


<p><b>Individual Mayoral Decision</b></p> <p>1<sup>st</sup> December 2016</p>	
<p><b>Report of:</b> Will Tuckley, Acting Corporate Director - Communities, Localities &amp; Culture</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Draped Seated Woman - process for relocation to Tower Hamlets</b></p>	

<b>Lead Member</b>	<b>Councillor Asma Begum, Cabinet Member for Culture</b>
<b>Originating Officer(s)</b>	Shazia Hussain, Service Head – Culture, Learning & Leisure
<b>Wards affected</b>	All
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>A great place to live</b>

### **Executive Summary**

This report sets out the recommended approach to implementing the Mayor’s manifesto pledge to bring the Henry Moore sculpture “Draped Seated Woman” (locally known as “Old Flo”) back to Tower Hamlets. Following the election, the Mayor set up a cross-party working group, chaired by the Cabinet Member for Culture. The working group assessed the different options available to the Mayor. The report seeks formal approval for officers to progress the implementation of the preferred option.

### **Recommendations:**

The Mayor is recommended to:

1. Authorise the procurement of a contract for *Hosting of Draped Seated Woman (Old Flo) by Henry Moore* in line with the contract approach set out in this report for a term of five years;
2. Note that following completion of the procurement process, a contract award report will be brought to Cabinet.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The decision is required in order to implement the Mayor's pledge to return Draped Seated Woman by Henry Moore back to Tower Hamlets. The decision also meets the requirements of the Council's constitution for the Executive to agree the contract strategy for any procurement exercise in excess of £250,000.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The following alternative options were considered:
- 2.2 Extend the current loan arrangement with Yorkshire Sculpture Park: This option would retain the sculpture in its current location and in the care of Yorkshire Sculpture Park, which has looked after the sculpture for a number of years now, at no cost to the Council. However, the option would not serve to implement the Mayor's pledge and, as such, is deemed unsuitable.
- 2.3 Sale and leaseback: This option would involve the Council disposing of and subsequently taking out a long lease/loan arrangement to retain the sculpture in the borough but no longer own it. The option could generate a capital receipt to the Council. The Council would be responsible for security and maintenance arrangements. However, the Mayor overturned the decision of the previous administration to sell the sculpture. A sale and leaseback arrangement is not considered compatible as the Council would no longer own the sculpture.
- 2.4 Exhibition of sculpture in a Council park or on the public highway: This option would provide access to the sculpture in a publicly owned space. The Council would be responsible for implementing security arrangements (capital cost), insurance, maintenance and other ongoing revenue expenditure. The risk of theft or damage in spaces which are not sufficiently overlooked or do not have permanent security is considered significant. This is reflected in the physical protection measures the Council's insurance providers require to be put in place, were the sculpture to be exhibited in a park or on the public highway. These requirements would hinder access to the sculpture and would require significant capital investment. Theft of metal sculptures is, sadly, a very real risk; sculptures are often sold for scrap metal. While sculptures can be insured, the monetary value could not replace the loss of this important artwork, were it to be stolen. Given the cost, risk of theft or damage, and access limitations, this option is considered unsuitable.

## **3. DETAILS OF REPORT**

- 3.1 *Background*
- 3.2 Draped Seated Woman (locally known as "Old Flo") is an important example of the work of Henry Moore. The sculpture was one of eight casts made in 1957/58.

- 3.3 In 1962, the sculpture was purchased by London County Council (LCC) as part of its public art programme which ran from 1948 to 1965 and sought to broaden public engagement with art in the municipal environment. The LCC public art programme was one strand of a post-war movement to deliver social reform through strategic civic schemes. The programme commissioned or procured many sculptures, mosaics and reliefs through the LCC's Public Art Committee.
- 3.4 Following its acquisition, Old Flo was placed on the Stifford Estate in Stepney, built in 1962. Henry Moore is said to have sold the statue below its market value as he wanted to support the siting of it in this context. The Stifford Estate consisted of three 17-storey tower blocks arranged around a large lawn, fronting Jamaica Street just north of Stepney Way. Old Flo was positioned in the northern section of the lawn and was visible from Jamaica Street as well as to residents in all three blocks. The estate was demolished in 1999 – 2000 and the site redeveloped and as a result the original location is no longer publicly accessible.
- 3.5 The statue suffered from damage and vandalism and in advance of demolition of the estate, Tower Hamlets Council entered into a loan agreement with Yorkshire Sculpture Park (YSP) in November 1997. YSP carried out restoration work and has exhibited and maintained the sculpture in its grounds since then at no cost to the Council.
- 3.6 In 2012 the previous administration resolved to sell Old Flo at auction to release a capital receipt. Shortly after the decision to progress with the sale in late 2012, the London Borough of Bromley claimed ownership of the sculpture. As a consequence the sale did not progress. In November 2015, the High Court ruled that the London Borough of Tower Hamlets was the rightful owner of Old Flo.
- 3.7 As part of his manifesto, Mayor Biggs pledged to reverse the decision of the previous administration to sell Draped Seated Woman and bring the sculpture back to Tower Hamlets. Following the election, he overturned the decision to sell Old Flo and set up a cross-party working group to consider options for returning Old Flo to Tower Hamlets.
- 3.8 *The preferred option*
- 3.9 Having considered the options for relocation of Old Flo to Tower Hamlets, the Mayor is recommended to agree that the most appropriate option, balancing access to the sculpture, security and cost implications at a time of constraint budgets, is to enter into a time-limited loan agreement with a local hosting organisation.
- 3.10 Many local organisations own publicly accessible land which is more secure than Council parks or highways. Such locations present an opportunity for balancing public access to the sculpture whilst providing a high level of

protection for a rare and valuable artwork, which is in the custodianship of the Council.

- 3.11 At the time of the proposed sale of the sculpture in 2012, a number of local organisations from the voluntary and private sector came forward offering to host the sculpture. Since the election in 2015, a number of these organisations have renewed their offers. It is recognised that there may be other organisations that would wish to work in partnership with the Council to bring Old Flo back. In line with the Mayor's commitment to transparency in the business of the Council, the proposal is for an open and transparent bidding process to be initiated, using set criteria.
- 3.12 It is proposed that the following requirements and criteria be applied to the selection process:
- Duration of loan: The proposed duration of the loan is for a period of five years. This takes into account the complexities of moving a large sculpture and the costs associated with installation and transport. The duration also aligns with the anticipated build programme for the Civic Centre in Whitechapel, allowing the Council to consider whether a location within the Whitechapel Civic Centre complex may be suitable in the medium term.
  - Costs: All costs associated with the hosting of the sculpture will be met by the hosting organisation. The hosting will result in nil costs to the Council.
  - Security, maintenance and insurance: The hosting organisation will be required to meet relevant standards in relation to the security, maintenance and insurance of high value artworks. The costs associated with meeting these standards will be met by the hosting organisation.
  - Location: The sculpture must be placed in a publicly accessible outdoor location, which is highly visible to passers-by and allows the sculpture to be viewed in close proximity. The location must be accessible to viewers without the need for pre-booking or payment of an entrance fee.
  - Education and outreach programme: The hosting organisation will be required to provide and fund an education and outreach programme aimed at bringing the widest possible section of the community into contact with the sculpture. The programme must be agreed with the Council's Arts & Events service.
  - Timing: It is proposed that the relocation of the sculpture takes place in late October/early November 2017. This allows for the chosen hosting organisation to secure any necessary permissions, including planning permission, and to carry out site preparation work. Furthermore, the timetable enables YSP to retain the sculpture through to the end of its 40<sup>th</sup> anniversary celebrations, recognising the important role YSP has played in looking after Old Flo.

### 3.13 *Procurement*

3.14 Officers received legal advice that the nature of the requirements placed upon the local hosting organisation means that the selection process must be treated as a procurement exercise, in line with the Council's Constitution and Procurement Procedures. This report therefore asks the Mayor to approve the contract strategy for selecting a hosting partner and furthermore meets the requirement to publish relevant contracts on the contract forward plan.

3.15 It must be noted that while the process to be followed is a procurement exercise, the Council is not disposing of the sculpture. The primary purpose of the contract is to replace the existing loan arrangement with YSP with a new loan arrangement that locates the sculpture within the boundaries of the London Borough of Tower Hamlets.

3.16 Choosing a procurement route to select a local hosting partner ensures that the Council is compliant with the procurement Direction issued by the Secretary of State.

3.17 Following approval of the contract strategy as set out in this report, the selection will be managed by officers, in line with the Council's Procurement Procedures. It is anticipated that in order to ensure relevant expertise is available, the bidder selection panel will include external individuals. These individuals will need to comply with the declaration of interest requirements in the Procurement Procedures.

3.18 Upon completion of the procurement process, a contract award report will be brought to Cabinet.

### 3.19 *Outline timetable*

3.20 The timetable below sets out the key milestones for the procurement and relocation process. It allows for the statutory period for determining the hosting organisation's planning application, a period of restoration work, site preparation and the retention of Old Flo at YSP for the duration of their anniversary celebrations throughout the summer of 2017.

<b>Milestone description</b>	<b>Date</b>
Tenders open	Mid-December 2016
Tenders close	End of January 2017
Award report presented to Cabinet	Early March 2017
Contracts exchanged	Mid-April 2017
Bidder submits planning application	Mid-May 2017
Planning application determined <i>NB. This allows for the statutory period.</i>	August 2017
Bidder commences works on site	Early September 2017
Official 40 <sup>th</sup> anniversary date at YSP	24 <sup>th</sup> September

	2017
Conservation works (3 weeks) completed	Mid-October
Sculpture is installed at new location	End of October/early November

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 It is a requirement of the Council's constitution that "The contracting strategy and/or award of any contract for goods or services with an estimated value exceeding £250,000, and any contract for capital works with an estimated value exceeding £5,000,000, shall be approved by Cabinet in accordance with the Procurement Procedures.
- 4.2 The current arrangements for Old Flo have been managed for a number of years through a loan of the sculpture to the Yorkshire Sculpture Park by the Council. The sculpture has been retained at the Park for the period at nil cost to the Council. The recommendation of this report is that a procurement process is undertaken that implements the Mayor's pledge to relocate and host the sculpture within Tower Hamlets.
- 4.3 The contract will be let in accordance with all relevant procurement procedures. The further recommendation of this report is that a term of five years (see paragraph 3.12).
- 4.4 There is no budget provision associated with this sculpture and no budgets for maintaining public art. Given the need for the Council to deliver significant savings over the Medium Term Financial Strategy period 2017-2020, all costs associated with the relocation and hosting of the Old Flo sculpture must be met by the new contract and not impact on the Council. Therefore the new contract procured will be expected to remain at nil cost to the council.

#### **5. LEGAL COMMENTS**

- 5.1 The loan arrangement proposed in this report as the preferred option is of the nature of a Public Services Concession Agreement. This is because intrinsically the organisation who wins the tender and therefore hosts the sculpture has the opportunity to exploit the sculpture for a commercial advantage.
- 5.2 However, it is noted that one of the provisions of the tender is that the sculpture must be free to access by the public so whilst the commercial advantage will not be a ticket price in itself, there is clear commercial gain through prestige and the potential of indirect financial reward (such as food and other café sales as an example).
- 5.3 The law relating to concession agreements is now dictated by the Concession Contracts Regulations 2016. In the main they require the tendering of

concessions at a Europe wide level. However, the regulations only apply where the value of the concession (being the potential sum estimated to be achievable by the exploitation) is greater than £4,104,394.

- 5.4 It is difficult to properly estimate the value of the concession here. However, it is unlikely to exceed this sum and therefore the regulations will not directly apply to the tender.
- 5.5 However, the European Law case of *Parking Brixen* shows that even where a procurement is outside the ambit of the appropriate legislation a public authority must still subject such a contract to a “reasonable level of advertising”.
- 5.6 It is notable also that the Council has a duty to subject this contract to competition under the general duties described by the Treaty For The Operation Of The European Union. However, also in line with the general principles the measures taken by the Council must be proportionate to the subject matter of the Procurement.
- 5.7 The Council’s Constitution is silent in respect to the level of advertising required for concession contracts where the European Law does not directly apply. However, a proportionate approach seems to be to operate a similar level of advertising as a services contract would require where the value of the services is similar to the estimated value of the concession. Therefore, an open or restricted (2 stage) process similar to a level 3 services procurement would be appropriate using the Council’s tendering portal.
- 5.8 It represents good practice however, to follow the Concession Contracts Regulations even though the value of the concession is below the relevant Threshold. Therefore, the concession length of 5 years is the maximum allowable under the current regime.
- 5.9 The criteria against which bids will be measured (and therefore the winner chosen) must be fair and non-discriminatory and applied fairly to all bids in the same way. It is notable that receipt of remuneration by the Council will not be part of the criteria. Therefore, in essence the bids will be evaluated against quality only and being an appropriately weighted combination of the relevant areas detailed in paragraph 3.12 of the report as well as any other matters as long as such additional matters are relevant to the subject matter of the contract.
- 5.10 Any change in provision or services should be considered in accordance with the, The Council has the need under the public sector equalities duty in accordance with the Equalities Act 2010 to have ‘due regard’ to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a ‘protected characteristic’ and those who do not share that protected characteristic. The Council should perform a proportionate equality analysis before determining its preferred procurement option and include such requirements as a part of the bid / evaluation process.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 Draped Seated Woman is currently not accessible to residents of Tower Hamlets unless they travel to YSP to view the sculpture. The proposed relocation therefore broadens the potential audience and makes it accessible to the widest possible range of Tower Hamlets residents.
- 6.2 The proposed criteria, as set out above, include a number of requirements which are directly designed to address One Tower Hamlets considerations. These include the requirement to provide free of charge access to the sculpture in an easily accessible location, as well as an education and outreach programme to engage harder to reach audiences.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 The preferred approach set out in this report meets the Council's Best Value Duty. The selection of an external local hosting partner at nil cost to the Council enables a high value artwork to be returned to its home borough. The agreement replaces an existing agreement with Yorkshire Sculpture Park, which similarly does not place any financial obligations on the Council. The proposed agreement therefore adds the benefit of enabling Tower Hamlets residents to access the sculpture more easily.
- 7.2 Selection of a local hosting organisation will be carried out as a procurement exercise in line with the Council's Procurement Procedures and the Constitution. This is in accordance with the procurement element of the Council's Best Value Improvement Plan and ensures compliance with the Secretary of State's Directions.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 None.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 This report sets out the preferred option for returning a high value piece of public art to Tower Hamlets. The approach to assessing the options available to the Council has been strongly focussed on risk mitigation. The preferred option minimises the risk of physical loss or damage to the artwork by requiring any future location to have robust security arrangements and be more overlooked than would be the case in relation to local parks or other Council owned sites with limited surveillance. The preferred option also minimises the risk of financial loss or exposure to the Council by requiring the hosting organisation to meet any costs associated with hosting the artwork.
- 9.2 There is a risk that no bidders will come forward. However, it must be noted that, as set out elsewhere in this report, a number of organisations have previously expressed an interest in hosting the sculpture.



## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 The preferred option as set out in this report seeks to minimise the risk of crime and disorder by placing the sculpture in a secure location.

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 None.
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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- None

#### **Appendices**

- None

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- None

#### **Officer contact details for documents:**

N/A