



Barbican Centre Board

Date: WEDNESDAY, 16 NOVEMBER 2022
Time: 11.00 am
Venue: COMMITTEE ROOMS, 2ND FLOOR, WEST WING, GUILDHALL

7. BARBICAN CENTRE TRUST - ARTICLES OF ASSOCIATION

Report of the Town Clerk.

For Decision
(Pages 3 - 12)

Item received too late for circulation in conjunction with the Agenda.

John Barradell
Town Clerk and Chief Executive

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Committee: Barbican Centre Board	Dated: 16 November 2022
Subject: Barbican Centre Trust – Articles of Association	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	n/a
What is the source of Funding?	n/a
Has this Funding Source been agreed with the Chamberlain’s Department?	n/a
Report of: Town Clerk & Chief Executive	For Decision
Report author: Ben Dunleavy, Governance Officer	

Summary

The Barbican Centre Trust (registered charity no 294282) (“the Trust”) is seeking to make several updates to its Articles of Association to modernise them to support greater efficiency in the Trust’s administration. Whilst the Trust is an entity independent from the City Corporation, these decisions are relevant to us as the City Corporation originally established the charitable company in the 1980’s, retains *ex officio* related appointments to the Board (including the Chairman your Board and the Managing Director of the Barbican Centre), and the Trust works closely with, and receives support services from, the Barbican Centre to achieve common objectives. The Trust has proactively engaged with your officers to progress these proposed changes, and has now formally written to the Town Clerk to consult on them before taking their final decisions on the changes which will then need to be notified to Companies House and the Charity Commission. This report provides information on the impact of the proposed changes for the City Corporation.

Recommendations

Members of the Barbican Centre Board are asked to:

1. recommend to the Court of Common Council that the Court endorses the proposed change to the Barbican Centre Trust’s charitable objects, trustee benefit provisions, and the City Corporation related appointments to the Trust’s Board of Trustees *ex officio* as follows –
 - (a) the Chair for the time being of the Barbican Centre Board or another member of the Barbican Centre Board nominated by its then current Chair;
 - (b) the Chief Executive officer for the time being of the Barbican Centre;

- (c) a further Trustee who the City Corporation shall have the right to appoint or remove specifying the relevant office by reference to which such appointment is to be made; and
- 2. in addition to the matters set out in Recommendation 1, to endorse other proposed changes and authorise the Town Clerk, in consultation with the Chair and Deputy Chair of the Barbican Centre Board, to provide the City Corporation's response to the Trust.

Main Report

Background

1. The Barbican Centre Trust (“the Trust”) was established by the Court of Common Council in 1985 as a company limited by guarantee, and a registered charity, to support fundraising for the Barbican Centre. The current objects of the Trust are:

‘To foster and promote the maintenance, improvement and development of artistic taste and the knowledge, understanding, education and appreciation of the arts among the inhabitants of the City and generally.’
2. The Trust’s Articles of Association continue to maintain rights for the City of London Corporation to appoint two Trustees *ex officio* to the Trust’s Board, being: the Chairman for the time being of the Barbican Centre Board and the Managing Director of the Barbican Centre.
3. The Chair of the Barbican Centre Trust also sits in an *ex officio* capacity on the Barbican Centre Board.
4. A 1996 report of the Barbican Centre Committee to the Court of Common Council regularised the City Corporation’s internal governance arrangements with regard to these appointments resolving that these decisions should be the subject of a recommendation from the Barbican Centre Committee/Board to the Court.

Current position

5. The Trust is now proposing several changes to its Articles of Association to modernise them with a view to improving the charity’s administration. As an independent body regulated by the Charity Commission (and Companies House), these decisions are a matter for the company and its members (who are the same individuals as the Trustees). However, a charity’s trustees should consult with affected parties as in our case, where the proposed changes affect the objects of the charity which we established, trustee benefit provisions, and our on-going rights of appointment to the trustee body. The Comptroller and City Solicitor’s Department have advised that the Charity Commission will in approving regulated changes have regard to the views of the City Corporation, given its rights of appointment and establishment of the Trust.
6. The Trust has engaged closely with officers of the City Corporation (including within the Comptroller & City Solicitor’s Department which has been advising your officers) on the drafting of the proposed revised Articles. The Chair of the Trust has now sent a letter dated 23 September 2022 to the Town Clerk providing further information on the proposed changes and requesting a formal response in advance of the Trust’s Annual General Meeting on 22 November 2022 (see Appendix 1) at which meeting the new Articles are intended to be adopted by the Trust.
7. Other than general changes to modernise the Trust’s Articles to allow it to operate more effectively, there are three principal types of change which are of particular interest to the City Corporation:
 - (a) Changes to the Trust’s objects as outlined below:

'To support, promote and encourage people in London, the United Kingdom and globally to discover and appreciate the arts through:

- (i) artistic, cultural and educational activities generally;
- (ii) artistic, cultural and educational programmes and activities run by the Barbican Centre; and
- (iii) the maintenance and development of the Barbican Centre as a centre of the arts, culture and education, in each case to the extent that such support, promotion and encouragement is of a charitable nature.'

(b) Changes to the appointments to the Trustee Board relating to the City Corporation with the following appointments being made *ex officio* and for an initial four (4) year term:

- (i) the Chair for the time being of the Barbican Centre Board or another member of the Barbican Centre Board nominated by its then current Chair;
- (ii) the Chief Executive Officer for the time being of the Barbican Centre; and
- (iii) a further Trustee who the City Corporation shall have the right to appoint or remove specifying the relevant office by reference to which such appointment is to be made.

(c) Changes to the trustee benefit provisions to reflect standard wording in modern Articles of Association for charitable companies.

8. As the committee given oversight of the Barbican Centre by the Court, and due to the historic and ongoing connection between the Board and the Trust, members of the Barbican Centre Board were informally consulted on the proposals set out in the Trust's letter by email between 1 - 7 November 2022. Two responses were received. These were:

- (a) A Member asked if the work currently underway to update the Barbican Centre's strategic framework would necessitate any update to the Trust's objects. In reply, the Trust has indicated that the proposals had been reviewed in light of the discussions around the Barbican Centre's strategic objectives and plans and it was felt that the revised wording of the Trust's objects and the general activities of the Trust are sufficiently broad.
- (b) A Member requested for further clarification on the proposed removal of the requirement to hold an Annual General Meeting (AGM) of the company's members. The Trust has replied that there is no legal requirement for the Trust to hold an AGM, and as its members and Trustees are the same individuals they will remain sighted and involved on all key decisions, such as approval of accounts and appointment of new trustees, at trustee meetings instead of requiring a standalone AGM (with the associated administration and potential for delay).

Legal Considerations

9. The Comptroller & City Solicitor's Department was consulted on the proposed changes and has advised that the proposed changes do not adversely affect the City Corporation's existing legal rights and interests; the revisions

proposed reflect good practice and modern drafting of Articles of Association of charitable companies limited by guarantee; and the changes to the charity's governing document by the adoption of the revised Articles will support the more effective and efficient administration of the charity (which charity trustees should seek to achieve in keeping their charity's governing document under review).

Proposals

10. It is recommended that the Board support the proposed changes to the Articles of the Barbican Centre Trust and endorse them to the Court. Regarding the proposed change to the *ex officio* appointments to the Trust's Board as they relate to the City Corporation, it is also specifically recommended that, in addition to the appointment of the Chairman of the Board (or the Chair's nominee) and the appointment of the Managing Director, that the Board consider whether to recommend to the Court that the third appointment should be made by the City Corporation by reference to the office of Deputy Chairman of the Barbican Centre Board or otherwise by virtue of membership of the Barbican Centre Board.

Conclusion

11. Members of the Board are now asked to support the proposed changes for endorsement to the Court, and delegate authority to the Town Clerk to provide a formal response to the Trust in advance of their AGM on 22 November 2022.

Appendices

Appendix 1 – Letter from the Chair of the Barbican Centre Trust detailing proposed changes, dated 23 September 2022.

Background papers

Report of the Barbican Centre Committee to the Court of Common Council, 28 March 1996 and associated Minutes.

Ben Dunleavy

Governance Officer

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John Barradell
Town Clerk and Chief Executive of the City of London
Corporation
Town Clerk's Department
City of London
Guildhall
London EC2V 7HH

23 September 2022

Dear John,

I am writing to inform you that on the consultation of pro-bono solicitor Simon Cox of Norton Fulbright Rose LLP, the Barbican Centre Trust is proposing to update the Articles of the Charity. In this letter I will outline what the proposed changes are and how they may impact the City of London Corporation.

Apart from a general updating, the following changes/clarifications are currently proposed:

- Making it clear that no AGM needs to be held
- Putting the ability to hold virtual/hybrid members' meetings beyond doubt
- Including a definition of "electronic form" and related provisions
- Providing for Trustees/Directors to be appointed for an initial term of four years, renewable for a second term of 4 years by a Board decision. In exceptional cases the Board could approve a Trustee remaining in office beyond this period.
- Trustees will be able to resign their appointment at any time. They should cease to hold office if they become disqualified to be a director of an English company and their appointment could also be terminated in exceptional cases, by a decision of two thirds of the other Trustees.
- A Director can only resign by notice if at least two directors will remain in office when the notice of resignation is to take effect.

- Additional Trustees can be appointed by the Trustees without the need for them to resign at the next AGM (if there is one).
- Updating ex-officio appointment rules so that another member of the Barbican Centre Board nominated by its then current Chair can sit as ex officio
- The City of London Corporation shall also have the right to appoint and remove one further ex officio director and in doing so shall specify the relevant office by reference to which such appointment is made.
- Formalising the ability of the Board to appoint committees with specific tasks. It is not intended to amend the Articles to provide for wider membership.

Additionally to these proposed changes, there are certain further changes to the Articles for which we propose to seeking Charity Commission approval. These comprise an updated objects clause and updated wording relating to the scope and powers permitting directors' or connected persons' benefits. The new proposed objects are outlined below:

To support, promote and encourage people in London, the United Kingdom and globally to discover and appreciate the arts through:

(i) artistic, cultural and educational activities generally;

(ii) artistic, cultural and educational programmes and activities run by the Barbican Centre; and

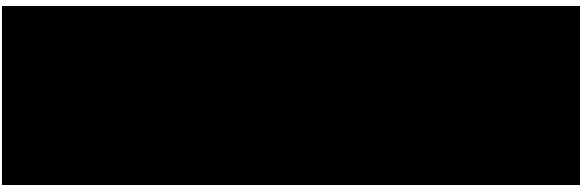
(iii) the maintenance and development of the Barbican Centre as a centre of the arts, culture and education,

in each case to the extent that such support, promotion and encouragement is of a charitable nature.

The Barbican Centre Trust has a provisional AGM meeting date of the 22nd November 2022 where we plan to pass resolutions to adopt these articles and approve the changes for submission following the meeting to the Charity Commission. Following the meeting we will send you a copy of the new articles being filed and the proposed changes as submitted to the Charity Commission.

Please can you pass on these proposed changes for decision to the City Corporation members, so that the Barbican Centre Trust can receive a formal response on the updated Articles ahead of the BCT AGM meeting on the provisional date of 22nd November 2022.

Many thanks, and please do not hesitate to get in touch if you have any questions.



Farmida Bi CBE
Barbican Centre Trust Chair

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