

FIRST WALKLATE REPORTANNEX 1INDEPENDENT REVIEW FOR THE LONDON BOROUGH OF HARINGEYTHE DEVELOPMENT OF A LICENCE TO OPERATE WITH FIROKASUMMARY FOR TRUSTEESOVERVIEW**Introduction**

1. This Trustees Management Summary has been prepared as a document designed to identify to the Trustees of the Alexandra Palace and Park Trust whether shortfalls in governance processes and good management arrangements took place in the development of the licence agreement with Firoka (Alexandra Palace) Ltd. This report is a summary for the Trustees of a fuller report which contains all the back up evidence, proofs and cross references necessary to validate the conclusions and recommendations made.
2. This section of the report contains the overall summary of the situation regarding the licence and the accompanying recommendations. The main report produced for the consideration by the Trustees follows. Appendices containing the terms of reference for this review are included as are details of the differences between the licence agreement enjoyed by the company APTC and that agreed with Firoka.
3. For the purposes of this report the term Firoka is utilised to cover the company Firoka (Alexandra Palace) Ltd, its owner, directors and managers. The term "Staff" relates to any person operating under a direct contract of employment, a consultancy contract or any other form of agreement that gives rise to the employment of that individual.
4. It should be acknowledged that the senior staff (including one retired individual) cooperated fully in the process leading to the development of this report.

**The Report Summary**

5. In May 2007, the Alexandra Palace and Park Trust entered into a licence agreement with Firoka (Alexandra Palace) Ltd. This licence enabled Firoka (Alexandra Palace) Ltd to operate within the Alexandra Palace buildings. It provided some staffing resources at no cost, building and other infrastructure facilities and it transferred existing negotiated contracts. It entitled Firoka (Alexandra Palace) Ltd to operate the Ice Rink. Firoka retained all profits and sustained all losses.
6. The licence was granted as a way of maintaining Firoka (Alexandra Palace) Ltd's interest in a development project for which they had successfully tendered. It was believed that Firoka were disappointed in delays in completing the full lease arising from the need for Charity Commission approval which had repeatedly been postponed. The licence also achieved the

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transfer of risk to Firoka of poor anticipated trading results and it gave some continuity to staff affected by the transfer.

7. Whilst there is some minor conflict over the extent and evidence of the reality of these anxieties, if the views of those involved are accepted it is apparent that there was a need for some mechanism to retain Firoka's interest and a good business case can be made for the use of such a mechanism. Firoka has been asked to confirm the reality of the anxieties but declined saying "Whilst we do not want to appear unhelpful, it seems to us that the review that is being undertaken is an internal affair and as such the questions you are raising are matters that can be answered by your own officers".
8. No other mechanism was researched or considered. No evaluation of any alternative took place and records have not been produced which would justify all the concessions given in the licence although full explanations as to the circumstances and intent have been reported through interview and other correspondence.
9. The report to Trustees seeking authority for the licence was hurriedly produced; it was tabled at the meeting and contained no justification for the licence although it does present the need for a mechanism within the context of the anxieties listed above. No understanding of the financial effects of the licence are given in the report and no evidence can be found that this was provided, even in the most basic form, at the meeting itself.
10. Arrangements for ensuring that the Trustees were sufficiently informed to make such a key decision were scant. Confusion exists over who was seen as responsible for briefing Trustees. The key decisions of the Trustees, to assign the APTL licence and to seek a management arrangement for the Ice rink, were taken as no more than a framework by those who then developed the licence. The licence differs in many key respects from the APTL licence and rather than seeking a management agreement for the Ice Rink it is simply subsumed into the new licence.
11. No opportunity is given to Local Authority staff to comment either on the report or the subsequent licence. Despite the level of change, Trustees are not subsequently invited to consider whether the revised licence meets their expectation. The licence is not subjected to any final legal scrutiny before signature.
12. Whilst the case for such a mechanism is strong, the licence was generated without any consideration of alternatives. The governance regime surrounding its production, authority and agreement is weak.

#### **Recommendations**

13. The Trustees of the Alexandra Palace and Park Trust review this report and consider the implications for good governance that it infers. Suggested outcomes of that review being to:

- Present a response to the Chief Finance Officer (Section 151 officer) of the London Borough of Haringey
- Include the creation of a 'smart' action plan showing milestones, key achievements and outcomes
- Put in place a system of monitoring to ensure regular review of standards
- Consider the extent to which regular financial and performance measurement data is routinely reported to the Trustees

14. That the Trustees similarly cooperate with the Audit Division of the London Borough of Haringey in their review of governance at the Alexandra Palace in order to:

- Seek the creation and implementation of a good code of governance without delay.
- Determine a full scheme of delegation showing the extent of powers delegated from the Trustees to the individual officers and the conditions within which they will exercise those powers.
- Clarify the role of the Trustees in order to ensure that paid staff and Trustees have a full understanding of their respective roles and responsibilities.
- Clarify procedures and opportunities for briefing of Trustees.
- Ensure that processes exist to provide clear audit trails and documentation to support decisions. This is particularly important where any form of negotiation is involved.
- Determine processes for consultation with Trustees and other related bodies to ensure clarity and certainty of decision making
- Determine or reinforce procedures for the production of key reports including allowing sufficient time for proper consideration and consultation and to develop an allied system for actions in case of emergency or urgent action.
- Receive a report from the Trustee's legal advisors in co-operation with the Legal Department of the London Borough of Haringey to ensure compliance with good governance guidelines as determined by the Charity Commission and to ensure that revised standards meet existing and anticipated statutory requirements.
- Fully review existing contracts for other services in order to ensure that they contain no shortcomings that expose the Trustees to either financial risk or accusation of poor governance standards.
- Consider the extent to which, in future, all contracts for significant services should, as a matter of course, be reviewed by legal representatives and subject to the signature of the Head of Legal Services at the London Borough of Haringey

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15. That an internal review of relationships between the Alexandra Palace and the London Borough of Haringey is carried out so as to include:

- The adoption of protocols which maintain suitable autonomy for the Charity but recognise the importance of the relationship with the London Borough of Haringey and the support and guidance it can offer.
- Ensure the validity of a process which allows sufficient time and opportunity for the London Borough of Haringey to consider matters of strategic importance or potential financial consequence.
- Identify barriers to cooperation and support and to eradicate these accordingly.

16. That the actions of staff taken within the report are evaluated by the Trustees in cooperation with the London Borough of Haringey with a view to identifying short comings in their performance over the production of this licence.

17. That key staff at the Palace are, where appropriate, given advice, support and training in good governance. This should include:

- Operating within a political environment.
- The responsibilities of staff serving a body of Trustees.
- The development of informative reporting that support good decision making including the proper evaluation of alternatives, clear and reliable financial and operational information and evaluation of potential risk.
- Ensuring that an atmosphere of transparency and openness exists between senior officers to ensure that all have the opportunity to contribute towards strategic decision taking.
- The proper use of external documents to ensure no infringement of copyright or intellectual property rights.

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**INDEPENDENT REVIEW FOR THE LONDON BOROUGH OF HARINGEY**

**THE DEVELOPMENT OF A LICENCE TO OPERATE WITH FIROKA**

**SUMMARY FOR TRUSTEES**

**MAIN REPORT**

18. This review has been commissioned by the Director of Corporate Resources at the London Borough of Haringey. The review relates to an investigation into the development, use and monitoring of a licence to operate between the Alexandra Palace Park Trust and the company, Firoka (Alexandra Palace) Ltd. The powers of investigation and obtaining documentation for this review are those contained within the powers of the Section 151 officer and counsel's opinion (see Bear/Pearce paragraphs 57 – 70 and 76 – 91)
19. The report firstly addresses directly the terms of reference as set. It then places these responses within the context of:
- What was the background in which the need for a licence arose
  - What were the major drivers for entering a short term legal relationship with Firoka
  - How was the licence developed
  - What are the major terms of the licence
  - What was the authority for the licence and how did the obtaining of that authority conform to good governance practice
  - The report goes on to consider the relationship between the Trust and the Local Authority.
  - It concludes with commentary.
20. The review has been fact finding in nature. Facts, in this context, relate to information gleaned from correspondence, primarily email, reports and minutes of meetings and responses from interviews and subsequent correspondence.
21. The co-operation of all concerned at the Alexandra Palace and at the London Borough of Haringey has been important to concluding this review.

**The Terms of Reference**

22. The terms of reference are enclosed as appendix one.

**Context**

23. In and around 2004, the Charity Commission were asked to consider the necessary changes to the charitable trust that would be required to allow the involvement of a development partner. The matter was considered by the parliamentary standing select committee in 2005 and the junior minister responsible gave assurances that the Charity Commission would undertake extensive consultation over the plans, choice of partner and future use of the building and its surrounds.

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24. In 2005/6, the Trust began the process of seeking a preferred partner and after a formal tendering and evaluation period appointed Firoka (Alexandra Palace) Ltd as its choice in November 2006.
  25. In April 2007, the Charity Commission gave notice that they accepted the required changes to the charitable status and the scheme was due to proceed.
  26. The change has not been without its objectors and critics and one particular body, the Save Ally Pally Campaign has been active throughout these times. Following the Charity Commission decision they lodged a judicial review which was heard in October 2007. The Judge accepted the claimant's position and was highly critical of the Charity Commission approach to consultation, particularly giving regard to the ministerial intervention. The order of the Charity Commission being quashed, the plans to lease the building to Firoka (Alexandra Palace) Ltd were stalled. Progress awaits further consideration by all parties.
  27. These events have led to considerable costs being met by the Council both in the representation at the legal actions and in failing to reduce expenditure as anticipated by the transfer of lease.
  28. Prior to the receipt of the Charity Commission Order, the Trustees received a report on the 24<sup>th</sup> April 2007 from the then General Manager which advocated the development of a phased approach to any transfer. The proposed arrangements included the assignment of the current licence held by the Alexandra Palace Trading Company, entering into a management agreement for the Ice Rink and the secondment of staff. This decision then led to the development of a licence to operate which was signed by all parties on 4th May 2007.

#### **Why develop a licence?**

29. The major driver in developing an advance agreement with Firoka appears to have been the concern that continuous delays arising from the Charity Commission would lead to Firoka withdrawing from the lease. All parties interviewed stress that this was considered a real possibility at the time. There is no written evidence to support this from Firoka. Firoka have been asked to give their view but have declined stating "Whilst we do not want to appear unhelpful, it seems to us that the review that is being undertaken is an internal affair and as such the questions you are raising are matters that can be answered by your own officers".
30. The other major issue which contributed toward the need to transfer risk was the trading situation within the company. The trading situation, and in particular its achievement of net income, had deteriorated to some extent in the previous year.
31. The forward trading position for May/July of 2007 showed an order book of £245,000 as compared with £1,250,000+ for the same quarter of the previous year. It is understood that it is the nature of the exhibition and event business that large contracts are in place at least five to six months in advance and consequently there was no likely prospect of the financial situation materially improving. On this basis it was realistic to be concerned that the company would not be trading solvently. The intention at this stage was to carry out a voluntary liquidation when all outstanding matters were resolved and this would have required the signing of a statutory

declaration of solvency which would not have been possible with the trading situation in doubt.

32. It is difficult in retrospect to understand why this financial situation evolved as the poor trading results predicted for 2007/08 contrast with an income in 2006/07 of c£5.5m with a similar sum being predicted for 2008/09.
33. This was also a very turbulent time for the staff at the Palace who were uncertain about their future both in terms of employment and role. A number of key staff had already left and it was important to offer some certainty to those who remained. Trades Unions were involved and they were pressing for some form of conclusion.
34. There is no direct written evidence or correspondence to show that Firoka were ready to abandon their plans for development of the Palace. However, it is clear that this is the impression received by those who had contact with them. The loss of Firoka would have meant a substantial loss of time in reaching the development goals and would have, almost certainly, led to considerable financial cost both in retendering and in meeting the inevitable rising cost base since 2005 when the tender was first submitted.
35. There is some ambiguity as to how this impression of potential withdrawal arises. Keith Holder states that it arose from discussions between his Chair (Councillor Adje) and Firoka. Councillor Adje, although also certain of the potential for withdrawal is clear that his contact with Firoka was limited to meeting when Keith Holder was present. The other staff interviewed had little or no direct contact with Firoka and, it must be assumed, largely gained their impressions from Keith Holder and Councillor Adje. Iain Harris, in his contemporaneous note, appears to suggest that the impression he is receiving from the legal advisors to Firoka may not indicate such a strong possibility.
36. In summary. The key drivers were the potential for withdrawal, the effect on the staff and the potential for the company to be acting insolvently. The evidence to support these drivers is not always clear. However, when taken at face value, they do represent a case for the development of the licence or a similar mechanism.

#### HOW WAS THE LICENCE DEVELOPED

37. In his submission of February 2008, the Consultant (previously General Manager) Keith Holder accepts that he drafted the licence whilst in correspondence with Firoka (Alexandra Palace) Ltd and Berwin Leighton, Paisner and Partners. Attached to his correspondence are six drafts of that licence which show the development over a number of days.
38. There does not seem to have been any consideration whatsoever of any other forms of agreement or contract structure with Firoka. The terms of reference to this review seek explanations about other means and the options appraisals that would necessarily have taken place. No such options appear to have been considered. It would appear that a view was reached that a mechanism was needed to engage with Firoka and the licence agreement was the only considered method.

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39. The structure and framework for the licence originated from the form of the 2002 APTL licence held by Howard Kennedy. This framework appears to have been used without their formal permission.
40. It is Laurie Heller from BLP who was the main advisor on the process. I have no documentation which briefs Mr. Heller nor can I find any reference to any external review of the potential financial consequences of the licence. Correspondence appears to indicate that a copy of the report to the Trustees authorising the assignment of the APTL licence was received by Mr. Heller towards the end of the licence development. The extent to which Mr. Heller was involved is difficult to quantify. In correspondence later that year he describes his involvement and that of Iain Harris from Howard Kennedy as commenting and advising but did not deal with it directly otherwise. In interview he comments that this was not an arrangement where solicitor to solicitor contact was the norm.
41. David Loudfoot produces on 22.2.08 a pack of information from which it appears that his role was to conclude a small number of specific issues relating to insurance and Tupe matters. He was certainly closely involved however although he cannot be described as the Licence author.
42. It would appear that the process commenced around the 20<sup>th</sup> April 2007 when Keith Holder sent an email to Iain Harris which included the statement to the effect of 'how can we lock Kassam in by 15<sup>th</sup> May. I have specific reason for asking which I cannot divulge at the moment'
43. On the 24<sup>th</sup> April (the date of the Board Meeting) Keith Holder in an email to Iain Harris, Laurie Heller and Kevin Bichard refers to the earlier email asking assistance in how to 'lock Kassam in' He makes further reference to previous conversations with Firoka that taking control of the business and staff may be an option.
44. The response from Iain Harris is to the effect that the authority is for the Trustees to enter into agreements, including interim arrangements for conduct of business. He also advises on the need for considering commercial prudence and to be aware of the potential for the Charity Commission decision to be successfully challenged. In regard to the licence he gives advice that the ending of the licence will be complex and require accounting exercises. He advocates waiting for the challenge period of one month to expire.
45. On 26<sup>th</sup> April 2007 email discussion takes place on the content of such a licence. Keith Holder to Laurie Heller, Iain Harris and Kevin Bichard states that he has in mind:
- *Novate contracts*
  - *Management arrangement for ice rink*
  - *Second all staff*
  - *Assign APTL licence interest.*
46. He concludes that he is working on the assumption that the Judicial Review challenge will not proceed.



47. Between 26<sup>th</sup> April and the 4<sup>th</sup> May, further correspondence is entered into but mainly dealing with the generality of the licence issues and concerns raised by Firoka (Alexandra Palace) Ltd with regard to insurance provision, Tupe and other disclaimers.
48. I have found no correspondence relating to the financial issues and, indeed, no actual replies from Firoka (Alexandra Palace) Ltd. Some correspondence is available from solicitors who act for Firoka (Alexandra Palace) Ltd but this is again more set in generality. The negotiations are said by Iain Harris to have been 'the result of fairly hardnosed and tough negotiations' their aim was to 'shift the risk' Trustees were advised to recognise 'the complete package'.
49. I can find no evidence that shows any real involvement of Firoka in any discussion or negotiation. I have had no evidence produced to me which would show where monies or areas of responsibility had to be conceded to allow the negotiation to progress.
50. It is difficult to ascertain the extent to which Trustees were informed of the licence development and the outcomes of the negotiations. Little evidence exists to show that any in depth briefing took place.

#### **The Financial consequence**

51. Broadly speaking, it does appear as though Firoka were operating in an environment with little or no overhead and little or no need to contribute to any long term expenditure. This may allow them to enter into contract with any party simply at a level which recovers any additional direct expenditure (catering/temporary staffing). This could make Firoka (Alexandra Palace) Ltd highly competitive and in an almost assured position of gaining income.
52. This has to be considered within the context of a failing organisation and the desire referred to earlier to transfer the risk. However, the trading conditions agreed under the licence must be seen as favourable particularly given the inclusion in the licence agreement of the Ice Rink income.
53. I can find no reference to the Trading Company considering the commercial aspects in any way nor can I find any correspondence, briefing note or report which outlines the financial consequences, whether beneficial or detrimental, to the Trust.
54. This would suggest that Firoka (Alexandra Palace) Ltd were given a very advantageous contract, presumably with the intention that this would facilitate the signing of the master lease and operational contract and that the granting of the licence was an acceptable price to pay for that facilitation.

#### **Post licence implementation**

55. A report to the Trustees at the time of David Loudfoot's appointment as the General Manager specifically included the role of monitoring and assessment. I have been unable to find any report in the information provided that shows that any effective monitoring took place. It appears that until the report of December 2007 no real knowledge of the financial consequence was obtained and formally reported.
56. It is only when the arrangement with Firoka (Alexandra Palace) Ltd goes into stasis that any negative consequences of the licence action were thought through.

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57. In summary. It is clear that the licence was developed without consideration of any other alternatives. Advice was sought but not throughout the whole process and, crucially, not at the conclusion of the licence development. The financial consequences do not appear to have been fully considered or justified but recognised as being minor when compared with the overall potential loss should withdrawal have resulted.

#### THE LICENCE TO OPERATE

58. A key recommendation as part of this process was the decision to assign the APTL licence to Firoka (Alexandra Park) Ltd. This section explores the extent to which that decision differs from the licence signed and agreed with Firoka in May 2007. This has implications for the extent to which the decision of the Trustees was followed through but also the nature of the expected trading arrangement with Firoka.
59. On the 4<sup>th</sup> May 2007 the Mayor and Burgesses of the London Borough of Haringey and Alexandra Palace Trading Ltd and Firoka (Alexandra Palace) Ltd entered into a licence to operate. Appendix two outlines the basic structure of the licence and appendix three indicates the differences between the APTL licence and the licence granted to Firoka.

#### Observations

60. The Firoka (Alexandra Palace) Ltd licence is much more advantageous to the licensee than the 2002 licence. The secondment of staff, the use of the ice rink and the general use of premises etc. are much more favourable to Firoka (Alexandra Palace) Ltd.
- The ice rink is now included
  - There is no provision for maximising income in the Firoka (Alexandra Palace) Ltd licence
  - There are no provisions in that licence for any lost days
  - There is no provision for any interest on defaulted payments
  - There is no requirement for either consultation or management information.
  - The building comes rent free
  - The building comes with a complement of staff for whom no charge is made
  - Admittedly, Firoka (Alexandra Palace) Ltd must suffer any losses on trading. However, the above terms require them to make very little contribution towards any infrastructure costs and restricted operational costs.
  - Very little in the licence gives guidance as to how the financial issues will be determined.
61. The licence appears to be a price to pay for Firoka's continued involvement and their acceptance of the transfer of risk. It is prepared in the absence of any other alternative and no evidence is available to show the negotiation with Firoka validates the inclusion of the concessions given.

## AUTHORITY TO ENTER INTO LICENCE

62. This section considers the authority of the officers of the Alexandra Park to enter into the licence. It considers the nature and content of the information made available to the Trustees and considers the appropriateness of this when considering a matter of this importance.
63. The licence was signed as referred to above on 4<sup>th</sup> May 2007. This followed a meeting of the Alexandra Palace and Park Board on the 24<sup>th</sup> April 2007. The report, on a matter of significant financial costs and implications, was tabled. It is apparent from the correspondence that it was hurriedly produced as the decision to utilise a licence route was apparently only taken earlier on the day of the meeting.
64. There is a fine balance to be achieved when any report is considered for tabling. Organisations must retain the ability to be flexible and act with urgency but this should not be at a price of limited consultation, inadequate briefing and an inability to demonstrate good governance. The reasons for urgency should be explicit and urgency should not be an excuse for inadequacy.
65. The report is set in the context of the delays that had taken place in reaching final agreement on the master agreement and lease. It commented upon the poor trading results and poor outlook.
66. Additionally, the report talked in terms of the damage that was being done both reputationally and commercially to the business arising from the uncertainty implicit in the Firoka (Alexandra Palace) Ltd transfer. It proposed that these could be ameliorated by the acceptance of the phased strategy of transfer. It specifies that such an approach shall be measured.
67. The principal measures were:
- Novate the contracts for events under signature to Firoka (Alexandra Palace) Ltd
  - Firoka (Alexandra Palace) Ltd can assume the terms of the APTL licence
  - A management arrangement for the ice rink can be concluded
  - Staff can be seconded for an interim period but in such a way as to give effect to continuity of their employment and length of service
68. The report concludes that the General Manager, after taking appropriate legal advice, be authorised to begin the process of a phased transfer of the charity business. The report also removed the use of the premises from the trading company. The Trustees approved these actions.
69. There is nothing relating to financial consequences in the report or to the extensive changes in structures and costs. The report is unmeasured and gives no negative consequence. Major issues such as the assigning of the APTL licence to Firoka (Alexandra Palace) Ltd are handled without any detail or comment. No comment appears from the Borough with the particular absence of any comment from either the Legal Services Department or the Chief Financial Officer.

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70. I can find no evidence that any substantial briefing took place to ensure that the Trustees were sufficiently informed to make this key decision. There is confusion as to the roles of officers and members on this responsibility and uncertainty over whether information was properly shared.
71. I can find no documentation that suggests that the details of the new licence were made available to the Board either at the time or at any time subsequently. No alternative structures are considered nor any detrimental possibilities of the chosen structure outlined.
72. On the 1<sup>st</sup> May 2007 the provisions in the 'phased transfer' report were agreed by written action by the directors of the company again without any supporting advice or briefing.

#### **Authority to make the decision**

73. The Board is stated by its lawyer, Mr. Harris, to have been delegated the power to make decisions on the future of the centre. It is assumed that given the Board approval they had such power. However, it does appear that the alternative of the Head of Legal Services entering into such an agreement on the Board's behalf was not considered in this case.
74. However in strict audit trail terms, the Board gave approval to 'assuming the terms of the APTL licence'. As has been made clear the licence given to Firoka (Alexandra Palace) Ltd varies considerably in content, intent and substance to that given to APTL which is considerably beneficial to the Trust financially and culturally.
75. The Board members understanding of context and background is questionable. The report gives no indication or information as to the potential benefit or disbenefit of the licence in financial terms and Board members, in the absence of any other information, may well have considered it neutral.
76. The Board approval gives permission to enter into a management agreement over the ice rink. It does not give approval to the subsuming of the Ice Rink into a licence which allowed such potential benefit to Firoka. The words, 'management agreement' have no specific meaning in law and it is a moot point whether the subsequent inclusion of this being simply added in to the licence was a failure to implement the board's decision.
77. The inclusion of the Ice Rink is a matter of considerable importance. The Ice Rink was a considerable income generator to the Trust and its inclusion represented a significant increase in the value of the licence. No evidence has been seen as to the necessity to include this sum although Keith Holder represents that its inclusion was necessary to fund the risk taken by Firoka in assuming the poor trading position and low return on contracts.
78. In summary it must be concluded that the approval process is weak.

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## Governance

79. The Alexandra Palace and Park Trust has no formal code of Governance but is dually a committee of the council and accordingly, where appropriate, its rules apply. I found this situation confused with some officers of the Trust indicating the need to delineate between the council and the charity and to maintain its independence from the Authority.
80. Legal requirements on charitable trustees to operate within good governance practice have really only been formulated and enacted in the recent past. Certainly since the development of the licence. (Whilst generally satisfied that no breaches of statute have occurred this is a matter outside my competence and the Trust should seek specific advice on whether they are currently operating within the appropriate statutory framework.)
81. Accordingly, it is difficult to comment usefully on breaches of governance procedures given that they don't exist. However, it is possible to highlight actions in this overall sequence which indicate areas where the expectations of good governance may not have been followed and where actions have taken place which do not offer sufficient protection to the Trust in terms of any retrospective analysis of those actions.
- The report on such an important matter was hurriedly produced and tabled at the meeting
  - No opportunity was given to any external advisor to comment
  - It offered no alternative structures
  - It presents no real financial information on the proposal or any alternatives or the cost of remaining at status quo
  - The recommendations relating to the assignment of the APTL licence and the management of the Ice Rink are, at best, ambiguous.
  - No specific authority to sign the licence is given which, it is understood, does not conform with usual practice
  - Apparently the licence is signed without any form of final legal approval.
  - No briefings or written supplementary reports were produced allowing trustees to fully understand the consequence of their decision.
82. In his interview, Keith Holder states that he saw the approval of the board as an agreement to a framework which he could then develop accordingly. To some extent the approved report supports this with the intention for him to begin a 'phased transfer' however, the extent of the changes, the potential financial consequences of those changes and the impact upon the management structure could be considered to extend well beyond this.
83. It is known that the Internal Audit Division of the London Borough of Haringey is tasked by the Director of Resources at the London Borough of Haringey to carry out a review and to assist the APPT and the company with their governance procedures and

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to carry out a review of existing arrangements. Furthermore, a review of governance and consultation arrangements has been requested by the current Chair of the Board. The shortfalls in governance demonstrated in this section stress the immediacy and importance of that review.

84. The Officers of the Trust presented a tabled report on an important subject which had not previously been discussed. No briefings were given by any officer or other party. The report gave little financial data and nor any analysis of how the proposals would impact upon the future of the Trust. Its proposals were vague and, it could be argued, did not accord directly with the actual outcomes.
85. There is a major difficulty in governance terms relating to the issue of the negotiation of the licence. The board gave approval to the assignment of the APTL licence and presumably, therefore, did not approve or authorise any boundaries for negotiation. It is difficult to know whether the licence was developed and presented to Firoka as a finished article or whether it was the subject of hard negotiation. The lack of evidence suggests the former whilst the views expressed by some of those involved suggests the latter. Negotiation in the absence of any agreed framework or written evidence places those involved in difficulty of being able to justify decisions or defend accusations of impropriety.

#### THE LOCAL AUTHORITY INVOLVEMENT

86. As stated earlier, the Local Authority involvement is through the various Councillor Trustees, the attendance at board meetings of its officers and the specific appointment of a senior officer as a director of the Company. A variety of local authority officers attend the Trust meetings but many reports are tabled or verbal and so it would be difficult to predict in advance which officers should attend. Councillors are Trustees and have a difficult legal loyalty. Additionally, they are, by their very essence, lay people on such issues and cannot necessarily be expected to see points of concern.
87. The appointment of the Local Authority Director provides a direct information flow on matters relating to the company. The appointment appears to have ceased in 2005 although the Memorandum and Articles of the Company specify the appointment of the local authority officer. It is not reinstated until the appointment of the Director of Corporate Resources in December 2007.
88. The responsibility of ensuring the performance of the Memorandum and Articles lies with the company secretary. It is a reasonable expectation that any incoming Chief Executive would have been informed of the company director position for the Local Authority. It is understood that no such requirement was conveyed to the Chief Executive on her visits to Alexandra Palace nor was any briefing note left by the outgoing officer.
89. It should not be distilled from this that the Local Authority failed in any duty to maintain a proper relationship with the Alexandra Palace. In the various interviews comment is made about the overview and intervention provided by the Chief Executive. Reference is made to visits to the site, attendance at meetings and offers of support.

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90. A number of previous discussions and Counsel's opinions had determined that the Trust had different objects to that of the local authority and decisions relating to the trust were to be made by the charity trustees to avoid the obvious conflicts of interest and to comply with Charity Commission rules and requirements. However, a practice had developed whereby local authority officers could proffer views which were not included in reports but considered alongside the main report. The Local Authority Clerk was responsible for the distribution of reports for this purpose.
91. Given that the report of the 24<sup>th</sup> April was tabled, this process may not have been followed although whether the Clerk had the papers in time for such consideration is not known.
92. As previously commented upon, a view persists throughout the interviews with the officers of the APPT that liaison was effected through Councillor Adje. At the very least this underlines a confusion of roles. It is generally considered the responsibility of the officers preparing the report to ensure that its contents are appropriately understood by all Trustees given that they hold the expertise on the subject and the full understanding and background of the proposals made. Whilst the Chair may have been appraised at a high level of the intended strategy and may even have contributed to that strategy he cannot reasonably be held accountable for the appropriate briefing and communications with other Trustees. This is particularly important given the political balance of the composition of the Trustees.
93. The Local Authority is a key partner in this matter and suffers financially when decisions of the Trust lead to loss. The Authority holds a wealth of experience and professional advice which, if considered at the time of the licence development, may have led to a more protected position for the trust. Throughout this report there is an expectation by the staff that the Trustees will take on roles of briefing and information. This is unreal and contributes significantly to the uncertainty that underlies the actions in this report.

## CONCLUSION

94. According to Keith Holder and Cllr.Adje, the situation with Firoka was of considerable concern and the potential for withdrawal was sufficient to warrant positive action. Whilst there is some conflicting view as to the extent of Firoka's anxieties, the potential when coupled with the other drivers appear to suggest that the use of a mechanism such as a licence was warranted.
95. There is no direct written evidence or correspondence to show that Firoka were ready to abandon their plans for development of the Palace. However, it is clear that this is the impression received by those who had contact with them. The loss of Firoka would have meant a substantial loss of time in reaching the development goals and would have, almost certainly, led to considerable financial cost both in retendering and in meeting the inevitable rising cost base since 2005 when the tender was first submitted. If the views of primarily Keith Holder and Councillor Adje are accepted then there was certainly a strong business case to support early intervention along the lines of a licence or similar mechanism.
96. The opportunity was taken to confirm the potential for withdrawal with Firoka, who, as stated earlier in the report, declined to assist.

97. It is also clear that the Trading Company was in danger of being viewed as insolvent. The cause of this is, however, less clear. David Loudfoot is clear that this situation was not engineered but it does appear that the decline in revenues is exceptional when taken in context of both the previous year and the budgeted expectation for the subsequent year.
98. The production of the licence without proper consideration of the alternative is unacceptable. Whilst the licence mechanism may have offered an expedient strategy it should have been considered alongside other methods such as profit sharing, a management fee etc. Whilst these may not have been the preferred alternatives the Trustees should have had the option of evaluating the best way forward for the Trust.
99. The governance regime surrounding the preparation and authority of the licence must be considered questionable at best. The licence development may, or may not, have been expedient actions. However, from the paper work provided it is questionable in a number of regards:
- a. Was it the most appropriate way forward and did other options exist. If so, they were not explored with the Trustees formally and the financial consequences considered?
  - b. When the Trustees considered and approved the 'phased actions' were they sufficiently informed to take such an important decision. Were they aware that they were authorising a completely new licence and were they aware that the Ice Rink would be subsumed into this licence rather than the 'management agreement' approved?
  - c. Was the local authority, as the ultimate bearer of both cost and risk, adequately informed as to the consequences of this action? It may well have been the case that this decision had a high degree of importance and influence however, what evidence exists to show that those having this influence were sufficiently informed in a balanced way about the consequences both financially and in the event of the judicial review proving successful?
  - d. Were the Members of the Trust Board sufficiently informed to know whether they were acting prudently in making this decision and doing so in the best long term interests of the Trust?
  - e. Were the inherent safeguards in any charitable trust maintained by the officers of the Trust, in particular in the performances of the Head of Finance, the Legal Advisor and the General Manager? Particular in this regard is the production of the report seeking approval to these changes being introduced on the same day as the issue of handing operational control to Firoka (Alexandra Palace) Ltd were first mooted.
  - f. Why, given the precarious state of the Trust's financial position was this matter not supported by estimates of the expected costs, loss of revenue and potential outcomes and why was such a financial position not carefully and closely monitored during the period of the licence?



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- g. There must be concern expressed about the lack of liaison between the local authority and the staff at the Palace. Whilst the Charity Commission may well advocate separation, the failure to utilise the wealth of experience that the borough officers will have held is regrettable.

Martin Walklate

August 2008

**Appendix one****Terms of Reference for the Review****The Terms of Reference****Introduction**

Following the decision that the licence for Alexandra Palace and Park (APP) was to be taken away from Firoka (Alexandra Palace) Ltd (Firoka), a number of issues have been identified which require further investigation. It was considered that the appointment of an external consultant to undertake an investigation would be the most appropriate.

**Issues**

The Director of Corporate Resources raised a number of concerns in relation to the implementation of the decisions of the Alexandra Palace and Park Charitable Trust (the Trust). Specifically, the governance procedures and decision making processes which were in effect to award the APP licence to Firoka in May 2007 and the processes put in place to manage that licence.

**Scope**

The review will examine:

- Who drew up the licence agreement, what advice was sought on the licence and from whom
- What options were considered when awarding the APP licence
- Who was involved in considering the options
- What documentation is available to support the option appraisal process
- Whether any independent advice was sought on the options and why (or why not)
- Where the advice was sought from
- How was the decision to award the licence to Firoka reached
- What options and recommendations were made to the APP Board and when these were presented
- Whether these conflicted with any option appraisal or independent advice

- What arrangements were put in place to ensure that the terms of the licence were adhered to?
- What actions the trust and APTL took to keep the council informed about its actions
- What were the handover arrangements regarding the departure of David Warwick (LBH).
- What monitoring of the licence took place once in place?

#### **Method**

It was agreed that an independent review would be conducted in order to clarify the matters discussed.

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## Appendix Two

### The details of the Firoka Licence

#### **The Licence**

The construct of the new licence is a main body licence accompanied by a series of schedules.

The first schedule is a simple description

The second schedule determines the rights granted to Firoka (Alexandra Palace) Ltd

The third schedule 'the ancillary rights' refers to the rights of entry, car parking and use of surrounding parkland.

The fourth schedule sets out the licence fee. The licensee shall pay a fee of £1,000 per month for until the licence is expired or terminated.

The fifth schedule determines any exceptions to the rights.

The sixth schedule sets out the prohibited trading activities and is primarily a health and safety response.

It contains a number of key provisions:

To use the premises for the purposes set out in the lease attached to the master agreement 26 November 2006.

The staff exempted are:

- D Loudfoot      General Manager
- I French General Manager's P.A.
- M Evison      Park Manager from 8<sup>th</sup> May 2007
- K Harrington      Company Secretary APTL (this was a subsequent addition)

The licensor maintains existing contract for repairs and maintenance, Insurance, maintain equipment, use of logo, rates, security.

The licensor agrees to account for monies received in advance for functions. To replace existing contracts with new ones where possible for those contracts booked in advance during the licence period.

Profits are retained by Firoka (Alexandra Palace) Ltd as is the liability for losses.

The licence is signed by Loudfoot, Harrington and Firoka (Alexandra Palace) Ltd

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### Appendix Three

#### The variations between the two licences

The licence to operate (2007) replaces the licence to operate with the Alexandra Palace Trading Ltd licence which was prepared on 8<sup>th</sup> March 2002. The licences differ in the following regards:

The 2002 licence is stated as a draft licence and as previous referred is unsigned and undated.

The 2002 licence term is for a period of three years and continuing by written notice.

The 2002 licence makes a specific reference to payments

The 2002 licence makes no direct provision for a licence fee to be paid.

The 2002 licence makes specific provision for payment and interest to be charged thereon in default.

The 2002 licence requires that the licensee shall take all reasonable efforts to maximise profits. A schedule of unused days to be provided monthly.

The 2002 licence requires management information to be provided both regularly and on request.

The 2002 licence contains considerable provision on the issues of default, winding up, failure to trade, assignment, etc. No comparable provision exists in the Firoka (Alexandra Palace) Ltd licence.

The 2002 licence restricts a number of uses including the reserving of up to 30 days each year for use by the licensor. This is not carried forward into the Firoka Licence

The 2002 licence specifically exempts from the agreement the Ice Rink. No such direct exemption exists in the Firoka (Alexandra Palace) Ltd lease. In fact the ice rink is an included operation and is similarly covered by the opportunity for Firoka to retain losses and profits.

The 2002 Licence specifies rights to the licensee that they can authorise use of the premises at the best fee reasonably obtainable for that part.

The 2002 licence specifies an annual sum of £220,000 to be paid in advance on four quarters. (This sum can be substituted after a payments review). The Firoka (Alexandra Palace) Ltd license makes no such provision other than for a minimal licence fee. It defaults to the master agreement in the lease.

The 2002 licence makes provision for consultation with the community and with the advisory committee. The Firoka (Alexandra Palace) Ltd licence makes no such provision.

The Firoka Licence allows retention of profits by Firoka (Alexandra Palace) Ltd and correspondingly, the suffering of any losses.