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14 February 2007

To: All Members of the Alexandra Palace and Park Board

Dear Councillor,

Alexandra Palace and Park Board - Tuesday, 20th February, 2007

I attach a copy of the following reports for the above-mentioned meeting which were not available at the time of collation of the agenda:

**4. CHARITY COMMISSION - PUBLIC REPRESENTATIONS (PAGES 1 - 54)**

To consider a formal response to questions raised by the Commission following the period of public representation. (Report of the Trust Solicitor)

Please also find attached the comments of the London Borough of Haringey's Director of Finance's comments in respect of Item 4 above, together with comments in relation to exempt Item 6 – Appointment of Monitoring Surveyor which was previously circulated.

Yours sincerely

Clifford Hart  
Non-Executive Committees Manager

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**SPECIAL ALEXANDRA PALACE & PARK BOARD**

**Agenda Item No 4**

**20 FEBRUARY 2007**

**REPORT OF HOWARD KENNEDY, THE TRUST'S SOLICITORS**

**RESPONSIBLE PARTNER:**

Iain Harris      Tel: 020 - 7546 8986

**REPORT TITLE:**

Charity Commission – Public Representations

**REPORT AUTHORISED BY:**

Iain Harris of Howard Kennedy of 19  
Cavendish Square, London W1A 2AW.  
Trust's Solicitors.

**1.      PURPOSE**

1.1      To report to the Board upon the Summary of Representations provided by the Charity Commission following advertisement of the Commission's intention to make an Order published on 28 November 2006.

1.2      To consider and comment on the issues raised in the Summary of Representations.

**2.      SUMMARY**

2.1      Board Members will need to consider the representations and attached draft letter.

**3.      RECOMMENDATIONS**

3.1      That the Trustees approve the draft letter addressed to the Commission attached to this Report, together with the appended enclosures.

3.2      To indicate whether any additional comments are required and if so, to record those.

**4. LOCAL GOVERNMENT (ACCESS TO INFORMATION)**

**ACT 1985**

- 4.1 Our continuing correspondence with the Charity Commission.

**5. THE REPORT**

- 5.1 At its Special Meeting on 25 October 2006 the Board resolved to give its approval to completing the Charity Commission Application for an Order containing a scheme under Section 16 of the Charities Act 1993.

- 5.2 Having so resolved and advised the Charity Commission, it advertised its intention to make the Order giving a period of 1 month for representations to be made to it. Advertisements were placed, in accordance with the Commission's requirements in:-

- The North London Group of Newspapers
- The Times Newspaper
- Noticeboards inside the Park and inside the Palace

In addition to the requirements of the Commission the General Manager caused advertisements to be placed in the public libraries operated by the London Borough of Haringey.

- 5.3 The advertisements indicated that comments or representations on the proposals could be made to the Charity Commission before noon on Friday 5 January.
- 5.4 Following closure of the period for representations to the Commission it has carried out an analysis of the 328 representations received.
- 5.5 The Commission has now provided a copy of its Summary of Representations which is attached to this Report. As appears from paragraph 2, of the 328 representations, 4 were clearly in support whilst 324 respondents expressed "at least some concern about aspects of the proposals."
- 5.6 The Commission has now indicated that it would be helpful if it could have the comments of the Trustees on the issues raised in the Summary. The Commission has highlighted four specific areas where it would like more detailed comment.

- 5.7 In accordance with instructions from the General Manager we have prepared a substantive response with supporting documentation. This is in the form of a letter, attached to this Report, and annexed supporting documents. It is presented to the Board for consideration.
- 5.8 The Charity Trustees are invited to review this letter and if they feel able to do so approve it and resolve that it be dispatched. If they have any additional comments that they wish to be made, as the letter indicates, we would propose to record these in a second letter.



## Alexandra Park and Palace (reg. no. 281991)

### Summary of representations

#### 1. Introduction

This is a summary of the representations received to the publication of the draft Order (case reference 522431) to dispose of Alexandra Palace and its surroundings to Firoka (a development company). The comments and assertions made under each of the representations reflects solely those of the respondents. It does not provide answers, comment or evidence to verify or gainsay any points of representation.

#### 2. Summary

We received 328 representations in response to the publication of the draft Order. Not all respondents stated whether they supported or opposed the making of the Order. However 324 respondents expressed at least some concern about aspects of the proposals, whilst 4 were clearly in support of them.

#### 3. Background

Alexandra Park and Palace is presently used as a conference venue and is set in 196 acres of grounds in the London Borough of Haringey. The charity is governed by a number of Acts of Parliament and the Commission's Order of 2004. The trustee, Haringey Council, has provided evidence that, for many years, the charity has operated at a substantial loss, which the Council has met out of public funds. The Council, as local authority, is not willing to continue to subsidise this loss. The trustee has looked into various options for the way forward for the charity and, after public consultation and a tender process, has decided to lease part of Alexandra Palace and its surround to Firoka (a development company).

The lease requires the Commission's consent (under the 2004 Alexandra Palace Act and section 26 Charities Act 2006). During a Parliamentary debate in 2004, Fiona McTaggart MP announced that she had received an undertaking from the Commission to publish the draft of any order that it might make authorising a lease and to invite and consider any representations that it may receive.

The trustee made a case to the Commission to demonstrate that the disposal was in the best interests of the charity. It therefore agreed to authorise the transaction by Order, subject to the analysis of representations made to it following a period of public notice. Consequently public notice was given for a period of 5 weeks, which ended on 5<sup>th</sup> January 2007. Publication was in The Times newspaper and 6 local London papers on 28<sup>th</sup> November 2006. Notices were also placed in the Park and Palace and in local libraries. We produced a Q&A sheet to explain the proposals.

The process has given the opportunity for those with concerns about the proposals to give their point of view. It should be noted that those who had concerns about a particular aspect of the proposals did not necessarily express overall support or opposition to the granting of the lease.

#### 4. Overall reaction to the proposals

A total of 328 individual representations were received and analysed during the publication period. These are broken down as follows:

- 4 letters of support;
- 324 letters with representations of concern (including two from MPs).

The representations contained a number of specific proposals for the Commission to consider, which are included in the analysis below.

During the period, a 1,600 signature petition was also received, signed in 2004. The petition is as follows:

*We the undersigned wish to raise our concerns regarding the parliamentary scheme to enhance the powers of the Alexandra Park and Palace trustees. We are concerned that any alterations may be detrimental to the building and its broadcasting history, which would mean the loss of the single most important historical site in the world marking the beginning of the first high definition television service. If any scheme is put in place we consider it vital that the historical areas of the palace must be preserved.*

The issues that were most important to the respondents were:

- 1 The continued community use of the Old Station Building by CUFOS after the current lease expires.
- 2 The retention of the original TV studios and the establishment of a museum.
- 3 The preservation of the Willis Organ and Theatre.
- 4 Whether the Commission has power to make the Order.
- 5 The sufficiency of the notice period, the lack of consultation and the lack of disclosure of information.
- 6 The sufficiency of the lease.
- 7 The adequacy of the monitoring arrangements following execution of the lease.
- 8 The trustee's potential conflict of interest and the adequacy of the bidding process.

These are considered in more detail below.

There was a widely held view that, being built as a 'Palace for the People', it should continue to be used as a place of public resort and recreation open to the public. There was general concern that the proposed developments are not consistent with the charitable status of the Palace. Respondents pointed to the Palace's unique heritage and many felt that it should be kept as charitable property and not passed to a company with commercial aims.

**5. Detailed representations**

**5.1 The Old Station building**

***– the CUFOS building should be removed from the footprint of the lease to Firoka.***

Community Use For The Old Station (CUFOS) (charity 296940) leases the old station building to provide a community centre. We received 73 representations supporting continued community use of the old station building, along with a petition signed by 47 people to remove it from the lease.

There was a general view that the CUFOS building should not be included in the area to be leased to Firoka. Representations included the following points:

- CUFOS provides excellent recreational and educational services. Over 30 organisations use the CUFOS building, including a multiple sclerosis club, multi faith charities and charities for people with Downs Syndrome.
- The proposed lease does not impose any contractual duty for Firoka to seek to negotiate with the present tenant when the current lease expires in 2011, or any contractual obligation to offer a lease at an affordable rent to the charity. If rent is charged on a commercial basis or 'best rent reasonably obtainable', CUFOS is likely to close. Therefore, including the old station in the lease, puts the charity at risk. There is also a shortage of local community halls in the local area to provide alternative accommodation.
- CUFOS does not have access to the Palace or Park and is a separate structure/self contained building with its own entrance. It would therefore be possible to keep it out of the lease to Firoka.
- The aims of CUFOS are consistent with the aims of the Alexandra Palace Charity and the benefit to the community should continue. It is not a financial liability for the Palace Trust. There is an internal repair lease and, if the Trust remains as landlord, it does not represent an 'unacceptable' liability to the Trust as any future lease should reflect the future repair and maintenance costs in the usual way.
- Including CUFOS in the lease was an administrative oversight, which the trustees consider 'too difficult' to change.
- The Statutory Advisory Committee recommended to the Board of Trustees that CUFOS should be taken out of the lease or the future of CUFOS should be safeguarded in the lease. Both recommendations were turned down by the Trustee.

**5.2 Retention of original TV studios**

***– the original TV studios in the south-east corner of Alexandra Palace, should be preserved and restored.***



- ***the lease should contain a covenant specifying the nature, size and type of museum, and ensure that it will have the resources necessary to run it.***

There were 186 individual representations about the site of the original TV studios. The principal concern is that the lease does not contain a requirement to maintain the historic TV studio. The majority view is that the original TV studios should be preserved in their original position and this should be written into the lease.

Representations received include:

- The TV studios are part of the national heritage, are of international importance and have a unique place in TV and broadcasting history. Many of the firsts for broadcasting happened here, including the first HD broadcast in 1936. This is the birthplace of TV, which should be celebrated and cherished.
- The TV studios are in good condition and should be preserved. Once lost, they can never be replaced. They should therefore be maintained and restored as a public exhibition. What independent assessment has been made by the developer to say that the TV studios are dilapidated beyond repair?
- The re-development is not opposed, but this should be done in a sympathetic way.
- Other parties (including the National Trust or Alexandra Palace Television Group) may be willing to take on stewardship of the areas in question. There is a support group who could help restore the studios.
- Although there is a requirement for a 'television heritage facility' in the lease, the full requirement of this is not specified. What is it and who will approve it? These are not 'best terms' which can be reasonably obtained. This provision is not sufficient for such a unique aspect of our technological heritage.
- Facilities, such as a bar, could make a museum commercially viable.
- Commercial interests should not be put above public interest. Firoka should not charge a commercial rent to the organisation taking on the museum.
- Why are the offices not moved, rather than the TV studios?
- Can a group of people interested in working on this 'engage' with a property developer who will have a different agenda?

### **5.3 Willis Organ and Theatre**

- ***The Willis organ should be protected and restored and the theatre opened to the public.***
- ***The Willis organ and theatre should be transferred to a body willing to restore and protect them.***

The salient points from respondents were the need to protect and restore the Willis Organ and to re-open the theatre to the public. Comments included:

- The Willis Concert Organ should be preserved where it is, in a perfect acoustic environment. It is of national importance and was once the finest in the world. It is a unique treasure and has a place in the history of British organ-building. The evolution of the organ should be recorded, with sound recordings.
- The auditorium of the theatre is one of the oldest surviving in London and should be protected, it has significant technical importance. (There is an Alexandra Palace Theatre Friends Group).
- The Alexandra Palace Organ Appeal is itself a registered charity (285222). Can ownership not pass to the Appeal charity; in a charity to charity transfer?
- The words '*in consultation with key stakeholders*' should be inserted after the words '*shall*' in subsection (1) & (2) of Order.

**5.4 Doubts about the Commission's power to make the Order**

- ***The Commission should consider if it has the power to make the Order; and***
- ***If it has this power, if it has been properly utilised.***

Some respondents thought that the Commission did not have power to make the Order because the lease would conflict with the charity's purposes and is contrary to the provisions contained in the Acts of Parliament that govern the charity. There was concern that the lease will not impose any obligation upon Firoka to devote any part of the Palace to charitable purposes.

There was also concern that assurances given in the Parliamentary debate have not been honoured. (Debate on the draft Charities (Alexandra Palace) Order 2003 by the First Standing Committee on Delegated Legislation held on 14 January 2004.)

Comments include:

- The Council do not have power to dispose of the property for non-charitable purposes - the 1990 Act of Parliament does not allow this. It provides for the Palace and Park to be made available for the free use and recreation of the public forever.
- The 1900 Act authorises lettings '*at the best rent that can be reasonably obtained*', does this extend to granting a lease at a peppercorn rent on payment of a fine? (Bearing in mind that other statutory powers make express reference to such a power ie Settled Land Act 1925.)
- Is it within the powers of the Council, as trustee, to delegate a power to curtail outright charitable activity at the Palace?

**5.5 Sufficiency of notice period & notices, lack of consultation and lack of disclosure of information.**

- ***The Commission should consider if the notice period was sufficient and if the notices have been correctly displayed.***

- ***The Commission should consider if there has been a lack of consultation during this process.***
- ***The Commission should consider if the lack of disclosure of the draft lease and other documents during the publication period is a critical factor when considering whether to authorise the disposal***

There was a general concern amongst respondents about an insufficient consultation and lack of transparency about the proposals. A number of respondents thought that the Commission's notice period was insufficient and should not have included a holiday period. Representations include:

- The public notices did not include details about the TV studios.
- The notices could not be found in the Park and Palace.
- The trustee dismissed the representations made to it (as required by section 36(6) Charities Act 1993) and the general manager's report did not accurately reflect the representations made.
- There should have been a public open meeting and consultation with local groups.
- The lease and project agreement should have been made public (or parts of it) before the notice period. As it is, the public do not know what covenants are contained in the lease or what else they may wish to make representations about.

#### 5.6 Sufficiency of lease

- ***The Commission should consider if the sufficiency of the lease is an area for it to consider, and if so, review the sufficiency of the lease based on the representations provided.***

Respondents raised the issue of whether the sufficiency of the lease is within the Commission's jurisdiction. A number of specific technical points were made about the sufficiency of the lease, which are too detailed to summarise here.

#### 5.7 Monitoring arrangements

- ***The Commission should consider if the monitoring arrangements are an area for its consideration, and if so, whether the monitoring arrangements are sufficient.***

Respondents queried the trustee's proposed monitoring and review arrangements for the covenants contained in the lease, specifically the need to monitor that the lease does not interfere with use of the Park. It was suggested that the monitoring arrangements should be included in the lease. Specific comments include:

- The trustees have a statutory obligation to consult with local representatives on the likely impact of development on local residents. How will this be done?
- The monitoring regime should be independent of Firoka or the trustee.

- Will the Statutory Advisory Committee and Consultative Committee provide a monitoring role in the lease? The Statutory Advisory Committee should meet with the trustee and Firoka regularly as part of the monitoring process. Other bodies with an interest should also be involved.
- What happens if the lessee decides not to carry out the work? Can they just hand back the Palace after a period of time? Is the project agreement tied in with the lease? If there is a flagrant breach of covenant in the project agreement, will the lease continue?

#### 5.8 Conflict of interest & concern over bidding process

- ***The Commission should consider if there is a conflict of interest, and if there is, what effect this has had on the proposed disposal.***

Concern was expressed about a perceived conflict of interest with Haringey Council being both the trustee and the only funder of the charity. Concern was also expressed about the bidding process. Representations included:

- The bidding process appears to have been artificially manoeuvred to exclude all bidders except Firoka. Only three bidders came forward and one dropped out. One company failed to provide public information for the three and a half day consultation in Palm Court. The trustee have not sought other bidders – ie museums, educational users or Princes Trust.
- The trustee is abdicating its responsibilities to the charity. The lease is in conflict with the Palace being held as a place of public resort and recreation. The trustee could be considered to be putting the assets at risk and acting in breach of the governing document.

#### 5.9 Other issues

##### 5.9.1 Statutory Advisory Committee

- ***The Commission should consider the role of the Statutory Advisory Committee throughout the process and whether its involvement has been in line with that agreed during the Parliamentary debate.***

The Alexandra Park and Palace Statutory Advisory Committee (SAC) is an external body, established under the terms of the Alexandra Park and Palace Act 1985. Respondents expressed concern that the SAC has not been involved in the process and has had no contact at all with the proposed developer. Comments include:

- Although the role of the SAC will not change after the lease is executed, it will no longer have direct input into how the Palace is run by the tenant, whose commercial aims will take precedence over community interests.
- The SAC has been ignored during the run up to the draft Order. The SAC, other than the Chair, has not had sight of the draft lease.
- The SAC's questions to the Board have not been answered. These include a request for an explanation of how the Board will fulfil its obligation to consult with

local representatives and how the Park will be funded and managed after the lease is granted.

- Does the lease include the role of the SAC, in accordance with assurances given in the Parliamentary debate?

#### **5.9.2 Traffic and Noise problems**

- ***The Commission should consider the representations raised regarding noise and traffic problems.***

A small number of representations raise the issue of parking and traffic problems in the area and parking in the park.

- The SAC asked for an overall traffic assessment of the scheme as a whole. The local community and Board need to gauge the impact of the development as a whole. Paragraph 19(iv) Part III of the Schedule 1 to the Act, requires that the charity must consider *'the adequacy of the car parking arrangements within the Park and Palace, so as to avoid overflow into adjoining residential streets'*.
- There is concern about noise pollution, and a suggestion that the lease should require the Palace to be sound proofed.

#### **5.9.3 Listing and Planning Permission**

- ***The Commission should consider the representations raised regarding planning permission.***

Concern was expressed that planning permission for changes implied by the lease will be contrary to planning polices and may be illegal in a listed building.

#### **5.9.4 Casino**

- ***The Commission should consider the representation raised regarding the casino.***

Concern was expressed that the provision for part of the premises to be used as a casino may conflict with the 1900 Act (ie an activity taking place which was illegal at the time of the Act).

#### **5.9.5 Park**

- ***The Commission should consider if further information is needed regarding the charity's retained land.***

Concerns was expressed that there are no means to prevent the use of the leased premises interfering with the use of the charity's retained land. Further, there has been no explanation by the Board of how the Park will be funded or managed following the lease of the Palace.

#### **5.9.6 Metropolitan Open Land**

- *The Commission should consider if the charity holds Metropolitan Open Land, and if this has any effect on the disposal.*

#### **5.9.7 Health and Safety Concerns**

- *The Commission should consider if the Health and Safety concerns have an effect on the disposal.*

Health and Safety concerns were raised about the construction period, including: environmental emissions, the logistics of construction traffic in the Park and encroachment on the Park land. The increase in visitor numbers will mean more parking in the Park area with consequential health and safety concerns.

#### **6. Letters in support**

The respondents considered that the proposal will facilitate economic development and growth throughout Haringey, in one of the 10 most deprived areas in the UK.

Comments included:

- It will provide employment opportunities, will improve business tourism once developed and will regenerate the Borough. Given the financial realities of the situation, the Council shouldn't have this burden.
- A commercial venture should be allowed on the site, but cultural activities should also be supported.

The letters in support do though offer the view that the lease could contain provision to ensure the creation of a museum and visitor centre to celebrate broadcast heritage and remove CUFOS from the footprint of the lease.



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Ms Victoria Crandon  
Charity Commission Direct  
PO Box 1227  
Liverpool  
L69 3UG

13 February 2007

Dear Ms Crandon

**SUBJECT TO TRUSTEE BOARD APPROVAL**

**Alexandra Park and Palace**  
**Response to Representations**

Thank you for letting me have the Summary of Representations. You have indicated it would be helpful if you could have the comments of the Trustees on the issues raised in the Summary. You have also highlighted four specific areas in respect of which you would appreciate my detailed comments (I assume you mean the Trustees comments) namely on CUFOS, the TV studios, the Willis organ and theatre and monitoring of the covenants in the Lease.

Following receipt of the Summary of Representations it was agreed to convene a Special Meeting of the Board for Tuesday 20 February. I have been instructed to prepare a Report for consideration by the Board. I have agreed with the General Manager that the most expeditious way of proceeding is by presenting a draft of this letter to the Board for consideration, review and approval. If any of the charity Trustees wish to make additional comments I will record these in a second letter.

In setting out comments I adopt the numbering format on your Summary:-

**3. Background**

- 3.1 Alexandra Park and Palace's present use is much wider than "a conference venue". It is used as an exhibition centre, for concerts, trade shows, events and conferences. It is a licensed wedding venue and contains a major ice rink and bar.
- 3.2 The Charity is also governed by The Alexandra Park and Palace Order 1966. The convenient shorthand by which the governing documents are referred to is "The Alexandra Park and Palace Acts and Orders 1900-2004".
- 3.3 In addition to the Council not being willing to continue to subsidise the Charity's continuing loss there are also unresolved questions as to its power to subsidise the loss.



- 3.4 The decision by the Charity Trustees is to lease all of Alexandra Palace and the immediate hard-standing surround as defined in the 2004 Order.
- 3.5 The reference to the 2004 Alexandra Palace Act should be a reference to The Charities (Alexandra Park and Palace) Order 2004 and the reference to Section 26 of the Charities Act should be to the 1993 Act not the 2006 Act.

**4. Overall reaction to the proposals.**

- 4.1 In response to the “widely-held view that, being built as a “palace for the people”, it should continue to be used as a place of public resort and recreation open to the public” the Trustees concur.
- 4.2 It is, however, of considerable importance to bear in mind the fact that this charity is only able to continue as a going concern upon the basis that the local authority uses its own corporate funds to support the Charity.
- 4.3 In circumstances in which there are doubts as to the authority’s powers to fund, should funding be withdrawn, the Trustees will have to close the business and effectively prevent access to the Charity’s buildings and land. The only way in which this outcome can be avoided is by securing investment from a third party developer, precisely the steps the trustees have taken.
- 4.4 What is expressed as the “general concern that the proposed development is not consistent with the charitable status of the Palace” may be due to a misunderstanding over its charitable status and what it entails to be a Charity.
- 4.5 The basis upon which the trusts under which the Park and Palace were held to be charitable, by the decision of Mr Justice Pennycuik in *Alexandra Park Trustees and another v Haringey London Borough and others* 66 LGR 306, was that they provide for free use and recreation of the public. “Free,” in the context of use, has always been interpreted in the manner in which it was originally understood in 1900, namely unlimited use, as opposed to uncharged use. With the exception of use of the Park, which is uncharged and is unaffected by the present development proposal, the Trustees their licensees and lessees have frequently levied charges for use and recreation at the Palace.
- 4.6 The issue of charging was specifically considered by the Court of Appeal in *Alexandra Palace Ski Centre Limited v London Borough of Haringey* [1994] New Property Cases 73. The Court held that there was an implied power for the Trustees to charge the public for admission and to permit its lessees to charge the public for admission.
- 4.7 In any event under the existing arrangements much of the Palace is subject to the licence granted to a trading company, whose aims are commercial.
- 4.8 The Trustees wish to distance themselves from any suggestion that holding “charitable property” means that charges cannot be imposed or levied and businesses cannot be run commercially for profit. The restraint imposed by charitable status is upon distribution of any profits made. The Trustees wholeheartedly accept that restraint. In the event that there are profits generated these will clearly be reinvested back into the charity and the improvement of the fabric of its assets, not subject to the Lease, and facilities.

**5. Detailed Representations**

**5.1 The Old Station Building**

- 5.1.1 The area of the Palace buildings and immediate surround in respect of which the Trustees were granted power to lease was shown on the plan annexed to the 2004 Order. It was always the clear intention of the Trustees to secure power to lease the whole of the area on that plan. This included any areas that were subject to leases, for example the Old Station Building and the top floor of the south-east tower.
- 5.1.2 On 8 February 2002 the Trustees entered into a Lease with named Trustees for the time being of Community Use For the Old Station (CUFOS). The Lease was for a 10-year term commencing on 25 March 2001 until 24 March 2011. The rent was an annual sum of £1,075 and the permitted user was as a play group/community centre.
- 5.1.3 This Lease regularised an informal occupation which had commenced many years previously. As part of the negotiations it was agreed that CUFOS would not have security of tenure. The Lease was authorised as a contracted-out lease by Order of the Mayor's and City of London Court made on 14 January 2002.
- 5.1.4 In accordance with their statutory obligation it was agreed at the time that the rent was the best that could reasonably be obtained and the Lease so declared at clause 15(2). The Trustees received valuation advice before reaching their decision to grant the Lease. Any suggestion that this rent is not the best reasonably obtainable is disputed.
- 5.1.5 When the contractual term expires on 24 March 2011 CUFOS will have no right to a new lease or continuing occupation, regardless of whether its landlord is the Trustee or Firoka. If the landlord remains the Trustee and it chooses to grant a new lease, this will have to be at the best rent reasonably obtainable. If the landlord is Firoka it may, if it is willing to grant a new lease, do so on some concessionary basis.
- 5.1.6 Whilst the Lease to CUFOS contains an obligation to keep the interior of the premises in good repair the Trustees have a continuing obligation in relation to the repair of the fabric. The upkeep of fabric is not without its costs and expenses and it is entirely unclear why the representations suggest that this liability does not represent an "unacceptable" liability. The continuing problem of the Trustees is that they do not have funds with which to carry out maintenance of the external fabric of the Palace and the surrounding buildings. Whilst the Old Station Building was refurbished following the transfer of trusteeship in 1980 it is an old building and will not be without future costs.
- 5.1.7 The suggestion that "including CUFOS in the Lease was an administrative oversight" is baseless. As indicated above it was always the Trustees' intention to secure power in relation to all of the Palace buildings and the immediate surround and the development proposals following the 2004 Order made this abundantly clear. Specifically paragraph 1.9 of the Development Brief referred, at 1.9.4, to the fact that the development footprint was subject to the occupancy of the Old Station Building and a copy of the Lease was provided to the short listed bidders
- 5.1.9 The suggestion in the Summary that the Statutory Advisory Committee has recommended to the Board that "CUFOS" should be taken out of the Lease is not correct.
- 5.1.10 .At the Special Board Meeting on 30 January 2006 the Charity Trustees considered advice and recommendations arising from the meeting of the Statutory Advisory Committee on 24 January 2006. The advice and recommendations were presented to the Board and the

Minutes showed in tabular form the Board's acceptance/rejection and reasons why as appropriate. The material advice is at paragraph 2. A copy of that table is enclosed.

- 5.1.11 The Board was subsequently asked at its meeting on 11 April 2006 to consider resolutions of the Statutory Advisory Committee Meeting from 3 April 2006. Point 2 of the Statutory Advisory Committee's response was in the following terms:-

"In respect of the CUFOS lease, that the developer be required to commit to maintain a community use for the premises on favourable terms with CUFOS or another similar party at the end of their lease term (2011) to ensure that the premises continue to be used as a community facility at an affordable rent."

- 5.1.12 The Board resolved, at its meeting on 11 April 2006

"that in respect of the request of the Advisory Committee in respect of the CUFOS lease arrangements the Board expresses a preference to the preferred investment partner to continue community use of the premises currently occupied by CUFOS upon expiry of the CUFOS lease in 2011.

- 5.1.13 Following the S.36(3) Notices, published in March 2006, the General Manager reported upon the responses, of which there were 24, to the Board meeting on 4 July 2006. 19 of the responses focused on CUFOS. I gave legal advice to the Board, a copy of which I enclose and the Board resolved:-

"to reject the representations that the building presently let to CUFOS until March 2011 be removed from the area proposed to be let to Firoka and that the term held by CUFOS be extended but that the representation received that the use of the CUFOS Building should continue as a community use be put by the General Manager to Firoka during the current negotiations for the grant of a Lease."

- 5.1.14 Negotiations were thereafter continued with Firoka and its advisers. The present view of the Trustees is that having:-

5.1.14.1 sought interest on the basis that the Old Station Building would be included in any demise and

5.1.14.2 not received any formal resolution from the Statutory Advisory Committee inviting exclusion of CUFOS and

5.1.14.3 negotiated throughout on that position and agreed terms with Firoka whereby the Old Station Building will be included in any demise

it would not now be appropriate to seek to amend the area of the demise.

## **5.2 Retention of original TV Studios**

- 5.2.1 It may be useful, in the context of the representations, to set out the provisions of the Agreement in relation to the studios.

- 5.2.2 Firoka's concept proposals indicated that a museum space was proposed at first floor level to exhibit the history of the Palace and BBC Broadcasting. They added that a museum of the

history of the Palace as well as the involvement of the BBC would incorporate a recording studio for public access and BBC training.

5.2.3 This proposal, and the concept drawings, has been incorporated into the agreed documentation. Clause 3.24 of the Lease provides: "BBC Museum to make available accommodation in the south-eastern wing of the property for a broadcasting and a recording studio in accordance with clause 9 of the project agreement".

5.2.4 Clause 9 of the project agreement reads as follow:-

"9. The Museum

- 9.1 Having regard to the historic importance of the Premises as the first and former sole television broadcasting centre in England, the parties intend to allow the Museum Operator the opportunity of taking up an underlease of premises in the south-eastern wing of the Premises to accommodate a broadcasting museum and working recording studio ("the Museum"). The following provisions of this clause 9 are to apply accordingly as to the terms of the underlease and the premises to be available to the Museum Operator.
- 9.2 The Landlord shall notify the Tenant of the identity of the Museum Operator as soon as reasonably practicable and in any event prior to completion of the underlease referred to in clause 9.1.
- 9.3 The accommodation for the Museum is not to exceed 558 m<sup>2</sup>.
- 9.4 The Tenant shall provide the accommodation as part of the Phase Three Works constructed or refurbished to a shell and core standard and to a specification agreed with the Museum Operator capable of taking the Museum Operator's proposed fit out works.
- 9.5 The underlease is to be offered for a term of not less than 15 years nor more than 20 years.
- 9.6 The rent of the premises is to be a market rent, without a fine or premium, exclusive of outgoings, service charges and insurance contributions, as between a willing landlord and a willing tenant acting at arms length subject to rent reviews of a frequency according with current market conditions at the time of grant of the underlease.
- 9.7 The underlease is to be on an interior repairing basis but subject to a pro-rated contribution to the cost of repairs maintenance and upkeep of the Premises (not comprised in an lettable area of the Premises) and recoverable by the Tenant by way of comprehensive service charge.
- 9.8 The underlease is otherwise to contain such other terms as are consistent in all material respects with the approved form of underlease referred to in clause 3.8.8.9 of the Lease.
- 9.9 The Tenant shall in good faith use its reasonable endeavours to negotiate appropriate terms with the Museum Operator so as to reach agreement, and the Landlord shall cooperate and use its good offices in this regard.
- 9.10 The Tenant may depart from the terms of the proposed underlease referred to in this clause 9 if the Museum Operator agrees different terms with the Tenant.

9.11 If no agreement has been reached with the Museum Operator within three years after the date of this Agreement, the Tenant having endeavoured in earnest to do so, the Tenant will then be released from the obligations under this clause 9 which are to lapse accordingly."

5.2.5 The documentation as drawn and agreed prior to mid November, but not signed, contained various references to the BBC. The draft documentation was presented to the Trustee Board at its meeting on 14 November 2006. Immediately prior to that meeting, the BBC had indicated that it did not wish its name to be included in any of the documentation. As a result of this late indication, the documentation had to be amended by deleting references to the BBC and the documentation was approved on 14 November in the amended form. I now set out below a narrative taken from the General Manager's letter to English Heritage dated 1 February 2007. This sets out the interest and involvement of the BBC in the matter.

"Over the years a number of attempts have been made by this charity and its Officers to engage with the BBC for the purpose of developing a new use based on the heritage of the site.

A DVD and brochure was produced with the assistance of the production facilities of the BBC to engender support for some form of media campus located in the now unused studios. In developing this initiative Middlesex University were also involved until it became clear that the BBC would not direct resources toward the facility and the university withdrew.

There was an attempt to create pan-industry interest via a meeting at the offices of OFCOM which also included representatives of the written media. Again no firm interest could be established in the absence of a BBC commitment.

Prior to the closing date for the submissions of final concepts by potential investment partners the BBC issued a note to bidders which was heavy on rhetoric about supporting the development of a heritage facility but the note contained little to persuade anyone of any real intent to commit resources to such a project.

In addition and prior to the submission of the proposals, the Firoka Group representatives also had an albeit relatively informal meeting about the BBC's potential involvement in developing some form of heritage facility at the site. There is no doubt that the concepts as submitted reflect the lukewarm and limited interest displayed at that time.

The current situation has only come about as a result of pressure created from **outside** the BBC. Given the lack of interest and commitment previously demonstrated by them there is only one logical conclusion to requesting a review of the grading of Alexandra Palace now. That is the Director General is able to argue publicly that he has engaged with English Heritage and requested a review of the listing. However he has not provided any statement of commitment to provide finance or indeed a statement which demonstrates intent do anything else to ensure that the BBC's heritage is recognised.

On the contrary, during the last 24 hours of discussion over the lease details with the Firoka Group, an approach was made by the BBC to this charity's General Manager. The purpose of this approach was to ensure that the Corporation was not identified within the lease in connection with any museum or heritage facility proposed on the site because "they were not in the business of running museums".

A more positive step by the BBC alone or in concert with other interested groups would have been to consider the type of heritage facility they would support and tease out any issues then arising, develop a concept, develop a business plan and identify

potential sources of funding and then engage with the Firoka Group to establish how the vision could be delivered within the overall plan. Clearly their commitment does not go that far and is predicated only on the concept that as long as someone else is responsible then the BBC does not have to be.

In relation to the physical space occupied by the studios, it has to be recognised that public access to the area is not available currently. The BBC made considerable alterations to the building during the period of the development of television and the public access available in the original Victorian plans was removed by the creation of the studios and its supporting infrastructure. Current public access is only available through this charity's offices and therefore is unsuitable and disruptive. To **guarantee** access to the areas in which the studios are located in the absence of detailed advice and architectural drawing would be foolish in the extreme. It is unclear at this stage whether such access is feasible without significant intervention into the historic fabric. This specific issue, vital to the success of any project to re-use the studios, has not been seriously considered. "

- 5.2.6 I hope the above adequately and fairly summarises the background to this particular topic. I now turn to the various specific representations to which I respond as follows.
- 5.2.7 The Trustees accept the representations that the TV studios are part of the national heritage. However, the Trustees are without funds. The BBC, whom one might expect would have wished to have preserved this heritage, appears to seek to dissociate itself from it. It is a question of funding. The Trustees have no funds. Despite efforts to raise funds which have been made over many years, there has been no success. Under the provisions of the project agreement, if no funding can be secured within three years after the date of the agreement, then Firoka is released from obligations under clause 9 of the project agreement.
- 5.2.8 There are many supporters of the studios and interested parties but none of these appear able and/or willing to make any funds available. The representations in respect of commercial interests and a group of people engaging with the property developer are not understood. The rents all parties, whether they be the trustees or Firoka must charge must be the best rent reasonably obtainable. Clearly, the assessment of the best rent reasonably obtainable is affected by the use to which let premises may be put.
- 5.2.9 In these circumstances it is quite impossible for the Lease to contain any covenant specifying the nature and type of museum or to ensure that it will have the resources necessary for its running costs.

### **5.3 Willis Organ and Theatre**

- 5.3.1 By way of introduction on these two matters, it is appropriate to observe that the Willis Organ is not subject to the Trusts. Notwithstanding this fact, part of Firoka's proposals include its repair.
- 5.3.2 The manner in which the obligation is recorded is at clause 3.22 of the Lease which provides that Firoka will assist the Alexandra Park Organ Appeal Society to raise funds for the improvement and retention of the Willis Organ and will meet from time to time with the society to discuss methods of fundraising and promotional activities for the purpose.
- 5.3.3 Once again this is a funding issue but unlike other funding issues the Trustees have no statutory obligations in relation to the Organ. It is a matter of good faith that the provisions have been agreed in the form indicated and there is really very little that the Trustees can say beyond this.

- 5.3.4 The significance of the Theatre is recognised not only by the fact that part of the stage equipment is listed but also at clause 3.23 of the draft Lease. This contains the tenant's covenant to bring the Theatre back into use for an operator in accordance with the obligations in but subject to the other provisions as contained in the Project Agreement. Under the Project Agreement the Theatre falls within the proposed phase 3 works set out at part 3 to Schedule 1. At this stage of the process it has not been possible to agree anything more specific than the provisions highlighted.
- 5.3.5 It is suggested that the words "in consultation with key stakeholders" should be added after the words "shall" in clauses 4(1) and (2) of the draft Order. It cannot be either appropriate or correct to add such wording because this may conflict with the Trustees' obligations and duties as Charity Trustees. They cannot exercise their role as Charity Trustees in consultation with others and the extent to which they can have regard to the views of others is limited.
- 5.3.6 It will be recalled that this was one of the concerns raised by the Attorney General, Michael Havers as he then was, in his report on the Alexandra Park and Palace Bill dated 7 June 1984. His advice was that it was essential the provisions in relation to the Statutory Advisory Committee contained the words:

"shall use their best endeavours to give effect to such recommendations of the said committee as are expedient in the interests of the Charity and as are consistent with the Trust."

His concern was that the Committee could come to a conclusion to give advice to the Trustees which would conflict with their duties as Charity Trustees. It was essential that they were not placed in the position whereby to follow the advice of the Committee would make themselves liable for breach of trust. It is therefore suggested this proposed wording be inappropriate.

#### **5.4 Doubt's about the Commission's power to make the Order.**

- 5.4.2 It is difficult to understand the representation that there was concern the Lease will not impose any obligation on Firoka to devote any part of the Palace to Charitable purposes.
- 5.4.3 The carefully negotiated user provision is at clause 3.11 of the Lease. It defines "permitted use" as

"a use or combination of uses of the premises consistent with the purposes of the Alexandra Park Acts as a place of public resort, recreation and public use, the primary uses of which must be as conference and exhibit centre and live music venue (primary uses) and for uses ancillary to the primary uses. The uses to be treated as ancillary to the primary uses would include (without limitation but for avoidance of doubt must be consistent with the purposes of the Acts.),

There are then set out certain specific uses.

In response to the specific comments:-

- 5.4.4 As indicated above the permitted use is as defined.
- 5.4.5 The Trustees have been advised that the terms proposed are the best rent that can be reasonably obtained.
- 5.4.6 This comment is not understood.

**5.5 Sufficiency of notice period.**

- 5.5.1 Whatever criticisms may have been made about the sufficiency of the notice period this has clearly not inhibited the process of representations because there has been a substantial number, some of which have expressed some concern about aspects of the proposals.
- 5.5.2 General proposals for the redevelopment of Alexandra Palace have been in the public domain since 1990. The current proposals have been in the public domain since the beginning of 2006. Specifically:-
- (a) The proposals were subject of an exhibition at Alexandra Palace in January 2006 when the public were given an opportunity to make comments. As reported by the General Manager to the Board on 30 January 2006 there were 248 comments submitted by the public during the display period. A copy of the analysis presented to that meeting is enclosed.
  - (b) The specific proposal to grant a lease was subject to notices under Section 36(6) of the Charities Act 1993 exhibited on 28 March 2006 inviting representations by 27 April 2006. There were 23 representations in response to that notice which were analysed and presented in detail to the Board at its meeting on 4 July 2006.
  - (c) The proposed Lease was subject to a further advertisement in November 2006 which consultation period ended on 5 January 2007.
  - (d) The advertising of each of these notices went far wider than the statutory requirements.
  - (e) On the issue of representations it must be that it is the public's right to make general representations. It cannot be appropriate as part of any consultation exercise for the public to be entitled to make representations on detailed provisions of complex legal documentation that has been agreed following complex and protracted negotiations.

**5.6 Sufficiency of Lease**

- 5.6.1 As referred to at paragraph 5.5.2(e) the draft documentation is the result of many months protracted deliberations and negotiations between Firoka's solicitors, Messrs Lewis Silkin, and Messrs Berwin Leighton Paisner who have been representing the Trustees in relation to this development project.
- 5.6.2 It is impossible to make any comments in reply to the summary of representations which indicates that the technical points made "are too detailed to summarise here". Suffice it to say that the draftsman of the documentation attended the Trustee Board Meeting on 24 July when he was asked various questions and responded. He also indicated that he would respond by letter to any drafting points that were raised. He duly did so and the Minute of the Board Meeting of 14 November 2006 contains the following record:-

Mr Heller (of Berwin Leighton Paisner) set out the history to Councillor Hare's questions and concerns and reminded the Board that, following the Special Board Meeting on 24 July 2006, which considered the draft document, Councillor Hare had written to Mr Heller in early October setting out his concerns. Mr Heller had replied to



Councillor Hare within a few days of receipt of his letter. Councillor Hare acknowledged this to be an accurate account of the events.

Mr Holder then took the Board through the main parts of the documents before them and advised of the required changes."

### **5.7 Monitoring Arrangements**

- 5.7.1 The Trustees have long been of the view that it is essential for them to have an adequate monitoring process in place so that they are able to assess that Firoka has met its ongoing obligations, in an appropriate manner and that the work it has been undertaking to the Charity's assets is of satisfactory quality and standard.
- 5.7.2 The General Manager presented a report to the Board Meeting at agenda item 18 held on 6 February that set out an outline proposal for the appointment of a monitoring surveyor. A copy of this report is enclosed. This is provided on a confidential basis and should not be made available under the Freedom of Information Act because it contains the commercial terms of the proposed monitoring surveyor's engagement.
- 5.7.3 A formal decision was not reached by the Board on this item and it is due to be considered again at the Special Meeting on 20 February. I was in fact called to give some advice on this aspect and enclose a copy of my letter to the Chair of the Board dated 7 February.

In reply to the specific comments:-

- 5.7.4 The Trustees do not have a statutory obligation to consult with local representatives on the likely impact of development on them. The Trustees have a statutory obligation under Section 9(3) of the Alexandra Park and Palace Act 1985 to consult the Statutory Advisory Committee. The remit of the Advisory Committee is recorded at Part III, paragraph 19 to the First Schedule. The Trustees will continue to consult in accordance with this statutory obligation.
- 5.7.5 Clause 3.14 of the Lease contains provision that Firoka will comply in all respects with the requirements of all statutes for the time being in force relating to the use and occupation of the premises or anything done in or upon them. Clearly it is not intended that there be any direct link between the Statutory Advisory Committee and Firoka but the link between the Statutory Advisory Committee and the Trustees will of course continue as per the 1985 Act.
- 5.7.6 The lease contains provisions permitting the Trustees to forfeit in the event of breaches of obligations.

### **5.8 Conflict of Interest and Concern Over Bidding Process**

- 5.8.1 At all times the parties concerned have been fastidious to manage any perceived conflicts of interest. The Council as Trustee has always made decisions in Board Meetings as opposed to by full Council. The Board Members as Charity Trustees do not hold roles which create any conflict of interest. Council Officers have taken no part in the ongoing process save that the Director of Finance and Acting Director of Finance have given their views and advice on issues where these touch upon the interests of the local authority. The Trustees have been represented by their own solicitors, surveyors and valuers.
- 5.8.2 The representation that

“the bidding process appears to have been artificially manoeuvred to exclude all bidders except Firoka”

is simply untrue. There were 13 expressions of interest received in response to the marketing strategy undertaken between September and October 2005. The development opportunity was given the widest possible exposure. According to the Trustees' valuer's Section 36(6) Report presented to the Board on 27 March 2006 the property was advertised as follows:-

1. Full page full colour Estates Gazette.
2. Full page full colour Property Week.
3. Full page full colour Leisure Opportunities.
4. Full page full colour Euro Properties.
5. 15 x 3cm black and white North London Group Newspapers.

In addition, the brochure was mailed direct with a covering letter to:-

1. Conference events and live music venue operators in the UK and Europe.
2. Major UK leisure operators.
3. Major UK leisure and commercial developers.
4. Commercial and leisure property consultants in the UK. In addition King Sturge made the information available to their national European and international offices.

A total of 13 expressions of interest was received, 8 for the whole building and 5 for parts. A shortlist of 3 parties was selected. One of these withdrew.

5.8.3 In the context of this extremely extensive marketing campaign it is simply untrue for representations to indicate that the Trustees have not sought other bidders.

5.8.4 The Trustee is not abdicating its responsibilities. It remains Trustee and will of course continue to be responsible for the maintenance and upkeep of the Park.

## **5.9 Other Issues**

### **5.9.1 Statutory Advisory Committee**

5.9.1.1 As indicated at paragraph 5.7.5 the role of the Statutory Advisory Committee will continue and it will give advice to the Trustees, upon which they will act in accordance with their statutory obligations.

5.9.1.2 It is incorrect to suggest the Statutory Advisory Committee “has been ignored during the run up to the draft Order.” It is correct that the Committee Members have not been provided with a copy of the draft lease. This has not been

considered appropriate having regard to the terms of the Statutory Advisory Committee's remit and obligations.

#### **5.9.2 Traffic and Noise Problems**

5.9.2.1 The Statutory Advisory Committee request for an overall traffic assessment was put to the Board of Trustees. The response of the Board was that this was not a matter for the Trustees at this stage but would be an issue for Firoka as and when it came to apply for planning permission. It is anticipated that a traffic impact assessment will be required by the Planning Authority as and when it considers the planning application made by Firoka.

#### **5.9.3 Listing and Planning Permission**

5.9.3.1 Any planning application will be dealt with in due course by the planning authority and the Trustees as proprietors will have an opportunity to make appropriate representations. The Trustees will invite the advice of the Statutory Advisory Committee in accordance with the terms of their remit.

#### **5.9.4 Casino**

5.9.4.1 It will be a matter for deliberation in due course as to whether any proposed use as a casino falls within the charitable objects.

5.9.4.2 In any event Haringey has not applied for a licence under the Gambling Act 2006 so this use would not be permitted.

#### **5.9.5 Park**

5.9.5.1 The lease contains a specific provision, at clause 3.12.3 that Firoka will

“not use or carry on business in the premises in such a manner as to cause nuisance to the owners, tenants and occupiers of neighbouring properties.”

5.9.5.2 At its meeting on 6 February 2007 a budget was presented to the Board based upon two scenarios. The first is that the Lease to Firoka will be granted before 31 March 2007. The second was that Firoka did not assume control before the start of the financial year 2007/2008. The budget shows that the Charity will need financial support from the local authority for 2007/2008 in the sum of £740,000. A request has been made to the local authority for funding at that level together with further funding of £65, 000 to £70,000 per month to meet ongoing costs should there be any continuing delay in the grant of the Lease.

### **5.9.6 Metropolitan Open Land**

5.9.6.1 The Park is metropolitan open land but this is not being leased and accordingly no issues arise.

### **5.9.7 Health and Safety Concerns**

5.9.7.1 Concerns of this nature are inevitable during the course of any construction project. These are essentially issues for the planning authority by which it is anticipated they will in due course be covered.

## **6. Letters In Support**

The representations in support are noted and welcomed by the Trustees.

I hope this letter together with the enclosures and any second letter sent cover all the relevant matters. Please do not hesitate to revert to me if I can add anything further to facilitate the Commission's consideration of this matter.

I look forward to hearing from you in due course.

Yours sincerely

**IAIN HARRIS**

Encs:

- 5.1.10 Statutory Committee advice to the Board on 30 January 2006
- 5.1.13 Advice to Board on 11 April 2006
- 5.5.2 General Manager's analysis of public's comments following 2006 exhibition as presented to Board on 30 January 2006
- 5.7.2 General Manager's Report dated 18 February 2007
- 5.7.3 Advice to Chair dated 7 February 2007

**ENCLOSURE 1  
(5.1.10)**

**STATUTORY COMMITTEE ADVICE TO BOARD ON  
30 JANUARY 2006**

**TABLE OF ADVICE AND RECOMMENDATIONS OF THE ADVISORY COMMITTEE DRAWN FROM THE MINUTES OF ITS MEETING ON  
24 JANUARY 2006 PRESENTED TO THE ALEXANDRA PALACE AND PARK BOARD MEETING ON 30 JANUARY 2006  
COMPLETED WITH THE BOARD'S ACCEPTANCE/REJECTION AND REASONS WHY AS APPROPRIATE**

<b>Advice and Recommendations</b>	<b>Accepted</b>	<b>Rejected and Reasons Why</b>
<p>1. In view of the Advisory Committee's comments at paragraphs 1(a) – (c) of its resolution, it asks the Board to seek professional advice and/or to satisfy itself that all the rules applying to the bidding process were made clear to ECO, and whether the Board ought to have given ECO an extension of time to allow any further more detailed submission by ECO (resolution 1(d)).<sup>1</sup></p>		<p>That the Board has satisfied itself that it had sought professional advice and had complied with all the rules applying to the bidding process and that these were made clear to ECO, and that ECO had been appraised of the timescale of the bidding process, as was Firoka, and that ECO had taken a decision without any influence of the Board, not to attend the presentation and therefore any extension would be against the agreed process and therefore not permissible.</p>

<sup>1</sup> BLP who are solicitors to the project have advised that all rules applicable to the bidding process were made clear to ECO. BLP further advise that it would not be appropriate to have given or now give ECO any further time to make a more detailed submission. If the Board were to do so this might unfairly prejudice other bidders and give them an opportunity to challenge the process.

<p>2. The Board should ensure that CUFOS continue to occupy its premises without interruption under its existing lease and be allowed to continue operating beyond its expiry date of March 2011 (resolution 2(d).<sup>2</sup></p>	<p>That the comment of the Advisory Committee was noted and any lease entered into with the chosen preferred bidder would include the existing lease to CUFOS, expiring in March 2011. At that time CUFOS would then be required to negotiate a new term of lease with the chosen preferred bidder.</p>	
<p>3. In the light of resolution 3(a) the Board be asked to reconsider the issue of consultation, and whether there is any legal constraint to the period of consultation for both bids being extended by one further month and if not that such extension be given</p>		<p>A period of further consultation at this stage was inappropriate in the light of the development timetable proposed and agreed by the Board and notified to bidders. From a legal position a set of</p>

<sup>2</sup> The Old Station Building let to CUFOS is within the development footprint and it is proposed will be included in any Lease to be granted as a result of the bidding process. The Lease granted by the Trustees to the Trustees of CUFOS is contracted out of the renewal provisions of the Landlord and Tenant Act 1954. Future arrangements in respect of this building will fall to be made between the Trustees' Lessee and CUFOS and the Trustees are not able to impose terms although can give an indication of their wishes to which regard may be had in the negotiating process.

<sup>3</sup> A period of further consultation at this stage is inappropriate in the light of the development timetable proposed and agreed by the Board and notified to bidders. In any event, further consultation in the absence of appropriate information from ECO probably serves little purpose, and as referred to above, BLP

<p>of consultation” and ‘good consultation practices’ adopted by Haringey Council in 2003 (resolution 3(d)).</p>		<p>rules had been agreed upon by the Board in November 2005 and there were therefore legal constraints in changing the competition rules. The preferred partner will also deal with all aspects of consultation and dealing with the public once selected.</p>
<p>6. That, the successful bidder, by its representatives, be required by the Board to meet the Advisory Committee as soon as practically possible and provide to it a full and detailed presentation of its bid, and to hear the views of the Advisory Committee in respect of its proposals concerning the future use of the Asset furthermore, in order to maintain such consultation on a continuing basis, to attend subsequent Advisory Committee meetings in the way that current Management representatives do (resolution 4).</p>		<p>That the Board accepts the recommendation of the Advisory Committee and will convey the request to the preferred bidder, but the Board could not guarantee that the preferred bidder will accede to this request.</p>
<p>7. That the Board disclose to the Advisory Committee in time for its next meeting the criteria it set for the</p>	<p>The Board can accede to the request.</p>	



bidding and for the evaluation process (resolution 5). <sup>5</sup>		
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<sup>5</sup> The Board will have to decide whether to make available the evaluation and methodology appointing a preferred bidder and the two appendices attached. This is provided at appendix 5 of the General Manager's report to the Board on 30 January.

**ENCLOSURE 2  
(5.1.13)**

**ADVICE TO BOARD ON 11 APRIL 2006**

**ADVICE TO THE BOARD ON GENERAL MANAGER'S REPORT SETTING OUT**  
**SECTION 36(6) RESPONSES**

1. Section 36(6) of the Charities Act 1993 provides that  
“where –
  - (a) any land is held by or in trust for a Charity, and
  - (b) the trusts upon which it is so held stipulate that it is to be used for the purposes, or any particular purposes, of the Charity,then.. the land shall not be sold, leased or otherwise disposed of unless the Charity Trustees have previously –
  - (i) given public notice of the proposed disposition, inviting representations to be made to them within a time specified in the notice, being not less than 1 month from the date of the notice; and
  - (ii) taken into consideration any representations made to them within that time about the proposed disposition.
2. As the General Manager has reported, public notice was given on 28 April 2006. 23 representations were received within the stipulated 28 day period and one following its expiry which the General Manager has agreed to report to the Board.
3. The Board is now required to give consideration to these representations. The Charity Commission Operational Guidance OG54B3 gives the following guidance under the heading “considering representations”:-

“The Trustees should consider any representations carefully. They may set aside any representations which advocate courses of action which, after due consideration and in their opinion, are not in the Charity's interest. Representations which are made in the interests of other persons or bodies, and are therefore not concerned with the best interests of the Charity, can also be discounted. Trustees need not respond formally to representations, but neither should they be seen to ignore them or to reject them out of hand. They should record their discussions and conclusions in their Minutes and be prepared to justify their decisions if challenged.”
4. The General Manager has analysed the representations received in respect of CUFOS. His summary is that the representations suggest the following course and/or course of action:-
  - (a) The building subject of a Lease by the Trustees to the Trustees of CUFOS should be removed from the area proposed to be leased to the developer for 125 years.
  - (b) Alternatively, consideration should be given to extending the term granted to CUFOS.

The representations refer to the loss to the community if CUFOS were unable to continue beyond the expiry date of its current Lease in March 2011.

5. The General Manager has summarised the representations on other matters made by other organisations. These do not appear to advocate any particular course or courses of action beyond requesting the Trustees to withdraw their intention to grant a Lease.
6. This advice addresses the general before moving to the specific. As regards the general representation, namely that the Trustees withdraw their intention to grant a Lease, Board Members will wish to be reminded that the Board resolved on 6 July 1998, at AP1, to request the Charity Commission to invite it to ask the Commission to promote a scheme empowering the Trustees to grant a 125 year Lease of the development footprint.
7. Board Members then concluded that the best interests of the Charity were served in securing such power. The Charity Commission formally accepted the Board's invitation to promote a scheme. After a lengthy procedure, including a debate in a parliamentary committee, the Charities (Alexandra Park and Palace) Order 2004 came into force in January 2004. That Order gave power to the Trustees to grant a long Lease of the so-called development footprint.
8. The Board Members as Charity Trustees may conclude, in the light of the general representation, that it would not be appropriate for them to change a policy adopted in July 1998 and accepted and approved by both the Charity Commission and Parliament.
9. Turning from the general to the specific recommendations with regard to CUFOS, the Lease granted to the Trustees of CUFOS was for a term of 10 years commencing on 25 March 2001.
10. When the Trustees granted that Lease it was on the basis of surveyors advice that the rent payable was the best reasonably obtainable. The Lease is excluded from the renewal provisions of the Landlord and Tenant Act 1954. As Board Members will appreciate, this means that at the end of the tenancy the Trustees of CUFOS have no enforceable entitlement to a new Lease. It may be that CUFOS's Landlords are prepared to grant a new Lease but that will be a matter for free negotiation between the parties.
11. Throughout the process which has resulted in the selection of the preferred developer it has always been made plain that any long Lease to be granted will be subject to the various subordinate interests already granted by the Trustees.
12. Expressions of interest were considered on this basis and following the selection of the preferred bidder negotiations have proceeded on this footing, as has preparation of draft documentation.
13. In a negotiating context the Trustees are seeking to hold the preferred bidder to the commitments it made in its original proposals.
14. All the representations made by in respect of CUFOS would entail some departure from the original proposals and Board Members as Charity Trustees will have to decide whether or not they wish to depart from the acceptance of the preferred developer's proposals.

**ENCLOSURE 3  
(5.5.2)**

**GENERAL MANAGER'S ANALYSIS OF PUBLIC  
COMMENTS  
FOLLOWING 2006 EXHIBITION  
AS PRESENTED TO BOARD  
ON 30 JANUARY 2006**

APPENDIX 4

**ANALYSIS of PUBLIC COMMENTS FROM PALM COURT DISPLAY**

When viewing the long term future plans for Alexandra Palace:

- 103 people responded positively
- 55 people responded negatively
- 90 people commented on what they wanted to happen to Alexandra Palace

A total of 248 comments were analysed.

103 Positive Comments

- 32 people, in their comments, listed **Firoka's plans** as positive.
- 3 people, in their comments, listed **Earls Court and Olympia's plans** as positive.
- 31 people, in their comments, listed the continuance of the **Ice Rink** positive.
- 10 people, in their comments, listed the new **museum** idea as positive.
- 9 people, in their comments, listed the continuation of the **exhibition halls** as positive.
- 9 people, in their comments, listed the **hotel** idea as positive.
- 9 people, in their comments, listed the renovation of the **theatre** as positive.
- 8 people, in their comments, listed bringing **Alexandra Palace in to the future** as positive.
- 7 people, in their comments, listed the **organ restoration** as positive.
- 6 people, in their comments, listed the new **restaurant** idea as positive.
- 5 people, in their comments, listed the retention of the **exhibition halls** as positive.
- 4 people, in their comments, listed the new **bar** idea as positive.
- 4 people, in their comments, listed the **conference centre** as positive
- 2 people, in their comments, listed the new **bowling alley** idea as positive.
- 2 people, in their comments, listed the retention of the **firework display** as positive
- 1 person, in their comments, listed the new **shops** idea as positive.
- 1 person, in their comments, listed the new **cinema** idea as positive.
- 1 person, in their comments, listed the new **market** as positive.

*"I think the plans are very exciting and seem realistic in terms of generating income for the area"*

*"The proposal is very exciting"*

*"Good idea to provide a theatre, hotel and perhaps renewed ice rink"*

*"I think the plans would really bring a wonderful building up to date"*

*"Firoka... idea's look great...don't delay choose them"*

*"I live at the bottom of the park and I liked the plans that I saw today"*

*"We believe that the restoration of the palace is not only a gift for the people of North London but a fitting compliment to such a wonderful building...good luck"*

*"The Firoka plan is preferred"*

*"Plans are very good"*

*"I am in favour of Alexandra Palace being used as a leisure and community resource"*

*"As a local resident, the proposal sounds good"*

*"Welcome hotel and restaurant with views"*

Some positive comments highlighted a few concerns

- 26 people, in their comments, highlighted **EC + O's plans** as a concern they had.
- 18 people, in their comments, highlighted **parking** as a concern they had.
- 15 people, in their comments, highlighted **transportation** as a concern they had.
- 9 people, in their comments, highlighted the **casino** as a concern they had.
- 9 people, in their comments, highlighted the **nightclub** as a concern they had.
- 8 people, in their comments, highlighted the **cost of completion** and whether it would be too high as a concern they had.
- 7 people, in their comments, highlighted the **ice rink on the third floor**, as a concern.
- 5 people, in their comments, highlighted the **closure of under performing venues** as a concern they had, e.g. the museum and the theatre.
- 5 people, in their comments, highlighted the **changing of the façade** as a concern they had.
- 4 people, in their comments, highlighted the **noise** as a concern they had.
- 4 people, in their comments, highlighted the **increased traffic and congestion** was a concern.
- 3 people, in their comments, highlighted that they found the **lack of knowledge on the completion time** concerning.
- 2 people, in their comments, highlighted **energy efficiency** as a concern they had.
- 2 people, in their comments, highlighted the idea of a **hotel** as a concern they had.
- 2 people, in their comments, were concerned that the **park should remain as it is**.
- 2 people, in their comments, highlighted the **lack of public consultation** as a concern they had.
- 3 people, in their comments, were concerned the **public right of way** through the park would be taken away.
- 1 person, in their comments, thought **125 year lease** was too long.
- 1 person, in their comments, was concerned about the proposed **shops**.
- 1 person, in their comments, highlighted the **offices** as a concern they had.
- 1 person, in their comments, highlighted the **affect on local residents** as a concern.
- 1 person, in their comments, highlighted the **bowling alley** as a concern.
- 1 person, in their comments, highlighted the **cinema** as a concern.
- 1 person, in their comments, highlighted the **commerciality** as a concern.
- 1 person, in their comments, highlighted the **gym** as a concern they had.
- 1 person, in their comments, highlighted the **changing of palm court** as a concern they had.

*"Is parking an issue?"*

*"Transport should be ensured as a priority"*

*"Need assurances that less profitable aspects of the Firoka bid would be guaranteed in the long term"*

*"Ice rink must not be lost for future generations"*

*"Pedestrian front of palace must stay open to the public"*

*"It would be a shame to allow the ice rink to close"*

*"Bit concerned about the Nightclub RE: Noise"*

*"No mention of public transport improvements"*

*"Public and pedestrian access to all terraces should be maintained"*

*"I hope there will not be a nightclub"*

*"Insulting to public that there is nothing from Earls Court Olympia"*

*"I would object to any further development in the park itself"*

### 55 Negative Comments.

- 31 people felt the **lack of EC +O's** plans meant the proposal process was negative
- 25 people thought the **lack of public consultation** (including the short commenting time (7 days)) was negative.
- 13 people felt the idea of a **casino** was negative
- 6 people thought the proposed **Willis Organ move** was negative
- 10 people thought the **ice rink removal** was negative
- 6 people thought the idea of a **hotel** was negative
- 7 people thought the idea of a **night club** was negative
- 5 people thought the **lack of provision for parking** was negative
- 5 people thought the idea of a **cinema** was negative
- 3 people thought the **lack of transportation** was a negative
- 3 people thought the **lack of details for what would happen to the green space** was negative
- 3 people thought the idea of **shops** was negative
- 7 people thought the plans were **too commercial** and therefore negative.
- 4 people thought the **park and its access would be damaged** and, therefore, viewed the plans as negative.
- 6 people felt the plans would cause too much **damage to local residents** and, therefore, were negative.
- 2 people thought the idea of a **bowling alley** was negative.
- 1 person thought the **closure of the phoenix bar** was negative.
- 1 person thought the **ice rink being placed on the third floor** was negative.
- 1 person felt the lack of assurance that **badly performing venues would not be shut down** meant the plans were negative.
- 1 person worried the **environmental quotas would not be met** and therefore thought the plans were negative as they would damage the environment.
- 1 person felt the plans were insensitive to **Alexandra Palace's history** and, therefore, negative.
- 1 person felt the introduction of a **Bar** would be negative.



- "This display is pathetic and unacceptable"*
- "Why no Ice Rink in the Earl's Court proposal?"*
- "The proposals do not take into account the adjoining conservation area"*
- "Public consultation [was] pretty lame and limited"*
- "No final decision should be taken until local residents have had an opportunity to comment on the options."*
- "There are already two cinemas in Muswell Hill and Wood Green, should be more focus on theatre"*
- "Both proposals would damage the local environment"*
- "I strongly object to a nightclub and casino"*
- "[The plans] take no account of the needs and quality of life of local residents"*
- "I do not support the Earls Court Olympia's unpublished proposals"*
- "We can't lose the ice rink... Earls Court Olympia once the existing system is too old. That's bad for the Palace and local people"*
- "I object to any plans that will lead to increased disturbance of local residents"*
- "I am very concerned about the casino"*
- "I am very disappointed by the lack of detailed information provided"*

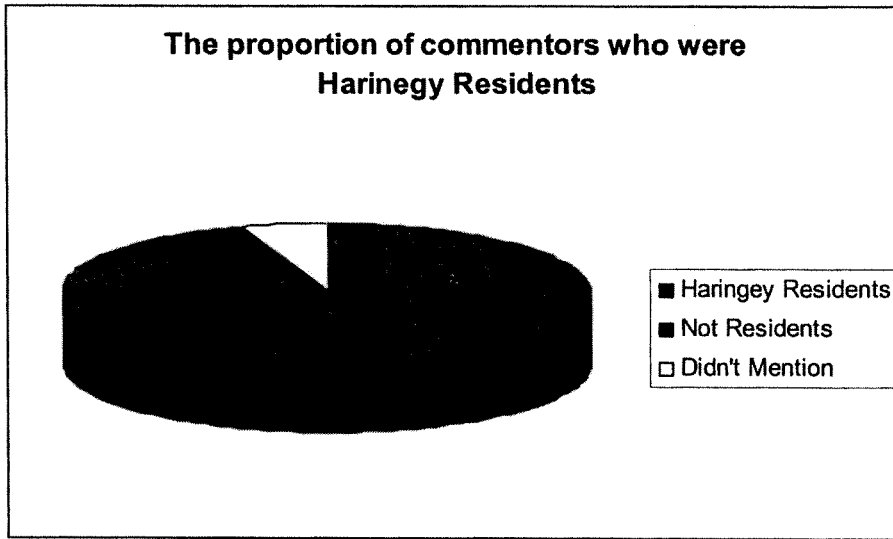
90 people commented on what they wanted to happen to Alexandra Palace

- 28 people wanted the ice rink to stay.
- 13 people wanted parking to be looked into.
- 9 people wanted transportation to be looked into.
- 10 people wanted the park to remain how it is.
- 5 people wanted the residents to be considered.
- 5 people wanted more teenage facilities.
- 4 people wanted the façade to remain the same.
- 4 people wanted assurances that less profitable events would stay open.
- 4 people wanted more public consultation.
- 4 people suggested Earl's Court was not to be trusted.
- 3 people wanted Earls Court and Olympia's bid to be disqualified due to their lack of presentation.
- 3 people wondered what the affects would be on traffic.
- 3 people suggested having a swimming pool.
- 2 people wanted the Willis Organ to remain.
- 2 people suggested a monorail to improve transportation.
- 2 people wanted the hall hiring to continue.
- 2 people wanted to know how many hotel rooms there were going to be.
- 2 people wanted to make sure the palm trees in palm court and the glass roof were not affected.
- 2 people were concerned about the introduction of a casino
- 2 people wanted the theatre to be kept.
- 2 people wanted security increased if there were going to be more night events.
- 1 person suggested an area be turned into flats.

- 1 person wanted **no housing** to be developed on the land.
- 1 person suggested facilities which could be used for **skittles and roller skating**.
- 1 person wanted assurances that the new proposals would provide for **better disability access**.
- 1 person wanted to ensure the continuation of the **exhibition halls**.
- 1 person wanted access to **palm court to remain public**.
- 1 person wanted a **ski slope** to be added to the Ice Rink.
- 1 person thought the proposals should focus on the **complete renovation of the theatre**.
- 1 person wanted to see a proportion of the **profits** to go to the public.
- 1 person wanted the continuation of the **ice rink** to be mandatory.
- 1 person wanted more provisions to be made for **noise control**.
- 1 person wanted the **views from Alexandra Palace** to remain accessible.
- 1 person wanted the **history of "Ally Pally"** to be told.
- 1 person suggested a **Squash Court** and another some **Tennis Courts**.
- 1 person did not want the **Ice Rink on the third floor**.

- "I would like the parkland to be kept as it is"*
- "The Ice Rink is essential and must be maintained"*
- "What about parking and congestion problems?"*
- "There must be adequate sound proofing of all performance and event spaces"*
- "Make sure to keep the original features of building where possible"*
- "What happens if the money runs out before the final phase?"*
- "Please keep the lovely palm trees and fountain"*
- "What will Firoka do about increased traffic/parking/improving transport?"*
- "For the past 6 years we have used the ice rink 3-5 times a week. Please do not let this very important part of the palace disappear"*
- "I learnt to skate on the ice rink and am currently on gold level...PLEASE DO NOT CLOSE THE RINK DOWN"*

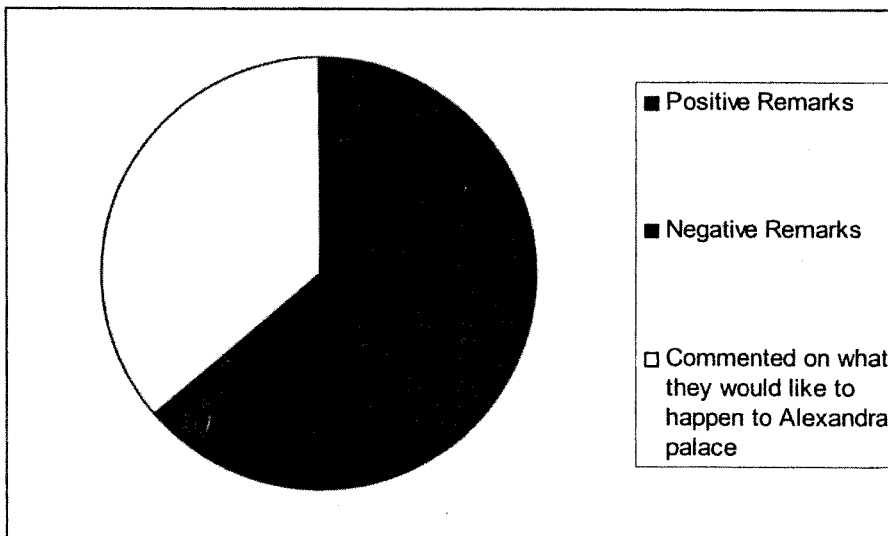
Out of a total of 248 people who commented, 199 were residents of Haringey Council, 36 were not and 13 people chose not to specify.



Out of 248 people 103 commented positively on the proposals. Out of 103 people who commented on the proposals positively, 86 were residents, 15 weren't and 2 people didn't mention.

Out of 248 people 55 commented negatively on the proposals. Out of 55 people who commented on the proposals negatively, 50 were residents of Haringey Council 3 weren't and 2 people didn't mention.

Out of 248 people 90 commented on what would like to see happen to Alexandra Palace. Out of those 90 people 63 people were Haringey Residents, 18 weren't and 9 people didn't mention.



Out of 103 positive remarks, 32 people's comments were directly positive to Firoka's plans and 3 people were directly positive to Earls Court Olympia's plans.

In Summary;

Haringey residents favour the renovation and rejuvenation of Alexandra Palace. (Only 55 out of 248 comments responded negatively to the proposals).

The majority favour Firoka plans. This is due to their promise of maintaining and/or renovating;  
The Ice Rink  
Theatre  
Willis Organ  
The Exhibition Halls,  
And Alexandra Park.

Many residents feel negatively towards Earls Court's lack of public presentation.

20 comments were submitted after the deadline (2000 Tuesday 17<sup>th</sup> January) on Wednesday 18<sup>th</sup> of January (18) and Thursday 19<sup>th</sup> January (2). The results are as follows;

Out of 20 Comments on the proposals to secure a long term future for Alexandra Palace;

- 6 responded positively
- 4 responded negatively
- 10 commented on what they would like to happen to Alexandra Palace.

6 responded positively

4 People commented on **Firoka's plans** as being positive.

*"Firoka's plans look excellent"*

Some positive comments highlighted a few concerns

3 people highlighted that they were concerned about **parking and transport**.  
2 people were concerned about the idea of a **nightclub**.  
2 people were concerned with the **lack of information provided by E.C.O.**  
1 person was concerned with the **lack of public consultation**.  
1 person was concerned about what would happen **if the project became non-commercial**.  
1 person was concerned about the proposal to relocate the **Willis Organ**.  
1 person was concerned that **pedestrian access** be maintained.

*"What are the implications for transport for any of these schemes?"*

4 people responded negatively

3 people commented on the **lack of information** being negative.

2 people commented on the issue of **parking** as being negative.

1 person commented that the idea of a **nightclub** was negative.

1 person commented that the affect the proposals would have on **local residents** would be negative.

1 person commented that **Earl's Court and Olympia's presentation** was negative.

*"One small board is not enough we require a full presentation for all interested residents"*

9 people commented on what they would like to happen to Alexandra Palace

7 people wanted the **Ice Rink to stay**.

1 person wanted **indoor tennis** facilities.

1 person wanted to know about **parking**.

1 person wanted a **swimming pool**.

1 person wanted to keep the **Phoenix Bar**.

1 person wanted to make sure the Palace would be kept for **public use**.

1 person wanted the **restaurant** to serve a variety of foods.

1 person wanted the **public access** to Alexandra Palace to remain.

*"The ice rink is a very good facility and not too expensive. We need to keep it and not close it"*

**SPECIAL ALEXANDRA PALACE & PARK BOARD**

**Agenda Item No 4**

**20 FEBRUARY 2007**

**REPORT OF HOWARD KENNEDY, THE TRUST'S SOLICITORS**

**RESPONSIBLE PARTNER:**

Iain Harris      Tel: 020 - 7546 8986

**REPORT TITLE:**

Charity Commission – Public Recommendations

**REPORT AUTHORISED BY:**

Iain Harris of Howard Kennedy of 19  
Cavendish Square, London W1A 2AW.  
Trust's Solicitors.

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**ADENDUM**

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Since preparing our Report and transmitting it to the Committee Clerk on the afternoon of Tuesday 13 February we have received a letter from Firoka's solicitors.

Given the terms of this letter and the matters upon which the Board are being asked to deliberate it is appropriate that Trustees are aware of its contents, particularly in view of the request that the opinion of Firoka be made known to the Trustees.

lewissilkin

13 February 2007

Iain Harris  
Howard Kennedy  
19 Cavendish Square  
London  
W1A 2AW

Our ref:       LIG/3393.184/1386270-1

Dear Iain

**Alexandra Palace**

Your client has kindly furnished mine with a copy of the Charity Commission's letter to you dated 6 February in which Victoria Crandon identifies certain areas upon which objectors have focussed attention concerning the project documentation. In that letter, the Commission requests your client to consider whether certain variations to the Project Agreement and Lease might be secured.

Although the question has not been raised of my client directly (and I make no assumption that your client would make such a request), I hope you and your client will find it helpful to know of my client's reaction were a request be made to vary the documentation as the Charity Commission has suggested.

These complex arrangements have taken well over a year to negotiate and have involved considerable time, expense and commitment on the part of all parties. Furthermore, we are in a further period of uncertainty whilst the condition remains unsatisfied. My client is not prepared to enter into further negotiations to revise and amend the documentation and sees no justification for doing so since it is believed that the current arrangements in the main already contain adequate and appropriate protection to meet the concerns expressed by objectors.

I should be grateful if you would make this opinion known to your client.

Yours sincerely

**Leonard Goodrich**  
**Partner**

Lewis Silkin LLP  
5 Chancery Lane  
Clifford's Inn  
London EC4A 1BL

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**ENCLOSURE 4  
(5.7.2)**

**GENERAL MANAGER'S REPORT DATED  
6 FEBRUARY 2007**





Agenda item:

**PLEASE NOTE THIS REPORT IS AN EXTRACT OF A REPORT BEING CONSIDERED IN THE EXEMPT PART OF THE AGENDA ON 20 FEBRUARY 2007 AND HAS BEEN ADAPTED FOR CONSIDERATION DURING THE UNRESTRICTED PART OF THE PROCEEDINGS. PLEASE ALSO NOTE THAT THE FULL REPORT WAS CONSIDERED AND DEFERRED BY THE BOARD ON 6 FEBRUARY 2007 DURING THE EXEMPT PART OF THE PROCEEDINGS**

**Alexandra Palace & Park Board (Special)**

**On 20th February 2007**

Report Title: Appointment of a Monitoring Surveyor

Report of: **Keith Holder, General Manager**

**1. Purpose**

1.1 To submit an outline proposal for the appointment of a Monitoring Surveyor as required under the draft order advertised by the Charity Commission.

**2. Recommendations**

2.1 That the outline duties and proposal by as shown at appendix 1 be considered and accepted.

Report Authorised by: **Keith Holder, General Manager**.....

Contact Officer: **Keith Holder, General Manager, Alexandra Palace & Park, Alexandra Palace Way, Wood Green N22 7AY Tel No. 020 8365 2121**

**3. Executive Summary**

3.1 The draft order of the Charity Commission previously considered and agreed by the Board contains a requirement that an independent monitoring surveyor is appointed. Discussions have been held with surveyors who have submitted the attached proposal for consideration.

**4. Reasons for any change in policy or for new policy development (if applicable)**

4.1 N/A

## **5. Local Government (Access to Information) Act 1985**

- 5.1 The background papers used were the lease document and project agreement previously considered and adopted by the Board together with the submission as appended.
- 5.2 This report is not for publication because it contains exempt information relating to the business or financial affairs of any particular person (including the authority holding that information).

## **6. Description**

- 6.1 The draft order from the Charity Commission granting consent to dispose of Alexandra Palace through a 125-year lease contains a requirement to ensure the trustees monitor the tenant's performance under the lease over its entire term.
- 6.2 Clearly there will be considerably more work arising from the monitoring process through the initial construction stages with the requirements for monitoring once construction is complete to that of uses and changes of use which require landlord consent.
- 6.3 Clause 4 (1) of the draft order states:

*“The trustees shall throughout the term of the lease, frequently and regularly monitor and review the performance of the tenant of the covenants contained in the lease and shall, before the execution of the lease, devise proper procedures for doing so. “*

- 6.4 In protecting the trustee interest and making sure that the proposals as selected are delivered there will be differing aspects of the monitoring process. Overall it will be a requirement of the re-defined role of the General Manager, with its emphasis on landlord responsibilities, to ensure the project is delivered in accordance with the terms of the project agreement, subject to those matters which may genuinely impact on that delivery such a planning and listed building consents. This role will manage and utilise the data supplied by the surveying function described in appendix 1 and further commented on below.

## **7. Consultation**

- 7.1 No specific consultation requirements arise from this report.

## **8. Summary and Conclusions**

- 8.1 The Board has viewed the draft order and taken cognisance of the views expressed by the Advisory Committee and others in respect of the need to ensure adequate monitoring of the tenants performance. The re-defined role of the General Manager supported by the appointed surveyors with regular reporting will satisfy the requirements of the draft order and provide a high degree of comfort to the trust.

## **9. Recommendations**

9.1 The board agree to waive standing orders and appoint \_\_\_\_\_ for the purpose of supporting the General Manager in the revised landlord role to assist in the detailed monitoring of the progress made by the investment partner during the development process.

**10. Legal and Financial Implications**

10.1 The 2007/08 budget estimates included elsewhere on the agenda for consideration include for this service within the professional fees heading. The need for the service is established under paragraph 4 (1) of the draft order. Nevertheless the Director of Finance and Trust Solicitor have been sent copies of this report and their views will be available at the meeting.

## **11. Equalities Implications**

11.1 No specific Equalities implications are identified in relation to the content of this report.

## **12. Use of Appendices/Tables/Photographs**

12.1 The detailed submission is included at appendix 1.

**ENCLOSURE 5  
(5.7.3)**

**ADVICE TO CHAIR DATED  
7 FEBRUARY 2007**

**Email Message**

**HOWARD KENNEDY**

To Councillor Charles Adje  
Organisation  
Your ref  
Email charles.adje@haringey.gov.uk

19 Cavendish Square London W1A 2AW  
Telephone +44 (0)20 7636 1616  
Fax 7664 4586

From Iain Harris  
Direct Dial 7546 8986  
Email i.harris@howardkennedy.com  
Our ref IMH1/014086.00007  
Document Ref VP/H2938339.1  
Date 7 February 2007

enquiries@howardkennedy.com  
DX42748 Oxford Circus North  
www.howardkennedy.com

Dear Charles

**Alexandra Palace - Monitoring Arrangements**

At the Alexandra Palace and Park Board Meeting on 6 February there was a report at Agenda Item 18 from the General Manager under the title "Appointment of a Monitoring Surveyor".

The General Manager's recommendation was that the

"outline duties and proposal by Robinson Low Francis LLP (RLF) be considered and accepted."

RLF's proposed role would be to support the General Manager in the

"revised landlord role to assist in the detailed monitoring of the progress made by the investment partner during the development process".

There were tabled comments from the Acting Director of Finance. These were that he agreed

"the continuity of RLF on the rates set out is sensible and appears to offer value for money".

He also recommended a timescale on the arrangement that

"accords with procurement arrangements and that a formal contract is constructed for the future."

The Board deferred a decision on this item until the Special Meeting on 20 February. However you asked me to let you have a note of my advice which is the purpose of this letter.

The draft Lease now agreed between the Trustees and Firoka and the Project Agreement contain key obligations to be undertaken by Firoka.

One of the requirements of the Charity Commission, which currently appears at paragraphs 4(1) and (2) of the draft Order is in the following terms:-

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Members of and regulated by The Law Society. A list of the partners is available for inspection at the above address.

- (1) The Trustees shall throughout the term of the Lease, frequently and regularly monitor and review the performance by the Tenant of the covenants contained in the Lease and shall, before the execution of the Lease, devise proper procedures for doing so.
- (2) Those procedures shall address in particular covenants which restrict the use of the leased premises to uses consistent with the legislation establishing and regulating the Charity and covenants preventing the use of the leased premises interfering with the use of the Charity's Retained Land."

Quite aside from these requirements the charity will wish to have professional advice with regard to the performance of obligations undertaken by Firoka.

The proposed engagement by the Trustees of RLF, on the terms detailed in the General Manager's Report, is intended to address the issue in the previous paragraph as well as to contribute towards the satisfaction of the requirements in the draft Order.

A number of the representations received by the Commission in response to the publication of the draft Order are directed towards monitoring arrangements. The Commission has raised, as one of four specific areas upon which it requires detailed comment, the issue of "monitoring of the covenants in the Lease".

I understand the suggestion has been put that monitoring arrangements could be made so that the responsibilities, as summarised in paragraph 4(1) and (2) of the draft Order, are dealt with by staff presently employed by Haringey Council. I indicated at last night's meeting that I saw a potential difficulty in this regard from a number of perspectives.

I referred to the historic position in which the over-spend on the original development had been incurred. This was the subject of very lengthy correspondence and argument between the then Chief Executive and the Treasury Solicitor.

The argument advanced by the Chief Executive was that the practice of using the design architect as the main project manager was then common practice and the design team was not inexperienced.

The Treasury Solicitor rejected that argument. He said that there were doubts raised about the financial viability of the project by objectors during the Planning Inquiry. He asserted that the suggestion the design team had the necessary experience was "expressly contradicted by the PMI Report".

This indicated at section 3.2 that

"a project of this nature and complexity required a high degree of professional expertise ... in our opinion, apart from Dr Smith, the APDT did not include the expertise required for this type of project and should not have been undertaken "in-house"."

He also commented in relation to the Wood Green Shopping City project that this was not an encouraging precedent because costs were much higher than predicted and rental income lower.

I have taken these extracts from two letters, one from the then Chief Executive to the Treasury Solicitor dated 19 February 1996 and the Treasury Solicitor's reply of 1 May 1996.

I suggest that it was clear during the course of the investigation following the over-spend that amongst the reasons it had arisen were the blurring of roles where there were potential conflicts of interest combined with the lack of robust independent advice.

For these reasons my advice, at this stage, is that it would be in the Charity's best interest for the on-going monitoring arrangements, which are so important not only from the perspective of the Charity Commission, with regard to approval of the Leasing arrangements, but also the performance of the Trustees' obligations, to be undertaken by professionals wholly independent from the Council, whether as such or as Trustee.

Of course, in giving this advice one hopes that a dispute in relation to adequate monitoring will not arise. However, if it does the Trustees will have the benefit of a potential claim against their insured advisers which would not be open to them if the task were undertaken "in-house".

One of the key reasons that neither the Council nor the Trustees were able to bring proceedings following upon the over-spend was that there were no independent outside organisations against whom such claims could be made.

By way of summary my advice is that the Board should accept the General Manager's recommendation, subject to review of the recommendation of the Acting Director of Finance.

Please do not hesitate to revert if I can add anything more. I will suggest that this advice is presented to the Board when it reconsiders the Item on 20 February.

Yours sincerely,

**IAIN HARRIS**