

Birmingham City Council

Report to Cabinet

17 March 2020



Subject: MIDLANDS ARTS CENTRE – NEW LEASE AND FUNDING ARRANGEMENTS

Report of: ACTING DIRECTOR, NEIGHBOURHOODS

Relevant Cabinet Member: Councillor Ian Ward, Leader of the Council

Relevant O &S Chair(s): Councillor Lou Robson – Economy and Skills

Report author: Symon Easton - Head of Cultural Development
Neighbourhoods Division
Telephone No: 0121 303 1301
Email Address: symon.easton@birmingham.gov.uk
Philip Andrews - Head of Operational Property Management
Birmingham Property Services
Telephone No: 0121 303 3696
Email Address: philip.andrews@birmingham.gov.uk

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Moseley		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 005280/2018		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. Information relating to the financial or business affairs of any particular person (including the council)		

1 Executive Summary

- 1.1 In 2008, to facilitate a building redevelopment project (the Project) to the arts centre in Cannon Hill Park, Cabinet Committee (Property) approved the

surrender of the existing lease held by Midlands Arts Centre (MAC) and the granting of a new lease on completion of the Project.

- 1.2 Following recent discussions with the MAC this report sets out proposed changes to the new lease in order to re-align the future funding arrangements.
- 1.3 Authority is sought to enter into a new lease with MAC for the Midlands Art Centre on revised terms including authority to write off debt owed for monies in regard to the Project.
- 1.4 On an annual basis, the Council award Arts organisations Grant funding from the 'Support to the Arts' budget. The proposal for MAC in 2019-20 was a new arrangement for funding via an Endowment Fund (Commissioning of Arts Activities 2019-20 Cabinet Report. 25 June 2019). This proposed arrangement is the subject of this report following discussion with the Trustees and Directors of MAC.
- 1.5 As such, Cabinet authority is sought to revert back to a grant award for the MAC in the current financial year to recognise their shortfall in funding in 2019-20.
- 1.6 Authority is also sought to set up an alternative funding arrangement of which the principal will have to be invested in a managed endowment fund of which the MAC will be entitled to utilise the interest (less expenses) earned on an ongoing basis.
- 1.7 There will be no further public subsidy in future years to MAC from the Support to the Arts grant distribution or other Council resources.
- 1.8 The Exempt Appendices 1, 2 and 3 contains confidential commercially sensitive information which could impact on the above transactions

2 Recommendations

That Cabinet:

- 2.1 Approves the proposed deed of variation to the original development agreement with MAC for the Project as set out in Exempt Appendix 1;
- 2.2 Approves the utilisation of specific policy contingency (Arts Endowment) to support the write-off of debt owed for monies in regard to the Project, £1.440m as detailed in section 7.3.
- 2.3 Approves the remaining specific policy contingency (Arts Endowment) allocation, £0.529m to be reverted to general contingency as detailed in section 7.3.
- 2.4 Approves the revenue grant award for the current year 2019/20 to the MAC in lieu of future funding arrangements via an Endowment Fund, of £0.092m (£92,400) as detailed in section 7.3.
- 2.5 Approves, the set up of a future alternative funding arrangement with the MAC via a capital endowment fund, £1.440m, to be held and managed by MAC, in lieu of all future grant payments.

- 2.6 Authorises, upon the surrender of the existing lease, the grant of a new lease on terms detailed in the Exempt Appendices 1 and 2.
- 2.7 Authorises the City Solicitor to negotiate, execute and complete all relevant legal documentation to give effect to the above.

3 Background

- 3.1 On 21st January 2008, Cabinet approved a budget of £14.800m for a major redevelopment of the rapidly deteriorating arts centre at Cannon Hill Park, home to the MAC and Sampad, two of the City Council's supported charitable arts organisations. On 7th September 2009, Cabinet approved a revised budget of £15.033m, incorporating additional work on the theatre refurbishment (£0.033m) and the Sports Block exterior (£0.200m) that would be funded by increased contributions from Arts Council England (ACE) and MAC respectively. The redevelopment Project was successfully completed and the MAC arts centre re-opened to the public on 1st May 2010.
- 3.2 On 21st February 2008, Cabinet Committee (Property) approved the surrender of MAC's existing lease to the City Council and the grant of a new lease of the refurbished building and surrounding land.
- 3.3 The final expenditure on the project amounted to £0.228m (1.5%) above budget, at a total of £15.260m. At its meeting on 27th November 2013, MAC's board agreed to meet the unbudgeted costs. The £6.632m grant that was approved by ACE has been received in full and there has been no change to the City Council's approved level of capital funding (£6.215m) for the Project, final costs shown in Exempt Appendix 2.
- 3.4 A large part of the delay in finalising the lease and receipt of MAC's financial contribution towards the Project has been due to a prolonged search with MAC for an appropriate vehicle for this transaction and a change of accounting rules since the Project began. With the support of their respective tax, property and financial advisors, extensive discussions took place between MAC and the City Council, aimed at identifying the most appropriate basis for delivering MAC's financial contribution towards the Project.
- 3.5 During this time, the financial challenges presented by the austerity agenda, meant that the city council had to significantly cut back on its annual revenue support to the MAC since the venue reopened in 2010 (alongside other organisations in the arts funded portfolio). In MAC's case, the annual 'contract fee' had reduced from £0.756m in 2010 to £0.120m in 2018-19. A further reduction of 23% was proposed to be applied in 2019-20 but the MAC had already registered an interest in taking up an annual revenue benefit from a £2.000m Capital Endowment fund set up by the council in lieu of a grant. The Council had set up a 'client account' arrangement where it retains the principal, but the account allowed an arts organisation to undertake an investment plan on the principal and utilise all the net interest earned.

- 3.6 This initial 'Capital Endowment' funding proposal for the MAC was referenced in last year's Cabinet Report - 'Commissioning of Arts Activities 2019-20'. However, MAC subsequently requested that the Council consider other proposals for their financial arrangements going forward to include the lease premium and Cannon Hill car park income as a holistic funding package.
- 3.7 With the completion of the project, the proposal is to proceed with a lease premium as the method for securing part of MAC's planned contribution and for the MAC to retain the remaining sum to be held by them and set up as an endowment fund, where interest earned from the principal is in lieu of all future grant payments. This proposal requires the council to use Policy Contingency to write off debt owed for monies in regard to the Project. However, this overarching arrangement means that there would be no further grant or public subsidy in future years to the MAC from Support to the Arts Grant distribution or other Council resources.
- 3.8 In recognition of the shortfall in funding for the MAC in the current year, it is proposed that the financial agreement reverts to a 'grant' arrangement in 2019-20, funded from a combination of existing resource within the 'Support to the Arts' budget and interest gained from the Endowment Fund.

4 Options considered and Recommended Proposal

- 4.1 Implementing the initial proposal for MAC to be funded in future via receipts from an Endowment fund held by the council in lieu of a grant has been superseded by a counter proposal from MAC Trustees. Therefore, not to bring MAC back into the arts funded portfolio in the current year will leave them with an unbudgeted shortfall in their 2019-20 accounts.
- 4.2 To treat the new lease agreement (including return of the full lease premium due to the Council) and revenue funding arrangements as separate issues to be resolved - would not assist in reaching an overarching agreement that is mutually agreeable to both parties i.e. a new long lease and capital investment fund retained by the MAC and, for the Council, a write-off of part of the debt but any revenue funding commitment ceasing from 2020-21.
- 4.3 Not granting the lease in totality - would leave the City Council with a shortfall in the proposed lease premium due for the Project and also without an experienced operator for the facility. This would result in the revenue costs for owning and/or operating the facility in future falling back on to the City Council.

5 Consultation

- 5.1 MAC Trustees, (including Councillors Matthew Bennett and Martin Straker Wells (as nominated Trustees on the Board of mac) and Arts Council England (ACE) have been consulted and support the recommendations in this report. The Moseley ward councillors have been consulted and their responses captured in Appendix 4.

6 Risk Management

- 6.1 Not completing the lease: This would result in no mechanism for the City Council to receive any lease premium funding due from MAC and would result in the revenue costs for owning and/or operating the facility falling back on the council. Officers have maintained regular communication with representatives of the MAC regarding the proposed arrangements alongside wider issues regarding Cannon Hill Park and the Council's Culture offer.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 Following completion of the MAC redevelopment project, this proposal finalises the planned arrangements for a new lease and financial settlement. This Project and the activities delivered by the MAC contributes to Council's planned outcomes in the Council Vision and Business Plan 2019-2023 by;

- building a city that invests in its people so that everyone can have opportunities to realise their potential through lifelong learning, skills and good jobs.
- To give all children from every background and community the best start in life with a clear pathway to achieve success and realise their full potential.
- To be a city of vibrant culture, flourishing neighbourhoods, where our citizens have pride in where they live, have a strong sense of belonging and a voice in how Birmingham is run as well as providing increased activity within Cannon Hill Park.

- 7.1.2 More specifically, the Project is consistent with the Council Plan 2019-2023 planned outcomes in the following areas:

- Birmingham is an entrepreneurial city to learn, work and invest in - we will create opportunities for local people to develop skills and make the best of economic growth. We will invest in growth sectors where Birmingham has competitive strengths to diversify the economic base of the city.
- Birmingham is an aspirational city to grow up in - we will inspire our children and young people to be ambitious and achieve their full potential.
- Birmingham is a great, clean and green city to live in - we will foster local influence and involvement to ensure that local people have a voice in how their area is run. We will work with our partners to build a fair and inclusive city for all. We will enhance our status as a city of culture, sports and events.

7.2 Legal Implications

- 7.2.1 The relevant powers for leisure, theatre and recreational activities are contained in Sections 144,145 and 111 Local Government Act 1972 and Section 19 Local Government (Miscellaneous Provisions) Act 1976.Under Section 145 of the Local

Government Act 1972 the Council may do, or arrange for the doing of, anything necessary or expedient for the provision of entertainment of any nature, the provision of a theatre, development and improvement of the knowledge, understanding and practice of the arts and the crafts which serve the arts and any purpose incidental to the matters aforesaid.

- 7.2.2 Under the general power of competence per Section 1 of the Localism Act 2011, the Council has the power to enter into the arrangements set out in this report which also are within the boundaries and limits of the general power of competence Section 2 and 4 of the Localism Act 2011.
- 7.2.3 The Council has a duty to efficiently manage its assets and has power to hold, appropriate and dispose of land under Sections 120-123 of the Local Government Act 1972.

7.3 Financial Implications

In 2019/20 the overall Arts and Cultural activities budget is a Revenue budget of £2.770m

- 7.3.1 In 2019/20 a specific policy contingency was approved for £2.000m to set up a Capital Endowment Fund for Arts Organisations of which the proposed MAC Fund would be £1.440m
- 7.3.2 With the low investment yield on Endowment Fund it is recommended that, of the remaining £0.560m in specific policy contingency, £0.031m is provided to support the MAC in the current year and the remaining £0.529m will revert to general contingency.
- 7.3.3 The Council's debtors include a balance for 2019/20 of £2.401m with the MAC for monies owed from the Project.
- 7.3.4 A debt £1.440m will be written off, this is a non-cash transaction funded by specific policy contingency previously set aside as the Endowment Fund for the MAC. The cash to be retained by the MAC will be set up by them as a managed endowment fund where interest earned from the principal is in lieu of all future grant payments. This would be subject to the following broad principles:
 - 7.3.4.1 The capital fund being invested and all investment income earned would be income to the MAC (the Council will want to assure itself that those investments are ethical).
 - 7.3.4.2 A legal and financial agreement whereby the principal element of this capital fund could not be utilised by the MAC without the prior consent of the Council.
 - 7.3.4.3 The Council would require the first legal charge on this capital fund. In the event of MAC ceasing to operate, these funds would be repatriated to the Council.
- 7.3.5 Due to the delay in set up of the Endowment Fund in the current year, a grant of £0.092m will be awarded for 2019/20 only, this is funded by £0.031m (para 7.3.2 above) with the remaining balance funded within the current Cultural Development Budget.

7.3.6 For completeness, the MAC will continue to benefit from a revenue stream generated from car parking operations at Cannon Hill Park, for the current year 2019/20 these are estimated to be between £0.047m to £0.100m.

7.3.7 The proposed lease premium from MAC will complete the funding of the Project without the need for any new financial resources from the City Council. There are no new ongoing revenue consequences that arise from this proposal.

7.4 Human Resources Implications

7.4.1 Internal professional property, legal and planning resources only have been utilised to deliver this project.

7.5 Public Sector Equality Duty

7.5.1 Whilst the Equality Act 2010 came in to force after the mac project was approved by Cabinet in 2008, the organisation has substantially improved its offer to the public, including many of the Protected Characteristic groups. This not only includes the more obvious physical access improvements to the building but also improvements to the facility that enables activities to be programmed and targeted at these groups. The latest Equality Assessment (EQUA445), attached as Appendix 5, covering funding for Birmingham's arts organisations prescribes that all funded organisations are required to have Equality policies. Organisations must also meet minimum safeguarding standards for work with children and vulnerable adults. All funded organisations must pay a "Living Wage" and comply with the Birmingham Business Charter for Social Responsibility.

8 Background Documents

8.1 "MAC/Sampad Redevelopment Project – Full Business Case" - report to Cabinet dated 21st January 2008

Lease to Midlands Arts Centre (MAC)" - report to Cabinet Committee (Property) dated 21st February 2008

"MAC/Sampad Redevelopment Project – Sports Block" - report to Cabinet dated 7th September 2009

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

1. Exempt Appendix 1
2. Exempt Appendix 2
3. Exempt Appendix 3
4. Member consultation summary
5. Equality Assessment (EQUA445)
6. Site plan