

# Birmingham City Council

## Report to Cabinet

14<sup>th</sup> February 2023



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**Subject:** MIDLAND ARTS CENTRE

**Report of:** Rebecca Hellard,  
Director Council Management

**Relevant Cabinet Member:** Cllr Ian Ward - Leader  
Cllr Jayne Francis - Culture, Heritage and Tourism

**Relevant O &S Chair:** Cllr Jack Deakin - Commonwealth Games, Culture and Physical Activity

**Report authors:** Alison Jarrett,  
Director Group & Capital Finance, Council Management  
Email [Alison.Jarrett@birmingham.gov.uk](mailto:Alison.Jarrett@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):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference: 011061/2023		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### 1 Executive Summary

- 1.1 This report presents the details of a request by the Midland Arts Centre (MAC) in pursuance of the agreement with the Council to request permission to use the capital element of the managed endowment funded granted to the MAC by the Council in 2020.
- 1.2 The report updates and asks Cabinet to note the request and the agreement of the Portfolio Holder to the proposed use, which is expected to deliver an improved financial position to the MAC. The Council will maintain a positive relationship

with the MAC and seek ways in which together the park and the arts centre can deliver future services and experiences for users.

## **2 Recommendations:**

- 2.1 Cabinet note the content of the report and the approval of the Portfolio Holder to the request of the MAC to use the majority of endowment fund to exit an historic pension scheme.
- 2.2 Note that a letter to the Trustees of the MAC will request confirmation and process by which the anticipated financial benefit to the MAC from the pension buy-out will, together with the remaining endowment fund, contribute to financial sustainability of the centre and Trust.
- 2.3 Note that through this arrangement and the benefit of car park income share, the Council continues to support and endorse the work of MAC in adding to the cultural contribution for the city.
- 2.4 Authorises the City Solicitor to negotiate, execute and complete all necessary documentation to give effect to the above recommendations.

## **3 Background**

- 3.1 On 17<sup>th</sup> March 2020 Cabinet approved a Capital Endowment Fund for Arts Organisations of which the proposed MAC Fund would be £1.440m. This cash was to be retained by the MAC and 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:
  - 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).
  - The principal element of the capital fund could not be utilised by the MAC without the prior consent of the Council, and that the Council would be the first legal charge on the fund. In the event of MAC ceasing to operate the funds would be repatriated to the Council.
- 3.2 The MAC does continue to benefit from a revenue stream generated from car parking operations at Cannon Hill Park, estimated to be around £47k to £100k.
- 3.3 In return for the endowment arrangement there would be no further public subsidy in future years to MAC from the Support to the Arts grant distribution or other Council resources.
- 3.4 Since May 2022, the MAC Trustees have taken steps to determine the best use of the £1.44m fund. Following a tender process, they identified a preferred investment manager to work with however they are not yet appointed. Setting a moderate risk profile of investment it was expected that in the market at the time of the report (Q4 2022) the investment return may be of the order of 2.8% after

costs. This return may improve should inflation reduce as predicted by economists to an expected return of 4%. The risk profile downside also means a potential 25% risk of reduction in the capital value.

- 3.5 MAC is currently a member of the PSATSA (Pension Scheme for Administration and Technical Staff in the Arts). This is a defined benefit scheme, set up by the Arts Council but from 2009 was no longer offered to new employees. The fund has been actuarially valued in deficit for a number of years and all of its remaining employer bodies have been paying a recovery amount. Exit of this scheme as an employer will not affect the rights of those already in the scheme and receiving pension benefits.
- 3.6 In October 2022 the MAC Trustees received a draft pension buy-out valuation from the fund actuary. Taking this buy-out option would secure the benefits for the existing members and place the fund with an insurance company. The MAC appointed independent legal and actuarial advisors and in November 2022 wrote to the Council setting out the intention to buy-out the liability to the pension fund and seeking the view of the Council to its use of circa £1m of the endowment fund to do so.
- 3.7 The recovery plan to deal with the deficit from 1 April 2023 is anticipated to cost c. £110,000 p.a. for at least the next eight years, providing a net benefit over the anticipated investment income of c.£80k. Whilst this net saving may fall in future years, it may also rise at each triennial valuation. In addition, as the fund deficit is shared between the employers, should others choose to exit the fund then the liability and risk falls only to those remaining.
- 3.8 The actual cost of exit will be calculated but the actuary on a date set by the Trustees.
- 3.9 There will be a balance remaining on the Endowment Fund and the Leader and Portfolio holder will write to the MAC Trustees seeking assurance that these funds will be retained under the original endowment terms and enquiring how the net saving from the exit from the pension fund will contribute towards financial sustainability of the Trust and its services. The letter will reiterate the Council's continuing support to the MAC and the commitment to maintaining this relationship into the future.

#### **4 Options considered and Recommended Proposal**

- 4.1 This report is for noting only. The MAC Trustees do not require the Cabinet permission to use the endowment fund in this way but have set out to members and officers how such a move is expected to financially benefit the MAC and improve its business sustainability.

#### **5 Consultation**

- 5.1 No external consultation is required in respect of this report, the request has been received from the MAC Trustees who themselves have consulted within their

Trust and have sought independent professional advice. Internally, the Leader and senior officers have been party to discussion with the Portfolio Holder.

## **6 Risk Management**

- 6.1 The actions of the MAC will not impact the risk profile of the Council. The Council no longer provides public subsidy by way of annual grant to the MAC and in approving the endowment fund creation in 2020, made clear that no further annual grants would be made.
- 6.2 Should the final buy-out price not be affordable to the MAC there is no recourse to the Council and the endowment will remain in place.

## **7 Compliance Issues:**

- 7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?
- 7.1.1 The proposals contained within the report are consistent with the priorities, plans and strategies in the City Council's Plan 2018-2022 (2019 update) to achieve existing six outcomes for Birmingham to be:
- An entrepreneurial city to learn, work and invest in
  - An aspirational city to grow up in
  - A fulfilling city to age well in
  - A great city to live in
  - A city whose residents gain the most from hosting the 2022 Commonwealth Games
  - A city that takes a leading role in tackling climate change.
- 7.1.2 The proposed pension fund buy-out is to provide annual financial benefit to the MAC and contribute to its sustainable future as a culture venue.

## **7.2 Legal Implications**

- 7.2.1 The relevant powers for leisure, theatre and recreational activities are contained in:
- Section 144 Local Government Act 1972: Gives the Council the power to encourage visitors and provide conference and other facilities.
  - S145 of the Local Government Act 1972 gives the Council the power to arrange/stage and/or contribute to entertainments.
  - Section 19 of the Local Government Act (Miscellaneous Provisions) 1976: the Council has the power to provide such recreational facilities as it thinks fit in its area.

- 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.

### **7.3 Financial Implications**

- 7.3.1 There are no direct financial implications for the Council arising from this report. All implications from the granting of the endowment fund are contained in the Cabinet report of 17<sup>th</sup> March 2020.

### **7.4 Procurement Implications (if required)**

- 7.4.1 There are no procurement implications falling directly to the Council as a consequence of the recommendations of this report.

### **7.5 Human Resources Implications (if required)**

- 7.5.1 There are no human resources implications arising for the Council from this report. Existing members of the PSATSA will be unaffected.

### **7.6 Public Sector Equality Duty**

- 7.6.1 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 Equality Assessment (EQUA445) 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.

### **7.7 Environmental and Sustainability Implications**

- 7.7.1 Not applicable – report for noting and of a financial nature

## **8 Appendices**

- 8.1 None

## **9 Background Documents**

- 9.1 None