

ITEM NO: 15

DECISION-MAKER:	Council Cabinet		
SUBJECT:	Seeking Attorney General's approval on the proposed financial procedures for art disposals		
DATE OF DECISION:	16 th September 2009 26 th October 2009		
REPORT OF:	Cabinet Member for Leisure, Culture and Heritage		
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STATEMENT OF CONFIDENTIALITY

n/a

SUMMARY

The Cultural Quarter is one of the key developments identified to move the City forward over the next few years. The Northern Above Bar area of the City Centre has experienced significant decline in footfall since the Tyrell and Green store closed. This has had a significant negative impact on the visitor numbers to the City Art Gallery. In order to reverse the fortunes of the area and to establish the existing and proposed new cultural facilities at the heart of a major visitor destination, over £40m of public and private sector money is planned to be invested, including £23m of Council resources, to transform the northern part of the City Centre. One vital component is the Sea City Museum project. In the challenging financial climate, given the withdrawal of some funding sources and significant changes in the property market, all funding options are being examined to deliver the transformation of the City. This includes the potential sale of works from the City's Art Collection. Following a detailed curatorial review, two items have been identified as potential items for disposal. These items are from the Chipperfield bequest, and in order to ensure appropriate procedures are used to invest the receipts from any art sales in the Sea City Museum project, the consent of the Attorney General on the disposals is required.

RECOMMENDATIONS:

COUNCIL (as Trustees of the Chipperfield Trust)

- (i) To approve, in principle, the retention of works of art and financial value in the Chipperfield Bequest Fund, whilst enabling the disposal of two items - Sir Alfred Munnings' 'After the Race' and either Rodin's 'Eve' or 'Crouching Woman' to enable the investment of the receipts of sale in the Sea City Museum project
- (ii) To authorise the Director Neighbourhoods to make a formal application to the Attorney General to seek her consent to the proposed disposals and purchases as documented in the report
- (iii) Subject to the approval of the Attorney General to the proposed

disposals and purchases, to note that the matter will be brought back for final decision of the Council as both trustees and as corporate body

- (iv) To note that consultation with the public, interested bodies and key stakeholders will be continued and will inform the final decision of the Council
- (v) To delegate authority to the Director of Neighbourhoods, following consultation with the Cabinet Member for Leisure, Culture and Heritage to do anything necessary to effect the trustees' decisions

CABINET (in its role as corporate body)

- (i) To authorise the Director of Neighbourhoods to make a formal application to the Attorney general to seek her consent to the proposed disposals as documented in the report and the process for doing so
- (ii) Subject to the approval of the Attorney General to the proposed disposals and purchases, to note that the matter will be brought back for final decision of the Council as both trustees and as corporate body
- (iii) To note that consultation with the public, interested bodies and key stakeholders will be undertaken/continued and will inform the final decision of the Council
- (iv) To delegate authority to the Director of Neighbourhoods, following consultation with the Cabinet Member for Leisure, Culture and Heritage, to do anything necessary to effect the decisions of the Executive

REASONS FOR REPORT RECOMMENDATIONS

1. To secure the Attorney general's approval to the proposed financial procedures, to ensure that any subsequent decision to dispose of works of art can be used for the intended purpose.

CONSULTATION

2. Officers have had extensive contact with the Museum Libraries and Archives Council (M.L.A), the Museums Association (M.A) and other cultural sector organisations, in the development of the detail of these proposals.
3. An informal approach has been made to the Attorney General to seek her preliminary views as to the Trust and Council's proposal.
4. Correspondence has been sent to local stakeholders, including the membership of Southampton Heritage and Arts People (SHAPE) - comprising over 250 individuals and organisations interested in the Cultural sector, setting out the proposals and soliciting feedback. A public session is planned for the 21st September to provide information on the plans for the cultural

quarter and to provide opportunities for feedback. The works in question are currently on display in the gallery, together with some information about the plans, with an opportunity for members of the public to provide feedback on the proposals. Feedback from all these consultations will be provided in reports pertaining to any final decision as to whether to sell.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. i) An alternative would be to seek a change of the 'Administrative Scheme' to the Chipperfield bequest. This would create a permanent change to the terms of the bequest and take a considerable period of time; neither of which are considered to be beneficial to the bequest.
ii) Not to sell. The current position is that there are no alternative funding sources that can be realised to deliver the Sea City Museum project. This is likely to diminish the overall benefit of the Cultural Quarter development as the project is highly unlikely to proceed in the medium term future as a minimum. The benefits to the Gallery, its collections and the broader heritage collections will not be realised.

DETAIL

6. The Chipperfield bequest came from Robert Chipperfield in 1911, and established a fund to establish an Art School, Art Gallery and a Charitable Trust. The bequest has collected a large number of works, which form a significant part of the Gallery's total collection of over 3,500 works.
7. The collection is recognised for its quality throughout the UK, many claiming it to be the best outside of London. However, the Gallery attracts only 60,000 visitors per year, and visitor numbers have been falling since the Tyrell and Green store closed. Whilst a programme of temporary exhibitions attract visitors, it limits the numbers of works from the Collection that can be shown and shared with visitors.
8. The Council has had aspirations to improve its museum provision for a significant period of time. Over the last 10 years or more, a significant amount of work has been done to identify potential sites, funding opportunities and deliverable proposals. In the last 18 months, work has focused on a project to establish a new museum in the former magistrate's court, when the Police vacate the premises and to tie in with the 100th anniversary of the Titanic leaving the city. Plans were developed and a stage one application to the Heritage Lottery Fund was, successfully, submitted to create the realistic potential of a new museum for the City. The museum will provide exhibitions on a broad maritime theme and the role of Southampton as a gateway to the world. As plans have evolved, the potential to create a world class temporary exhibition space have been further developed as an integral component of the project. This space would provide a wonderful opportunity to house some of the temporary arts exhibitions currently displayed in the City Art Gallery, thus expanding the space in the City Art Gallery that can be dedicated to exhibiting works from its own collections. The investment in the Cultural Quarter will create a major visitor destination, increasing footfall and visitor numbers to the Gallery, encouraging more people to enjoy the benefits of the collection.

9. The Cultural Quarter, a critical programme for the future cultural sector in the City, is made up of a number of elements, including Guildhall Square and the New Arts complex. These projects have encountered significant funding challenges, to which solutions are being found. To maintain the momentum on the Sea City Museum project, alternative funding sources have had to be examined, including the sale of works from the collection.
10. Following a robust curatorial review of the total collection, three items from the Chipperfield bequest have been identified as candidates for disposal, two of which are proposed to be disposed. The three items are *After the Race*, by Sir Alfred Munnings, *Eve* and *Crouching Woman* by Auguste Rodin. Although as Trustee of the Trust, the Council has under the terms of the bequest a power to sell any of the items which are held by the Trust, the proceeds of sale of any such works should be spent on the purchase of further works of art for the Trust. What is under consideration is for the proceeds of sale of the identified items held by the Trust which are to be sold to be used to purchase for the Trust one or more items at present owned outright by the Council. A proposed list of these items is contained at appendix one. The Council could then use the proceeds of sale of the latter to provide part of the Council's contribution to the Sea City Museum project which will have clear benefits to the Art Gallery as defined above. Counsel's opinion has been sought as to how this might be achieved. Counsel's opinion is that the proposal requires consent of the Attorney General.
11. Transactions between a Trustee in his personal capacity and the Trust of which he is a Trustee is subject to regulation. It covers purchases by a Trust from its Trustee and such transactions would normally be set aside unless the Council fully discloses the nature of its interest in the transaction. A Trustee can therefore only sell his own property to the trust of which he is a Trustee if he has made the fullest possible disclosure to all the beneficiaries of the trust. There are no actual beneficiaries to the trust other than the Attorney General in her historic role as representative of the public interest in ensuring the proper application of charitable funds and as representative of the Crown. Consent of the Attorney General is therefore needed for the proposals.
12. The proposed process does not create any permanent changes to the terms of the bequest and retains financial value in the Chipperfield bequest fund, allowing future purchases in line with the collection policy.
13. An informal view as to the proposal has been sought from the office of the Attorney General, but not yet received. In order to give her consent she will need to be convinced that the Council in its dual role as Trustee and corporate body is not procuring an unfair advantage, that the transaction has been fair and honest and that it is acting in the best interests of the Trust.

Officers are involved in dialogue with the MLA over the development of the proposals. Their understanding and support for the process is critical on a number of fronts. Funders of future projects to develop the Gallery, collections and the Cultural Quarter, including Sea City Museum, will wish to see that proposals have been developed in line with the view of the sectors 'governing body', and retaining accredited status for the collections will be fundamental to a high quality application to the Heritage Lottery Fund. Officers are also consulting with Tate, who have acted as curatorial advisors to the collection

since 1976.

14. Once the application for consent has been submitted to the Attorney General, consultations will continue with the public and interested parties. If consent to the proposals is given by the Attorney General, it is intended to bring this matter back before Council and Cabinet for the final decision as to the disposal and purchases to be made in light of the representations received.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

15. None

Revenue

16. Council officer time utilised in reviewing the arts collection and the subsequent proposed application to the Attorney General has been met from within existing resources
17. To date the sum of £5,250 has been incurred in seeking legal counsel and it is expected that further legal counsel advice may be required in pursuing this application. The incurred and expected costs can be met from within the existing Leisure, Culture & Heritage Portfolio 2009/10 revenue budgets.

Property

18. There are no immediate property implications associated with this proposal

Other

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

19. The law relating to bequests and charities is primarily contained within the Charities Acts 1993, as amended by the Charities Act 2006. They are subject to the control of the Charity Commission, the courts and through the supervision of the Attorney General acting through the Treasury Solicitor in the historic role as representative of the public interest in ensuring the proper application of charitable funds. The Attorney General has the power to refer the matter to the Charities Tribunal for decision if she deems it necessary.

Other Legal Implications:

20. The Council makes its decision at full council in its role as Trustee and its decision at Cabinet in its role as corporate body. The Council must act

properly and with propriety in both roles. If the Council fails to do so it may be in breach of trust, be sued and have to compensate the trust out of its corporate assets.

POLICY FRAMEWORK IMPLICATIONS

21. The report is consistent with the community strategy; strategic objective 5 imaginative Arts and Cultural opportunities.

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Items in the Ownership of Southampton City Council
2.	

Documents In Members' Rooms

1.	
2.	

Background Documents

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.		
2.		

Background documents available for inspection at:

FORWARD PLAN No:

KEY DECISION? yes

WARDS/COMMUNITIES AFFECTED:	Potentially all
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