

**Haringey** Council

Report for:	Cabinet 9 July 2013	Item Number:	
-------------	---------------------	--------------	--

Title:	Proposed Amendments to VAT Status of Alexandra Palace
--------	---

Report Authorised by:	Director of Corporate Resources <i>J. Paul 27/6/13</i>
-----------------------	---

Lead Officer:	Frances Palopoli, Head of Finance Central Services 0208 489 3896 Frances.palopoli@haringey.gov.uk
---------------	---

Ward(s) affected: ALL	Report for Key/Non Key Decisions: Non Key
-----------------------	--

**1. Describe the issue under consideration**

In order to facilitate the regeneration activity at the Alexandra Palace & Park it is proposed that a decision is taken to elect to opt to tax the Palace which will require it to charge VAT on all future supplies but which will also enable it to recover VAT paid out.

**2. Cabinet Member introduction**

The proposal is a technical matter but one which I endorse as it provides the optimum outcome for both the Council and the Trust to make best use of available resources to further the regeneration work begun at the Palace & Park whilst protecting the Council from incurring potentially significant VAT liabilities.

I am satisfied that the appropriate professional advice has been sought and I would recommend that the proposals are agreed.

**3. Recommendations**

- 3.1 That Cabinet endorses the recommendation to elect to opt either the Palace only or, in the event that HMRC is unwilling to treat the Park & Palace separately for VAT purposes, that Cabinet endorses the option to tax both the Palace & Park i.e.



## **Haringey Council**

the whole legal entity. This is on the basis that without this action, VAT incurred on the significant capital expenditure in prospect, will not be recoverable which would seriously compromise deliverability of the proposed regeneration.

- 3.2 That Cabinet authorises the Director of Corporate Resources to take any further action required by the Council in connection with the application to HMRC preferably to opt to tax only the Palace but if necessary to opt to tax the whole legal entity.

## **4. Alternative options considered**

- 4.1 Maintaining the existing VAT status was considered as this would enable the Palace & Park to continue to offer supplies exclusive of VAT however, following detailed examination of the Council's overall capital expenditure in relation to its partial exemption limit for VAT, it was clear that the proposed expenditure on the Heritage Lottery Funded (HLF) regeneration activity alone (without factoring in any other regeneration work streams) would risk the Council breaching its annual partial exemption limit leaving it facing a large unplanned VAT expenditure

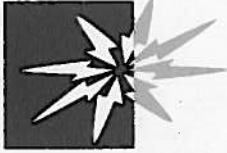
## **5. Background information**

- 5.1 The London Borough of Haringey is Trustee of the Alexandra Park & Palace Charitable Trust (APPCT) and shares the same VAT registration number with it so it is important that the Council clearly understands any potential impact the proposed significant regeneration of the Palace building may have on both the Council and the Trust.
- 5.2 The estimated costs contained within the recent application for Heritage Lottery Funding (HLF) were £23.1m, £16.5m of which was sought from the HLF, leaving £6.6m to be raised from match funding. Should VAT have to be paid on the total estimated spend it would add a further £4.1m cost to the whole project.
- 5.3 Raising more than £10m, particularly in the current economic climate would be extremely challenging. As such, officers have been reviewing options to minimise or avoid the VAT burden.
- 5.4 Generally local authorities are able to recover VAT incurred although this has to be tightly monitored to ensure that its partial exemption limit is not breached. The background to partial exemption is the basic principle that VAT incurred on expenditure that relates to the generation of VAT-exempt income is not recoverable. This requires an annual calculation that takes account of all VAT-exempt income received and ensures that VAT incurred on associated expenditure does not exceed 5% of all VAT incurred. If the limit is breached, the Council could be liable for all VAT incurred in that financial year.



**Haringey** Council

- 5.5 Assessment of the Council's historical and forecast use of the partial exemption calculation shows that we do not have the headroom to accommodate expenditure of the size proposed at the Trust even if spread over 2-3 years.
- 5.6 As VAT is a specialist area, Haringey retains the services of a VAT specialist as and when required. Advice on this particular issue was sought and the strong recommendation was to opt to tax the Palace. This is a mechanism whereby a person can elect to treat exempt supplies of land, i.e. those supplies falling with VAT Act 1994, Schedule 9, Group 1, as taxable. The option to tax is a complex mechanism and is covered by VAT Act 1994, Schedule 10. Essentially, if a person opts to tax a building then all supplies of that building become taxable (as opposed to exempt), which means that VAT must be charged on those supplies, but also means that any VAT incurred in making those supplies is recoverable as being attributable to taxable supplies. If the Council were to opt to tax the Palace then the issue of VAT recovery on the refurbishment would not arise, as all the input VAT would relate to either non-business or taxable activities and there would be no need to calculate the level of business activities and whether the input tax might or might not fall within the 5% limit. The corollary of that is, however, that VAT must be charged to customers, some of whom might not be able to recover VAT.
- 5.7 The planned election is in respect of a particular building (i.e. the Palace as a whole) and is not planned to impact on the Park leases. It would mean that any future Trust leases / lettings in the Palace would be subject to VAT. Advice received from the council's VAT specialist is that it is possible to separate the Palace from the Park in the proposed application. This would enable transactions between the Trust and lessees of the park to remain non-vatable. However, it should be noted that VAT law is complex and requires the option to tax in respect of a building to extend to the building and its curtilage. Although deemed as unlikely, there is a risk that HMRC takes this to mean the whole legal entity (Palace & Park) to be included as part of the Option to Tax and view the Park and Palace as one entity for VAT purposes. If this were to happen, VAT would have to be charged on all supplies including park leases. This would only impact on charitable park tenants who would not be able to recover VAT; commercial organisations would already be VAT registered. If this was to occur the financial implications would be relatively small to the Park and Palace if the VAT was absorbed within the rentals charged.
- 5.8 This issue needs to be addressed now in advance of major expenditure on the Palace. The election is made by the council as the VAT registering body.
- 5.9 It should be noted that an option to tax can generally be revoked no earlier than 20 years after its effective date.
- 5.10 Overall the proposed election is seen as the optimum strategy as it:-
- Removes the risk that the Trust fails to recover some or all of the VAT payable on fees and construction associated with the HLF project, or indeed any future



**Haringey Council**

landlord's works to the Palace the impact of which could seriously compromise the feasibility of the regeneration programme.

- Removes the risk that capital expenditure at the Park & Palace leads to a breach in the council's annual partial exemption
- The overall benefit of reclaiming VAT on significant capital expenditure far outweighs any possible impact on Palace & Park Trust income streams.

**6. Comments of the Chief Finance Officer and financial implications**

6.1 The majority of comments of the Chief Finance Officer are already incorporated into the body of the report.

6.2 Members should note that the proposal, whether achieved in relation to the Palace only or the Park as well will have minimal impact on the normal operation / running costs of the Trust. As stated in the body of the report, the impact of paying VAT at 20% on the current estimated capital expenditure would create a much larger impact and would risk jeopardising the whole project and any subsequent works.

**7. Head of Legal Services and legal implications**

7.1 The proposed election for VAT purposes is in respect of the Palace building only. The Palace and the Park are registered under a single legal title and as indicated in section 6 above, it will be necessary to agree with HMRC the extent of the land which makes up the curtilage to the Palace and will therefore be covered by the option to tax for VAT.

**8. Equalities and Community Cohesion Comments**

n/a

**9. Head of Procurement Comments**

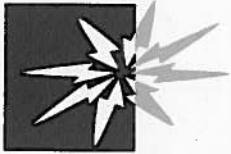
n/a

**10. Policy Implications**

n/a

**11. Reasons for Decision**

11.1 In order to facilitate the regeneration activity at the Alexandra Palace & Park it is proposed that a decision is taken to elect to opt to tax the Palace which will require it to charge VAT on all future supplies but which will also enable it to recover VAT paid out.



**Haringey** Council

**12. Use of Appendices**

n/a.

**13. Local Government (Access to Information) Act 1985**

13.1 No background documents that require to be listed were used in the preparation of this report.

