- 4 Other benefits are expected to include:
 - Increased national and international profile for Leeds
 - Enhanced employment levels in the area
 - Increased visitor spending
 - Improved commercial climate
 - Land value uplift

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 5 The artwork will help deliver inclusive growth in Leeds by adding a significant and history making visitor attraction to Aire Park, the South Bank and the expanding city centre. It will provide health and wellbeing for many communities and families by providing a focal point for celebrating our varied cultures and the contributions of the diverse citizens of Leeds. The project is situated at the heart of Aire Park, a new green space being developed in the South Bank, encouraging people to visit green spaces. A sustainability statement in terms of process and materials is in preparation by the artist studio and a carbon impact assessment will be carried out for the project.

What consultation and engagement has taken place?

Wards affected: Hunslet & Riverside

Have ward members been consulted?

Yes

No

- 6 All ward councillors have been consulted on the Shonibare proposal and city-wide community consultation has taken place, led by the David Oluwale Memorial Association.

What are the resource implications?

- 7 The co-operation agreement sets out that the Council shall provide a financial facility of up to £1.83m against which the Trust can draw down on, whilst fundraising efforts progress. This financial facility was agreed by Executive Board on 22 June 2022 and will be held against the capital programme contingency reserve. The amount held against the reserve will be reduced as fundraising progresses.
- 8 On signing the co-operation agreement, the Trust will draw down the first payment of £1m from the Council using the financial facility.

What are the key risks and how are they being managed?

- 9 Given the current geopolitical context and cost of living crisis, fundraising efforts by LEEDS 2023 could be made more difficult. Consequently, a risk remains that the funding target may not be met within the timescale envisaged. However, a full fundraising strategy is in place and a number of bids are ready to submit once the co-operation agreement is agreed and signed.
- 10 There is also a risk of an increase in the price of materials given current rates of inflation and an unstable economic climate. A contingency has been built into the budget at 5.65% across the project and 9% for materials in order to mitigate this risk and build in flexibility.
- 11 There is a risk that delays in the commissioning/fabrication/installation process might push the date of installation beyond the end of 2023, after the Year of Culture. Another factor is the eventual winding up and dissolution of the Trust in early 2024. In the event of the project overrunning to such an extent that the Trust will be dissolved before the artwork is unveiled and ownership is transferred to the Council, the Trust and the Council shall enter into a Deed of Novation in respect of the Commission Agreement between the Trust and the Yinka Shonibare Studio.

What are the legal implications?

- 12 Under the Director of City Development's Sub-Delegation Scheme, the Chief Officer Culture and Economy has authority to discharge any function of the Executive in relation to Culture including arts and events.
- 13 The proposal constitutes an administrative decision taken by a council officer and is therefore not eligible for call-in.
- 14 In the report which went to Executive Board in June 2022, it was noted that there would be no immediate procurement considerations for the Council, but that detailed legal advice should be sought on any potential subsidy control elements which may be relevant to the project in accordance with the current UK subsidy control laws following the UK's exit from the EU on 31 December 2020 and the new Subsidy Control Act 2022, which comes fully into force on 4 January 2023.
- 15 The Council has sought an external legal opinion in the form of a letter of advice which summarises that the proposal to support the cost of creating the artwork should be readily capable of satisfying UK subsidy control law and the procurement requirements under the Public Contracts Regulations 2015 (the 'Regulations'), provided careful steps are taken.
- 16 In respect of any potential subsidy to the Trust, the new Subsidy Control Act guidance issued by the Department of Business, Energy and Industrial Strategy in July 2022 mirrors the previous stance of EU state aid law in that the building of a statue in a park which is open to all without charge is not considered to be "aid" as a public realm measure. On that basis, there are strong grounds to consider the provision of the artwork in Aire Park is a non-economic activity and recommends two "no subsidy" routes which could be applied. In the circumstances, the most relevant option is for the Trust to ensure that the full cost of commissioning the artwork should be ring-fenced so it can be clearly demonstrated that the Council's financial facility flows through to pay for the public realm artwork and thereby demonstrating that it is

considered to be a non-economic activity as it will be made available to the general public free of charge. The letter of advice suggests that this be incorporated into the co-operation agreement as a condition.

- 17 With respect to any potential subsidy being provided to the artist Yinka Shonibare CBC, the letter of advice concludes that there will be no subsidy if there is basic evidence to show that the price being paid to the artist (who would be considered to be an enterprise) is not disproportionate with market rates for similar pieces of artwork. The best way of demonstrating this by running an open and competitive procurement or conducting a benchmarking exercise.
- 18 The initial element of the project (the Council providing the financial facility to the Trust) is not considered to be a procurement due to the provision of the financial facility being in answer to a funding request, therefore the Council is not procuring anything for its own benefit. However, the purchase of the artwork by the Trust may constitute a procurement for the purposes of the Regulations and if that is the case, the Trust will be required to comply with the Regulations. It will be for the Trust to satisfy the Regulations (should they apply), with the preferred route being the negotiated procedure without prior publication under Regulation 32(1)(b) of the Regulations. Again, it is advised that a condition is included in the co-operation agreement to ensure that the Trust complies with the Regulations if it is determined to be a 'contracting authority' and they shall provide any relevant documentation to the Council upon written request to confirm the position either way.
- 19 The letter of advice concludes that the risk of a challenge is medium, noting that although there is widespread support for the project, the cost of the artwork is high given the current cost of living crisis. Any challenge on the no subsidy element would be by means of a judicial review against the Council, whilst any challenge on the potential application of the Regulations would be against the Trust. It is advised that information about the decisions is placed into the public domain at the earliest opportunity.

Options, timescales and measuring success

What other options were considered?

- 20 Various commissioning models were examined following the decision made by Executive Board, and it was agreed in consultation with colleagues from Asset Management, Parks and Countryside, PACS Legal and Finance that the Trust should act as the commissioner for the artwork, allowing the Council to offer a finance facility whilst funds are raised by the Trust.

How will success be measured?

- 21 Success will be measured by the successful and timely installation of the artwork on the Meadow Lane green space within Aire Park and unveiling as part of the LEEDS 2023 year of culture. A comprehensive fundraising strategy has been drawn up by the Trust and success will be measured against established targets.

What is the timetable and who will be responsible for implementation?

- 22 The artwork is scheduled to be installed in summer 2023 in preparation for the unveiling as part of the LEEDS 2023 Year of Culture in October 2023. The artwork shall be transferred to the Council at the end of the Year of Culture in December 2023 by means of a Deed of Gift.
- 23 The responsible officers will be:
Karen Murgatroyd - Executive Manager LEEDS 2023 Partnership, Culture & Economy.
David O'Connor - Project Manager, Asset Management & Regeneration.

Appendices

- Co-operation Agreement attached.

- Letter of Advice from DWF Law LLP.

Background papers

- N/A