

**BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE****PUBLIC REPORT**

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b> <b>Date of Decision:</b>	<b>Assistant Director - Street Scene</b> <b>24th April 2020</b>
<b>SUBJECT:</b>	<b>SMALL HEATH PARK – INSTALLATION OF THE INTERNATIONAL MOTHER LANGUAGE MONUMENT</b>
<b>Wards affected:</b>	<b>Small Heath</b>

**1. Purpose of report:**

- 1.1 To seek approval to the installation of an International Mother Language Monument in Small Heath Park.

**2. Decisions recommended:**

That the Committee notes that an application for planning permission for the monument has been submitted by the International Mother Language Monument Project (IMLMP) on land in Small Heath Park and approved on 30<sup>th</sup> January 2021 as shown in Appendix 1.

and the Committee recommends that

- 2.1 the erection and dedication of the monument on land in Small Heath Park is approved subject to the satisfactory resolution of the planning conditions, the on-going consultation and the development of a future management and maintenance plan to enable the erection and dedication of the monument on land in Small Heath Park as shown in Appendix 2.
- 2.2 as soon as the above matters are properly resolved to advance the recommendation of the Trusts and Charities Committee to the next available meeting of the Council as Trustee for approval, if required
- 2.3 approval be given to the negotiation and settlement of the terms for the installation and occupation of land or of any disposal necessitated by the installation being delegated to the Assistant Director of Property
- 2.4 authorises the City Solicitor to make any further applications necessary for appropriate powers or approvals from the Charity Commission or other party or body as appropriate to agree to the disposal or use of the land and then to prepare, negotiate, seal, execute and complete all legal documentation to give effect to the above recommendations.

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### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

Small Heath Park is held in trust and it is appropriate that the matter be considered via the Trusts & Charities Committee once officers in the Street Scene and Parks Service have considered all practical issues. The International Mother Language Monument Project is undertaking all local consultation and will report the results to the Street Scene and Parks Service. Consent by Parks officers will only be given if the consultation requirements have been fully complied with and the results considered to be satisfactory and agreement of the future maintenance of the monument and surrounds is agreed.

The scheme was presented to the joint Small Heath and Bordesley Ward Forum Meeting on 25<sup>th</sup> February 2021 and the local Ward Members are supportive of the proposals going forward.

The District Parks Manager is supportive and officers in the Landscape Practice Group are supporting The International Mother Language Monument Project with project management advice.

The proposals were presented by the Assistant High Commissioner for Bangladesh to the Public Art Gateway Group on 14<sup>th</sup> April 2021, where the project was supported.

Officers from the Parks Service are due to present the proposals and update the Cabinet Member for Street Scene and Parks on 19<sup>th</sup> April 2021.

##### External

The International Mother Language Monument Project in order to hold a meaningful consultation during the Covid19 pandemic restrictions have undertaken a neighbourhood wide Facebook consultation and will collate the responses into a report when the consultation closes. This is being left open for as long as possible to allow for as many people to comment as possible.

No additional separate consultation is envisaged except where further consultation locally may be required to satisfy the requirements of the Charity Commission and the Charities Act 2011.

3.2 Are there any relevant legal powers, personnel, equalities, procurement, regeneration and other relevant implications?

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision making to the Trusts and Charities Committee. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust document as amended by any Scheme approved by the Charity Commission.

Birmingham City Council holds a long leasehold interest being a 900 year lease from 29<sup>th</sup> September 1876 of the land comprising Small Heath Park in trust as Sole Corporate Trustee and is responsible for ensuring the Trust is managed in accordance with the lease as the governing document and in accordance with charity law and relevant Charity Commission guidance. Day-to-day management is delegated to the Parks Service via the Acting Director of Neighbourhoods.

The installation of memorials on park land, whether in trust or not, is a suitable use for the land. Provided arrangements for the installation and for the on-going maintenance can be formally resolved the installation will be managed by the International Mother Language Monument Project but no disposal or lease of land is envisaged. Birmingham City Council Parks service will indemnify the Trust against costs of repairs and maintenance and any future decommissioning and enter into a corresponding agreement with the IMLMP to ensure recovery of any costs incurred by the Parks Service as a result of any maintenance or emergency repairs or remediation required for health and safety or community welfare reasons. It is the intention of the IMLMP to commission the Parks grounds maintenance team, Birmingham Parks and Nurseries, for the first 3 years following erection of the monument and then review the agreement following this period. The IMLMP will also be required to be fully constituted with appropriate Terms of Reference and management structures in place. This will also include confirmation that appropriate Public Liability Insurance has been secured for the monument structure.

3.3 How will decisions be carried out within existing finances and resources?

The Committee has responsibility for ensuring the proper governance of the Trust in accordance with the objects of the trust and charity law. The Trustees must act with prudence and must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. Financial arrangements for this installation are set out in section 4.6.

3.4 Main Risk Management and Equality Impact Assessment Issues (if any):

Not applicable. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

#### **4. Relevant background/chronology of key events:**

4.1 Small Heath Park was formed from the original gift of 16.63 hectares of land from Miss Louisa Anne Ryland who also gave money for it to be laid out as a park which opened in 1879. The gift was by way of a long lease of 900-year lease from 29<sup>th</sup> September 1876. The terms of the gift require the Park to be used for 'providing for the inhabitants of the City, parks and other places of healthful and pleasurable resort'.

4.2 International Mother Language Day is a worldwide annual observance held on 21 February. Although initiated in Bangladesh Mother Language Day is part of a broader initiative to promote awareness of linguistic and cultural diversity and promote multilingualism. First announced by UNESCO on 17 November 1999, it was formally recognized by the United Nations General Assembly with the adoption of UN resolution 56/262 Multilingualism in 2002. It should be noted that International Mother Language Day events have been held at this Park for several years already with a temporary monument erected for the event. Also note that the original application was made for a monument with the central panel being 7.0m high and that in discussion with the planners the scale of the monument has been much reduced with the central panel now being 4.0m high and the others reduced proportionately, set on a 1.0m high plinth giving an overall maximum height of 5.0m from ground level. .

4.3 The proposed monument will be one of several in Britain. Although not in the current proposals or the planning approval, the provision of any lighting and water to the memorial area will require additional approvals including for underground pipes and wires but these would feed from existing services in the area and be minimal in their disruption. The work to install the memorial will be managed carefully by the Parks Service operatives. There should be little impact on the public areas of the Park generally.

4.4 The works may require a small compound to be formed in the Park. Proposals for this are being discussed and will be subject to a licence to be negotiated. It is requested that the works proceed urgently once planning conditions have been cleared. All appropriate local consultation will be completed including appropriate advertisements for the temporary loss of access to the open space during the contract, if necessary. Once constructed the memorial will be open to the public and there will be no permanent loss of public open space.

#### **4.5 Aims and Objectives of the Trust**

Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The specific objects of the trust are that Birmingham City Council shall hold the land as parkland. The installation of works of public art is consistent with the provision of parkland open to the public.

#### **4.6 Trustee Powers**

A trust's constitution is set out within the executed Trust Deed for each property principally the acquisition deeds as amended by a scheme agreed with the Charity Commission, if any. All decisions will be mindful of the original intention of the documents although routes exist for their amendment through Part 7 Charities Act 2011 or an Order or Scheme from the Charity Commission.

#### **4.7 Trust Finances**

The trust delegates the management of the park to the Birmingham City Council Street Scene and Parks Service who cover all costs and collect income generated, if any, which would be used to partly offset the running costs incurred at the Park.

The proposed memorial installation is essentially a cost neutral proposal as far as the trust is currently concerned. The cost of the design and construction works will be fully funded by external capital through the International Mother Language Monument Project who will also provide assurances to BCC Street Scene and Parks Service that an effective maintenance regime will be put in place. This will be underpinned through a management and maintenance plan and agreement between BCC and the IMLMP.

**5. Evaluation of alternative option:**

The memorial site has been selected after discussion with Parks Service officers. The site selected is suitable for the installation and for the annual ceremonies anticipated and the memorial is an attractive addition to the Park.

**6. Reason for Decision(s)**

- 6.1 The use of the land for the memorial and the celebration day is compliant with the Trusts Objects of operating a park open to the public.

**Signatures:**

Chief Officer(s): .....

Dated: .....

**List of Background Documents used to compile this Report:**

1. Acquisition - lease dated 22nd December 1876

**List of Appendices accompanying this Report (if any):**

1. Planning Approval 2019/06270/PA and Conditions
2. Layout Plan and Elevations Drawing ref 80442/L02D