



## SCRUTINY TASK GROUP REPORT

### PUBLIC ART PANEL

DECEMBER 2014

#### 1. INTRODUCTION

- 1.1 The Cabinet Member Healthy Lifestyles, Councillor Rowena Hay, first suggested that the governance and accountability of the Public Art Panel was a suitable topic for scrutiny. A discussion paper was brought to the Overview and Scrutiny Committee on 8 September 2014 setting out the history of the panel and the findings of a previous review carried out by the Social and Community O&S Committee in 2011. The recommendations from that review were agreed by Cabinet at the time and good progress subsequently made in implementing them. These are available in the report which went to Overview and Scrutiny Committee in September 2014 if any member wishes to read the details.
- 1.2 These recommendations included the appointment of an independent lay member chair, agreed membership of the panel and a regular programme of meetings within the council's municipal calendar. Under these new arrangements the panel has gone on to demonstrate a successful track record in its support for the delivery of public art within the borough
- 1.3 At the O&S meeting in September, the Cabinet Member was keen to recognize the contribution made by the panel and emphasise that in her view it was working effectively. Her main concern was that as she had been designated as the Cabinet Lead Member for Public Art, she needed to understand the process for selecting and appointing panel members and have clarity with regard to the lines of authorisation for the spending decisions it reached. This was particularly relevant due to the level of section 106 funds earmarked for public art at any one time with total amounts typically in the order of £300,000, a considerable sum.
- 1.4 The O&S committee agreed that the best way to progress these governance issues would be to hold a joint workshop with members of the panel and scrutiny. Councillors Harman, Payne, Colin Hay and Ryder were nominated as the scrutiny members who would be invited to attend.
- 1.5 This workshop was held as the first item on the agenda of the Public Art Panel meeting on 12 November 2014. It was facilitated by the Democratic Services Manager, Rosalind Reeves. Two scrutiny members, namely Councillors Payne and Ryder were in attendance and the Townscape Manager, Wilf Tomaney was present to answer any questions and give guidance on the process.

- 1.6 There was further follow-up after the meeting with officers particularly with regard to the governance issues and decision-making process and Shirin Wotherspoon from One Legal gave guidance on the Constitution.
- 1.7 This report summarises conclusions from this work and makes a number of recommendations which can be forwarded to Cabinet.

## **2. MEMBERSHIP AND TERMS OF REFERENCE**

### **2.1 Membership of the task group:-**

- Councillor John Payne
- Councillor Chris Ryder

And with officer support from:

- Rosalind Reeves, Democratic Services Manager
- Wilf Tomaney, Townscape Manager
- Shirin Wotherspoon, Solicitor One Legal

### **2.2 Terms of reference**

- To review the governance arrangements for the Public Art Panel with particular reference to the appointment and membership of the panel and its decision-making
- To make recommendations to Cabinet as appropriate via O&S Committee

## **3. OUR FINDINGS**

### **The Achievements of the Public Art Panel**

- 3.1 When the scrutiny members attended the meeting of the Public Art Panel we were impressed by the enthusiasm and commitment of the panel members. They give up their time on a voluntary basis to support Public Art in Cheltenham and have a successful track record of delivery. We commend them for their hard work and their contribution should be recognized by the Council.

### **Selection and Election of Panel Members**

- 3.2 The terms of reference for the panel were set some time ago and we think they would benefit from a refresh. In particular the membership of the panel should be clearly set out and terms of office included. We have worked with officers to draft some revised terms of reference and these are attached as Appendix 1 to this report.
- 3.3 We welcome the continuation of a non-elected/councillor representative as chair to ensure some continuity but we suggest in the terms of reference that they are re-elected every three years. Ideally a new chair would then be elected but the existing chair could be re-elected for one further term before they must stand down as chair, though they could continue to remain on the panel as a representative of their organisation. Similar

conditions should also apply to co-optees. This will ensure that the panel is kept fresh with new ideas.

- 3.4 In particular we would draw attention to the fact that the majority of the membership are representatives from organisations. It is up to the organisations who they put forward but we suggest they refresh their membership every three years and the panel should consider implementing a system of suitable substitutes.
- 3.5 The terms of reference lists the organisations that are currently represented on the panel. If at any point the panel felt they would benefit from additional representation they could appoint an individual from an organisation as an additional co-optee. It is suggested that the number of potential co-optees be increased from 2 to 3.
- 3.6 The Cheltenham Trust has now been commissioned by the Council to deliver sports and leisure services for the borough. Although their brief does not specify public art as one of their deliverables we think the Trust could use Public Art to support some of their objectives in promoting awareness and understanding of visual arts. As a major organisation for arts in the town we think they should be invited to nominate a member to join the panel as their expertise could be very valuable.

#### **The role of the panel in projects**

- 3.7 As mentioned the panel is an 'advisory' panel. This is true in terms of their role in advising the Cabinet Member with responsibility for Public Art or any organisation wishing for advice and guidance in this field. However we do feel that the panel performs a wider role in that it assists the Director of Environmental & Regulatory Services with commissioning project managers to carry out public art projects and subsequently receiving progress updates and managing issues arising. We feel this important role needs to be made clear in the terms of reference.

#### **Project Sponsors/ Budget holder and stakeholders**

- 3.8 In performing this project review role, it is also important that the panel have a mechanism for reporting back progress to project sponsors, budget holders and stakeholders.
- 3.9 We are advised by one of the project managers from the Public Art Pool that they followed a project management process. We were keen to ask the panel what decisions they made on projects. In response the panel did not feel there were specific decision points but projects followed a due process and therefore evolved over the project life cycle.
- 3.10 Members familiar with the Prince2 methodology adopted within the authority, highlighted that this methodology would have key decision points along the way and a formal process for reporting to project sponsors. This would be set out in the project initiation document. We did not go into the detail of the project management methodology used in managing the public art projects but there should be similar decision points and key milestones which could be identified.
- 3.11 We feel it would be beneficial for some officers from the council's business development team to sit down with a representative from the Public Art Pool to better understand the project management structure adopted for Public Art projects and assist in identifying the

milestones and decision points.

- 3.12 We think there is also an issue about accountability for the successful delivery of a public art project. Clearly the project manager has a contractual responsibility because they are being paid to deliver the project. We were keen to ask the panel the question “If a project got into trouble and the media started to ask questions who would be the individual who would stand up and be accountable?”
- 3.13 The panel responded that there was always likely to be a difference in public opinion on a particular piece of public art. That may be so but the question we were asking was relating to a more serious problem, for example if a project went seriously over budget, or the contracted artist went out of business for example. Who would be accountable in that case?
- 3.14 The scrutiny members were of the view that in this case it would be the project sponsor or budget holder that would need to be kept fully aware and would ultimately be accountable. This could be the Cabinet Member/Director of Environmental & Regulatory Services responsible for public art or the budget holder/Director.
- 3.15 This reporting mechanism needs to be made clear in the project initiation document which is then jointly agreed before work on the project commences. We feel this is essential to the successful management of a project.

**Decision making**

- 3.16 Within the authority there is a specific decision-making process which is set out in the Council's Constitution. The schemes of delegation set out which decisions must be made by Council, by Cabinet, those which can be taken by a Cabinet Member and those which are delegated to Directors/officers. There is a statutory requirement to publish Executive decisions made by the Cabinet or a Cabinet Member and there is also a statutory requirement to publish certain types of officer decision.
- 3.17 The first point to establish is that any decisions relating to public art projects which are being delivered on behalf of the authority would need to follow these procedures.
- 3.18 One Legal were very clear in their advice that decision making in respect of the Public Art Panel should be one of the following:

Cabinet	In respect of Key Decisions
Cabinet Member Healthy Lifestyles	Who has been delegated authority by the Leader to be the Cabinet Member for Public Art
The Director of Environmental & Regulatory Services	Who is the relevant Executive Board Lead Officer for the Public Art Panel
Officers	To whom the Director has sub- delegated authority. These decisions would be likely to be taken by the Townscape Manager who has responsibility for the budget for the section 106 money.

- 3.19 The authority has a statutory requirement to publish such decisions and they would need to be supported by the appropriate documentation, typically a report.
- 3.20 The challenge is deciding at which points in the life cycle of a public art project, these decisions need to be taken and formally recorded. We would suggest as a minimum the following decision points could be designated and the decision maker is indicated in brackets:
- i) Define the key roles and responsibilities i.e panel members, stakeholder, budget holder, relevant officer who will be consulted on and named in the project initiation document (Director/Officer)
  - ii) Agreement of a project initiation document which would set out roles and responsibilities and budget and authorises the project to proceed (Cabinet Member)
  - iii ) Appointment of a project manager (Officer)
  - iv) Agreement of the project brief for potential artists prepared by the Project Manager (Director/Officer)
  - v) Selection of artist (Director/Officer )
  - vi)) Tenders and contracts (as required by the Contract Rules )
- 3.21 We are keen to stress that we do not want to create a burden of administration for the officers, project managers or the panel but we do feel it is essential to maintain a proper audit trail and indeed this is a statutory requirements where the authority's monies are being spent.

#### **Dissemination of Information**

- 3.22 We have already mentioned the need to keep project sponsors and budget holders updated on projects. We also think it is important for the Public Art Panel to promote their achievements to the wider group of Councillors. This could easily be achieved by officers supporting the panel including an update on the Members Briefing after each panel meeting.
- 3.23 Members could also request to have a copy of the minutes of the Panel or view the minutes on the intranet link.

#### **Public Art Strategy**

- 3.24 The Public Art Strategy forms a valuable document within the authority and for the panel, project managers and potential developers and sponsors. It was produced in 2004 and has not been updated since then and the panel are very keen that it should be updated with the involvement of the Public Art Pool. We think the authority should undertake this valuable piece of work by providing some resource and budget for the task. Officers have previously obtained estimates from individuals or organisations who could carry out the work at a cost of £5000 or £6000 hence the need for £6000 of funding for this work. We understand that some councils have top sliced the section 106 funding to fund this sort of work. One Legal has confirmed that top slicing sums may be possible for future s106 agreements but it is not part of the current Public Art SPG policy. In those circumstances, owner/developers may not accept the obligation as a valid requirement.

#### **Community Infrastructure Levy**

- 3.25 The Government is introducing changes which will allow councils to develop a charging structure for a Community Infrastructure Levy which could replace Section 106 agreements. We understand that Cabinet has agreed in principle to ask officers to investigate the feasibility of charging such a levy. We have not gone into this in any

detail but this may be an opportunity to change the way developers provide funding for public art. Therefore public art requirements should be considered as part of this feasibility study and the Public Art Panel should be consultees on the project although it was accepted that such contributions are likely to be at the lower end of the list of levies.

#### **4. CONSULTATION**

- 4.1 During the course of this review we have consulted with officers involved in this issue. The Cabinet Member Healthy Lifestyles attended the meeting of O&S when this review was initiated and had the opportunity to review our draft report. We also met with members of the panel and sent out our report to members of the Public Art Panel for their comment.

#### **5. RECOMMENDATIONS**

- 5.1 Taking all our findings into consideration, the task group agreed a number of recommendations to Cabinet, namely that :
- i. **The Public Art Panel are commended for their achievements to date in the support of Public Art in the borough.**
  - ii. **The revised terms of reference for the Public Art Panel as set out in the Appendix be approved and adopted by the Public Art Panel at their next meeting and communicated to the organisations represented on the Public Art Panel.**
  - iii. **A representative from the Cheltenham Trust be invited to the Public Art Panel and if accepted, that the membership of the Public Art Panel be extended accordingly.**
  - iv. **The non-councillor membership of the Public Art Panel be formally appointed at the next meeting of the Public Art Panel and a review date set for 3 years hence in 2018.**
  - v. **A sum not exceeding £6000 be allocated to enable the Director of Environmental & Regulatory to carry out a refresh of the Public Art Strategy.**
  - vi. **The Public Art Panel should be consultees on the Community Infrastructure Levy project.**
  - vii. **The project management process for Public Art is reviewed with the council's business development team.**
  - viii. **Officers supporting the Public Art Panel work with Democratic Services and One Legal to agree when and by whom decisions are being taken and which decisions should be published as part of the democratic process.**
  - ix. **The Members Briefing following the Public Art Panel meetings is used to provide an update to all Councillors and minutes of the Public Art Panel are made available on the intranet subject to any confidentiality.**

#### **6. PROGRESSING THE SCRUTINY RECOMMENDATIONS**

- 6.1 The scrutiny task group will report to O&S on 12 January 2012 and to Cabinet in February.
- 6.2 In conclusion the task we are confident that we have met our terms of reference are and commend our recommendations to the Overview and Scrutiny Committee.

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<b>Appendices</b>	1. The Public Art Panel revised terms of reference
<b>Background information</b>	1. Meeting of O&S 8 September 2014