

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES MEETING ON MAY 24, 2017
FROM:	MARTIN HAYWARD MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER AND CITY MANAGER
SUBJECT:	MUSEUM LONDON ENDOWMENT FUNDS TRANSFER REQUEST

RECOMMENDATION

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer and City Manager, the following actions be taken with respect to Museum London's request to transfer the Endowment funds to the Museum London Foundation:

- (a) that no action **BE TAKEN** related to the John H. and Elizabeth Moore Acquisition Fund as Museum London and its Board as the trustees are responsible for the administration of the endowment fund and must apply with all applicable law; and
- (b) that the request to transfer the Operating Endowment Fund **BE DENIED**.

BACKGROUND

Municipal Council, at its meeting held on September 27, 2016 resolved:

That, the Civic Administration BE DIRECTED to report back within six weeks to the Community and Protective Services Committee (CPSC) with respect to the request of Museum London to transfer the Museum London Endowment funds (Operating Endowment and the Moore Acquisition Endowment) to the Museum London Foundation; it being noted that the CPSC received a communication dated August 9, 2016 from B. Meehan, Executive Director, Museum London, with respect to this matter.

Museum London

Museum London was established by private legislation in 1974 and continued under the City's By-law A.-6869-2783 passed September 18, 2012 and known as the Museum London By-law. Museum London is a local board of the City.

Museum London derives its authority from and is governed by the Museum London By-law, the *Municipal Act, 2001*, the *Municipal Affairs Act* and the *Corporations Act*.

Museum London would be considered a charity (Canada uses a common law definition). The Museum London By-law sets out its powers to "collect and raise money by way of grants, gifts, donations, bequests, legacies and other payments and to hold, expand or deal with such funds".

Museum London was established as a local board of the City and accordingly, their financial statements are consolidated as part of the City's financial statements as per the Public Sector Accounting standards. Therefore, assets of Museum London are assets of the City.

Museum London Foundation

Museum London Foundation (the Foundation) was incorporated in 2004 and registered as a Not-for-Profit Corporation in 2014. The Foundation exists to provide the Museum with financial support as identified in the objects contained within its Letters Patent as follows:

"The objects of the Corporation are to receive and maintain a fund or funds and to use, apply, give, devote or distribute from time to time all or part of the fund or the income therefrom to or for the London Regional Art and Historical Museums; and
To do all such things as are incidental to the attainment of the above objects"

The Foundation is not affiliated with the City but a letter of understanding agreement exists between Museum London and the Foundation to outline the relationship and expectations of the two organizations.

Endowment Funds as Charitable Purpose Trusts

The term endowment is used generally to describe the provision of money as a permanent fund which is intended to be held to generate income for the support of a charity. An endowment is a form of a restricted charitable purpose trust.

Generally, a restricted charitable purpose trust is one that is subject to restrictions, limitations, conditions or other restricting factors imposed by the donor that constrain how the charity may use the gift.

As restricted charitable purpose trusts, endowments are not owned by the charity. Endowments are held in trust by the charity for the purpose for which they were given.

John H. and Elizabeth Moore Acquisition Fund (Moore Fund)

It is Civic Administration's opinion, based on information provided, that the Moore Fund is an endowment fund which is supported by its Terms of Reference. The Terms of Reference outline the following:

- purpose and establishment of the fund;
- investment of the fund;
- expenditures from the fund; and,
- accountability and acknowledgment.

The Moore fund is shown as a restricted fund on Museum London's audited financial statements. As of December 31, 2016 the Moore fund had a balance of \$2,716,373.

As a charitable purpose trust, the Moore Fund is held in trust by Museum London for the purpose it was given. The request to transfer the Moore Fund must be decided by Museum London as the City has no jurisdiction over the trust funds and therefore cannot direct Museum London on any actions to be taken with regard to it.

Operating Endowment Fund

Museum London's Operating Endowment Fund is a fund internally restricted by Museum London's Board of Directors. Civic Administration is not clear of the origin of all the funds; however, we understand it includes specific revenues recorded by Museum London historically since 1985 and other gifts. The Operating Endowment Fund is classified as a reserve fund set aside for specific purposes on the Museum's audited financial statements. As of December 31, 2016 the Operating Endowment Fund had a balance of \$2,745,991.

The principles to support the creation and use of the Operating Endowment Fund set aside by the Board is included in the Museum London's Board Policy. The Operating Endowment Fund Policy approved by the Board indicates that:

"the long-range goal for the use of Museum London Operating Endowment monies is primarily to act as a safety net for future operations and shall fund only those operations considered critical to the organisation's current and future health. It may also fund innovative projects that benefit and are accessible to the Museum's entire constituency."

Museum London has labelled this fund as an "endowment". The use of the term "endowment" does not in itself mean that the monies in the fund are restricted gifts and that the Operating Fund is a charitable purpose trust. Only monies that were given subject to restrictions or given based on a program or representation by Museum London that the funds will be allocated to a specific

purpose (for example donations solicited for the purpose of the Operating Endowment) would be classified as a charitable purpose trust.

Museum London has the authority to earmark for a special purpose funds that it has acquired through unrestricted gifts or other revenue sources. These funds set aside for a specific purpose would not be classified as a charitable purpose trust and may be used by Museum London provided it is in accordance with its objects and powers as set out in the Museum London By-law.

The Museum London By-law, section 11.1(c) permits Museum London to raise funds:

(c) to collect and raise money by way of grants, gifts, donations, bequests, legacies and other payments and to hold, expend or deal with such funds;

The extent to which a transfer of funds to another entity would fall under the power to “deal with such funds” is not conclusive. The express power to invest as contained in the Museum By-law Section 11.1(d) may support the position that Museum London does not have the authority to transfer funds that are not trust funds to another entity for the purpose of investment and to raise additional funds for the Museum. Two other provisions within the Museum London By-law may also support the position that Museum London does not have the authority to transfer reserves to another entity:

1. City does have an interest in Museum London’s assets, including its reserves and investments noting that pursuant to section 17.1 of the Museum London By-law, on dissolution the assets of Museum London revert to the City or to such organizations having objects similar to those of Museum London as may be designated by council.
2. Section 13.1 of the Museum London By-law contemplates that the City may permit Museum London to use property the City has an interest in upon such terms and conditions agreed to.

As a local board of the City, Museum London’s financial statements are consolidated as part of the City’s Financial Statements. The Operating Endowment Funds are therefore assets of the City. Transferring ownership of these funds would effectively be granting away City assets and would remove them from Museum London and the City’s financial statements. Once asset ownership is transferred to a separate entity, neither Museum London or the City has any direct control over it.

Should Council wish to consider the transfer of the Operating Endowment Fund from Museum London to the Foundation, the following safeguards are recommended to mitigate some risk as a result of the loss of the City’s interest in the assets:

- an agreement between the City, Museum London and the Foundation;
- insurance;
- annual reporting regarding the acquisitions, expenditures and performance of the funds;
- regular monitoring/ audits;
- audits performed by the City’s auditors; and,
- compliance with the Trustees Act and Municipal Act regarding investment requirements.

The significant amount of workload to monitor, followup and ensure the accountability of the Endowment funds may outweigh any benefits of the transfer.

In addition, if the City permitted the transfer of the funds, the City would be setting a precedent where perhaps other Boards would encourage the setup of Foundations and divest themselves and by default, the City of both control and ownership of its assets.

CONCLUSION

In summary, as the City has no jurisdiction over trust funds, the City cannot direct Museum London on any actions regarding the Moore Fund. Museum London as trustee are responsible for the administration of the fund and must apply with all applicable law.

However, the City does have an interest in Museum London’s assets, including its reserves and investments as a local board. Therefore, it would not be a prudent business decision to consent to the transfer of the Operating Endowment Fund to an entity not affiliated with the City because:

- a transfer is inconsistent with the intent of the Operating Endowment Fund Board Policy whereby it is set aside “to act as a safety net for future operations and shall fund only those operations considered critical to the organisation’s current and future health”; and,
- Museum London and the City would lose both control and ownership of the asset resulting in a reduction of the City’s net assets shown in the consolidated Financial Statements.

Acknowledgements

This report was prepared with the assistance of Jennifer Smout, Legal and Corporate Services.

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