

Decommissioning Public Art A Policy for East Kent Local Authorities (2006)

1. Introduction

This policy has arisen from an identified requirement by the East Kent Local Arts Partnership group. It has been researched as part of a larger project studying the practice of decommissioning public art on a national scale.

The policy addresses both the decommissioning of existing public art and planning for the decommissioning of new works.

2. Aims

The aims of this policy are to ensure that in the East Kent districts:

- high quality public art commissions are experienced and maintained
- any required decommissioning of public art is a fair, reasonable and transparent experience for all participants

3. Definitions and Exclusions

3.1 Public Art can be defined as the work of artists or craftspeople within the public realm, and can include a wide range of media - e.g. metal, wood, glass, textiles, light, sound, text – as well as artist-designed places, spaces and functional items e.g. public squares, planting, street furniture. It also includes artist collaborations with other design professionals, e.g. architects, engineers, landscape architects, and artist interventions in particular elements of a place or space – e.g. an artist-designed colour scheme. Public Art may be deemed permanent or temporary, and can also comprise research, participation and event-based works.

3.2 Excluded from this definition for the purposes of this policy are any historical monuments, memorials or statuary already covered by Conservation policies.

3.3 Decommissioning is defined as the removal from its original site, or the destruction of, a public art commission.

4. Policy Requirements

4.1 Audit of existing work

The East Kent Districts will keep an accurate audit of all existing public art commissions (or create one if none exists). This will include the name of the work, name of the artist, date commissioned, material, location, and condition. It should be updated every time a new work is added.

4.2 Annual review of existing work

Using the audit, an annual review of the physical condition of the works should be noted. Where the physical condition is cause for concern, or where attention has been drawn to the condition of a work outside the regular review, a more detailed appraisal, according to the health and safety/risk assessment policies of the Council should be carried out. This may then trigger the decommissioning process through the Review Group (see below in section 5) or as an Emergency Decommission (see section 6).

4.3 Contracts

All commissioned work should be the subject of a contract agreed between the Council and the artist. All contracts should include contact details for the artist, and a requirement to keep these details updated. All contracts should include life expectancy, maintenance and decommissioning clauses (see below at 5.2).

Commissions carried out prior to the adoption of this policy may not have contracts or decommissioning clauses in place. This policy therefore covers decommissioning of both existing commissions and planning for decommissioning of new commissions.

4.4 Review Group

A Review Group will be needed to discuss decommissioning of individual works at the agreed Review Period (see 5.2.5 below) and when there is a request for decommissioning outside a Review Period (particularly where there is no contract or decommissioning clause in place).

4.5 Named Officers and members of a Review Group

Each District should nominate an officer to lead on the review and decommissioning of public art works. Each District should keep a register of a pool of appropriate officers, members and local arts personnel who have agreed to be part of a Review Group when the need for one arises.

4.6 Alert system linked to redevelopment plans

Planning Officers within the authority should be made aware of the nominated officer for decommissioning public art works, and where any planned redevelopments may impact on an existing art work they should inform the nominated officer as soon as possible.

5. Planning for Decommissioning

5.1 Commissioner's Intent

Commissioning bodies should be clear on their intentions when commissioning artworks and recognise the commitment and responsibilities they are taking on. The intention and context of art commissions informs the likely decommissioning scenarios. The East Kent Local Authorities need to be clear whether their public artworks are seen as part of a civic collection of artworks, or whether they are integral parts of the public realm, subject to the same maintenance but also the same risk and damage assessments. Where artworks are commissioned as part of a new development, they may be subject to decommissioning in a certain amount of time if the area is likely to be redeveloped. Where artworks are commissioned as monuments to a contemporary figure or event, a view may need to be taken as to how long such memorials may be relevant.

A broad view therefore needs to be taken of the likely decommissioning scenario for each commission, according to the commissioner's intention. This need not be a formal written document, but should be considered in the light of the brief and contract for the commission.

5.2 Contracts

The areas of contracts which are relevant to decommissioning are listed below. Suggested wording for these clauses is at Appendix 1. All contracts between the East Kent Local Authorities and artists should cover these issues:

5.2.1 Ownership

Ownership of the finished artwork needs to be made clear in the contract. In most cases it will be the Local Authority itself, in which case the Local Authority can take the lead on any necessary decommissioning activity. If the work is to be the property of another body, then the Local Authority should satisfy itself with the lifespan, maintenance and decommissioning clauses in the contract. Note that ownership and copyright in the work are two different issues.

5.2.2 *Lifespan*

The expected lifespan of the work should be made clear in the contract. This will vary from work to work, and the East Kent Authorities might like to use the following definitions to assist in defining lifespan for each work:

- temporary – up to 5 years
- mid span – up to 15 years
- long term – up to 50 years

Alternatively, according to the type of work being commissioned and its context, the contract could stipulate a particular number of years.

The lifespan clause is important in order to agree expectations between all parties. It also helps to define and assess technical requirements of materials, manufacturing and installation. It also forms a definite cut off point where a decommissioning discussion is mandatory.

5.2.3 *Maintenance*

Maintenance is a key issue in relation to lifespan (and lack of maintenance can often result in controversial decommissioning). An artist may design or make a work which will fulfil its lifespan requirements, but only if particular maintenance is carried out. The likely extent of maintenance which will be undertaken on a work needs to be made clear to the artist before any design proposals are embarked upon. The contract needs to make it clear that the artist must provide a maintenance schedule, but it also ties the commissioner in to fulfilling the schedule.

The maintenance clause in the contract therefore needs to make reference to a meaningful maintenance schedule. Again this is a way of agreeing expectations between parties. (Note that in most cases, it is cheaper to maintain a work than to decommission it.)

The maintenance clause may also make reference to the artist carrying out any repairs as the first contractor of choice. Again, this is something which should be explored and agreed in advance of the contract being signed.

5.2.4 *Decommissioning and Decommissioning Methods*

The contract should have a decommissioning clause which makes reference to the lifespan, review (see below) and emergency decommissioning requirements. (see section 7).

The contract should detail the method of decommissioning if this can be agreed at this stage, or it should detail the preferred options. Options include:

- Moving to a new site.
- Removal and donation

- Removal and storage
- Dismantling/destruction. (with details of what happens to any salvageable materials)

These are discussed in more detail in 5.3 below.

5.2.5 *The Review*

In most cases, the artwork should be reviewed thoroughly at a set period after commissioning, to assess its condition and any action which is needed to be taken. This set period should be agreed with the artist and written into the contract. The recommended time for review for permanent projects is 5 years (temporary projects may not need review at all, depending upon their expected life). The artwork should also be reviewed a short time before the end of the agreed lifespan. The Review is carried out by a Review Group. This is detailed further at 5.3 below.

5.3 Process of Review

5.3.1 *Principles of the Process of Review*

- The process must be transparent
- The process must allow sufficient time
- The process should engage with experts.
- The process should engage with artists.
- The process should gather appropriate input from key constituents.
- The process must be resourced.
- The process should be documented and a visual record of the work in situ included in this.

5.3.2 *What Triggers a Review Group Process*

- The Review Group meets at the agreed review periods as set out in the commission contract.
- The Annual Review is carried out to report briefly on the status and condition of artworks. This can trigger the Review Group if concern for the physical condition of an artwork demands it.
- The planned redevelopment of a site where an artwork is located can also trigger a Review Group – the nominated officer needs to keep abreast of such developments and feed into the review group accordingly.

5.3.3 *Preparation for the Review Group: Consultation*

The nominated Officer must carry out a required set of consultations with interested parties so that their opinions can be fed into the Review Group discussions. These include:

- Any partner funders
- Community groups, schools etc who may have taken part directly or indirectly in the original commission
- Current local community group or residents association, or business association if appropriate

The Officer should also carry out research into alternative locations for the work, should the review group agree that re-siting is the best way forward.

Paperwork

Review Group Members should be given the original brief and contract, plus the most recent condition reports, as well as images of the work. A site visit should also be carried out as part of the Review Group meeting.

5.3.4 *Membership of the Review Group*

The Review Group should be made up of the following:

- The nominated Officer with responsibility for commissions/decommissioning
- Another Council Officer with a special interest e.g. urban design, planning, engineering
- The Council's Health and Safety Officer, or a representative from Maintenance, Estates or equivalent
- The Artist
- An external arts expert (either an artist, curator or public art consultant)

Additional members of the panel might include:

- An Elected Member with a special interest (either by Ward or special responsibility)
- A representative of a relevant community group, school or other relevant organisation

5.3.5 *The Role of the Review Group*

The Review Group is convened to look at the condition and context of the artwork under a number of headings, and to agree any action that needs to be taken. The group should examine the artwork under the following criteria:

- Physical condition (*in terms of appearance, soundness and safety*)
- Relevance to context (*is it still relevant to the context it was commissioned for?*)
- Access (*i.e. can the work still be physically or visually accessed as was originally intended?*)
- Artistic Value (*has the artist's intention been compromised since the work was completed? did the work have historical, social or cultural significance that is now compromised?*)
- Results of consultation (*what was the outcome of the consultation carried out with interested parties*)

Where the Review Group considers that there are problems with the work in any one of the above areas, it should discuss whether the problems can be solved, and if so agree the action to do so, or if the problems cannot be solved, then it should recommend decommissioning.

5.3.6 *Where there is no contract or decommissioning/review agreement*

All artworks will be monitored for physical deterioration in the annual review, whether there is a contract in place or not. If the condition causes reason for concern, the Review Group will be convened to discuss the work in the same way as described above. Similarly, an artwork which is to be affected by a planned redevelopment may come forward to the Review Group but does not have a contract or decommissioning agreement.

In these cases, the work should be considered in the same way by the Review Group. Where a written contract does not exist, the artists' moral rights should still be respected, and all efforts made to contact them and involve them in the decommissioning discussions. If the artist is unknown or not contactable, their rights should still be respected in the discussions.

In many cases it will not be possible to provide thorough preparation and paperwork for the Review Group when it is considering such a work. There may be no contract or brief on file or in existence. Condition reports and images should however be provided, and any consultation, particularly local to the site, should still be carried out.

5.4 **Process of decommissioning**

If the Review Group agrees that the work should be decommissioned, the Group must look at the process and agree how this will be carried out.

Note that the particulars of funding must be checked at this stage. If there has been joint funding of an artwork, or it was the subject of a bequest, the nominated officer should confirm whether there are any conditions imposed on the project should the work be decommissioned (e.g. there may be a requirement to donate work or materials.)

The process of decommissioning can take a number of forms, and depends upon the reason for decommissioning. Destruction should be a last resort. The options are:

- Moving to a new site – *suggested sites should have been researched prior to the meeting and should be discussed.*
- Removal and donation to another organisation e.g. *charity or school*

- Removal and storage (*by the artist or a.n.other*)
- Dismantling/destruction. *Donation of any salvageable materials, or given to artist*

5.5 Costs of decommissioning

There are a number of costs associated with decommissioning. These range from payment of the Review Group members for their expenses, to the cost of physical destruction or removal of a large scale work. Planning for the expense of decommissioning should begin with the commission budget, in the same way that the planning for future maintenance costs should be addressed at the beginning of the project.

5.6 Recommendations of the Review Group

The recommendations of the Review Group can be acted on directly by the officer responsible.

6. “Emergency” Decommissioning

There may be a case where the decommissioning of an artwork is urgent, due to rapid physical deterioration, for example, after heavy vandalism or a traffic accident. If at all possible, the site should be made secure and safe whilst the Review Group is urgently convened to discuss the best way forward. In such cases, the nominated officer must make best efforts to contact the artist involved and inform them of what is happening.

It is only if the work has become such an obvious danger to the public that it needs to be removed immediately, that decommissioning may take place without the Review Group meeting. This “Emergency Decommissioning” must be seen as a last resort in the most extreme cases.

In such a case, the nominated officer must again try to inform the artist of what is happening, as well as the Review Group. The artwork, and then the decommissioning of it should be documented. If any materials are salvageable they should be first offered to the artist. The nominated officer should then write a full report to be taken to the next Review Group, or a special Group should be convened to accept the report and agree the decommission.

7. Dispute

There may be rare cases where the Review Group cannot come to an agreement. In such cases of irreconcilable dispute, a mediator from an outside arts organisation such as the Arts Council could be asked to

attend a further Review Group meeting to adjudicate. However, the Arts Council may well have been involved in the commission as a funder. In most cases, Independent Arbitration (as described by the Law Society) will probably provide the best route.