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APPENDIX 5

FIRST WALKLATE REPORT **ANNEX 2**

INDEPENDENT REVIEW FOR THE LONDON BOROUGH OF HARINGEY
THE DEVELOPMENT OF A LICENCE TO OPERATE WITH FIROKA
DETAILED REPORT WITH REFERENCES

MANAGEMENT SUMMARY

1. This report is prepared upon the instruction of the Director of Corporate Resources of the London Borough of Haringey.

2. 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 staffing resources at no cost, building and other infrastructure facilities at no cost 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.

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

4. 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.

5. 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.

6. 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

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evidence can be found that this was provided, even in the most basic form, at the meeting itself.

7. 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.

8. 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.

9. 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.

It is recommended that:

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

    - Present a response to the 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

2. That the Trustees similarly cooperate with the Audit Division of the London Borough of Haringey in their intended 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.

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- 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's 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

3. 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.

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4. 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.

5. 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.

Martin Walklate

August 2008

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INDEPENDENT REVIEW FOR THE LONDON BOROUGH OF HARINGEY
THE DEVELOPMENT OF A LICENCE TO OPERATE WITH FIROKA
DETAILED REPORT WITH REFERENCES
MAIN REPORT

Summary

This report investigates the circumstances surrounding the development of a licence with Firoka (Alexandra Palace) Ltd and the Alexandra Palace Park Trust.

It concludes that, if the anxieties expressed over the likelihood of a potential withdrawal by Firoka are taken at face value, then a business case for entering into such a licence probably existed.

However, the report raises a number of concerns about the way the licence was developed, the lack of consideration of any alternative and whether good governance was achieved.

Introduction

1. 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 events 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)

2. The terms of reference are as follows. As agreed at the briefing (JP/MW) on 27th February 2008, the purpose of this report is to bring together the known information on this issue and to highlight questions and issues for further consideration/information.

The Terms of Reference

Introduction

3. 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

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4. 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.

The report structure

5. 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.

6. It concludes with recommendations.

7. 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.

8. The co-operation of all concerned at the Alexandra Palace and at the London Borough of Haringey has been important to concluding this review.

9. Wherever possible the material for this review has been taken from existing documents and interview notes. These are shown in Calibri font 11, italic in order to distinguish it from normal text.

NB: 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.

Martin Walklate

August 2008

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SECTION ONE

Response to the terms of reference

1. To fulfil the brief given, this section addresses curtly the terms of reference and answers those terms of reference specifically. However, it is important that these direct answers to the set terms are considered within the context of the whole report.

Who drew up the licence agreement, what advice was sought on the licence and from whom?

2. The licence was drawn up by Keith Holder, who at that time was the General Manager of the Alexandra Palace. He sought advice from Laurie Heller of BLP and some internal advice from Iain Harris and David Loudfoot. KH maintains that he acted under the guidance of the then Chair of the Board and of the Company, Councillor Charles Adje although Councillor Adje only recalls giving strategic and general advice.

What options were considered when awarding the APP licence?

3. No other alternatives to a licence were considered. No other alternative options were presented to the Trustees for their consideration. Some informal consideration was given to the options for detail in the licence such as the level of licence fee and indemnities.

Who was involved in considering the options?

4. As stated no other options were considered. The discussion of the variations appears to have included Keith Holder, David Loudfoot and Laurie Heller.

What documentation is available to support the option appraisal process?

5. There is no documentation as none was produced.

Whether any independent advice was sought on the options and why (or why not)?

6. Again, if the term 'options' is taken to include the minor detailed variations then the answer above stands. There is no explanation given for 'why not'.

Where the advice was sought from?

7. Again, as stated, the only advice was sought from Laurie Heller on some of the issues in the licence and from Councillor Adje to check out the overall strategic aim was being maintained. As far as can be ascertained, neither Laurie Heller nor Iain Harris saw the final document before signature.

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How was the decision to award the licence to Firoka reached?

8. The decision to award the licence was reached at a meeting of the APPT on the 24th April 2007. The decision of the Board was the assign the terms of the APTL licence. As stated in the full report the APTL licence differed in many material respects from the licence signed and agreed on the 4th May 2007 with Firoka.

What options and recommendations were made to the APP Board and when were these presented?

9. The Board formally received no alternatives or any detail whatsoever of the changes which eventually took place in the licence. In fact, it is unlikely that the structure of the final licence had even been envisaged at the point when the Board met on the 24th April.

10. The recommendations to the Board were set within the context of anxiety over Firoka's willingness to continue and the danger of withdrawal. It also presented a strategy of a 'phased transfer' thereby allowing staff to be seconded and Firoka to have the opportunity to improve trade.

11. The report also recommended the development of a management agreement with Firoka over the Ice Rink. In fact, the Ice Rink management and its income were eventually simply subsumed into the new licence.

Whether these conflicted with any option appraisal or independent advice?

12. The Board received no option appraisal or independent advice. The report was effectively tabled which meant that no borough officer had the opportunity to comment.

What arrangements were put in place to ensure that the terms of the licence were adhered to?

13. No evidence has been produced to show that any such monitoring took place. The only formal review of the licence adherence took place after its termination.

What actions the trust and APTL took to keep the council informed about its actions?

14. No evidence of any proactive action has been produced. Officers of the Trust appear to have an expectation that the Council Members on the Trust would have kept officers informed. The Council would have received the minutes of the meeting.

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What were the handover arrangements regarding the departure of David Warwick (LBH)?

24. David Warwick held the position of a director of the Trading Company in accordance with the Terms of Reference of that company. Upon his resignation no attempt appeared to have been made to replace him either by the Board, its officers or the Local Authority until the appointment of the Director of Resources in November 2007. It is understood that no advice was left for the incoming Chief Executive that such a position either needed to be maintained nor was she appraised of any such need by the staff at the Alexandra Palace.

What monitoring of the licence took place once in place?

25. As stated earlier, no evidence of monitoring can be found.

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SECTION TWO

BACKGROUND

General History

26. The Alexandra Palace is a building of national importance. First built in 1873, it has been a major venue for events, sports and recreation and has the historic emphasis of being a base of the BBC and the place of early television broadcasts. It has suffered badly from two serious fires and areas of the building are in substantial disrepair and not in use.

27. The building was acquired at the dissolution of the GLC in the early 1980's by Haringey Council who are the freeholder to the building. The site, including the buildings is held in trust.

28. The building is currently maintained at a basic level in accordance with the terms of the freehold. The London Borough of Haringey contributes significantly to the upkeep of the building and any revenue shortfall. In addition it provides help and assistance to the Alexandra Palace and Park Trust.

29. The Trust is a registered charity and is responsible for maintaining the charitable objectives of the Trust. Its Trustees are primarily Local Authority Councillors plus a small number of non executive Trustees. Meetings of the Trust take place regularly and are attended by the Trustees and observers.

30. The trading operations of the Trust are performed by a limited company Alexandra Palace Trading Ltd who operate the majority of the facilities on the site, organise and deliver events and publicise and market the building. The trading company seeks to achieve an operational profit and, when this occurs, return that profit to the charitable Trust under a gift aid scheme.

31. The Trust employs a general manager, a company secretary and other employees. Its legal advice is obtained externally.

32. Liaison between the Local Authority and the trading company takes place by the appointment of one director who is usually a high ranking officer of the local authority. This practice appeared to lapse around 2005 and has recently been restored by the Director of Corporate Resources at the Authority who took up her post some months ago.

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Seeking a development partner

33. The financial burden that the building represents, the state of the premises and the now highly complex nature of event planning and delivery led the Trust (in cooperation with the council) to begin consideration of outsourcing or seeking a private partner to assist in the development and use of the site.

34. In and around 2004, the Charity Commission were asked to consider the necessary changes to the charitable trust that this would require. 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.

35. 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.

36. 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.

37. The change has not been without its objectors and critics and one particular body, the Save Ally Pally Campaign has been active and vociferous 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.

38. 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.

39. It is not within the terms of this review to consider the matter of the lease, its tendering, or any other associated matter. The information is provided to give context to the development of the licence with Firoka.

The Staff

40. As already stated, the Trust is operated by a board of trustees headed by the Chair, at the time of the drawing up of the licence, Cllr. Adje.

41. Until May 1st 2007, the Trust employed Keith Holder as its General Manager.

'Keith was employed as General Manager to the Trust from 1996 to 30th April 2007. Following the incorporation of APTL in 1999 and to which all non-primary activities were

transferred, all responsibility for these activities transferred to the newly appointed managing director and Keith's role of managing the charity reduced to part time of approximately 3 days per week. By March 2004 the directors of APTL were disappointed with the performance of APTL and the managing director was summarily dismissed. Keith was asked to take over the managing director role in the interim and pending the transfer of the asset. An entirely separate contract of employment was entered into with effect from April 2004. The contract covering the two remaining days of the working week was at a nominal salary without any pension or holiday provision. The contract ended in March 2007 in preparation for the final transfer of the asset and business to the Firoka Group. From the 1st May 2007 he became a consultant to the Trust under a contract for service and works three days per week in that role.'

42. From 1st May 2007 he became a consultant to the Trust and he was replaced by David Loudfoot who was the previous Facilities Manager.

'David's role was created within the context of the transfer of the operations at Alexandra Palace to Firoka (Alexandra Palace) Ltd. The envisaged duties primarily concerned those issues of management of the charity and parkland which were not part of the Firoka lease as well as the contract management and monitoring of that lease. It was envisaged that his role would be assisted by the Project Consultant (Keith Holder) who was retained by the Trust for three days per week to assist in the transfer and to ensure David developed into the post.'

43. Ken Harrington was the Head of Finance and Company Secretary for the Trading Company and he also provided a financial role to the Trust.

'Ken commenced his role in January 2006 and resigned in February 2008 following his personal decision to retire. He had joined the company on a 6 month contract which month by month had extended to a 2 year period. It had already been made clear to him on joining the company that he would not be included in the transfer with the existing staff to Firoka which was a logical course since he was not engaged as a permanent employee.

Ken was appointed through an agency on the basis of acting as the Head of Finance for both the Company and the Trust. The role of Head of Finance for the Company also included the Company Secretarial role. After a short while he appointed an assistant who dealt primarily with the Company's accounts giving Ken primarily to carry out the overall management functions and to focus more on the Trust'

44. Legal Advice was provided to the Trust by Howard Kennedy through the auspices of Iain Harris.

'Iain's firm, Howard Kennedy is retained by the Trust as legal advisors. He is the client partner and has performed this role since July 1989. On 1 April 2008 Iain became a consultant at Howard Kennedy standing down from equity partnership although continuing to provide the same advisory service.'

'Iain's role is to give legal advice to the Trust as and when instructed, either himself or through one or other of his colleagues. HK does not advise the trading company. Its retention is by the Trust.'

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45. Legal advice on the drawing up of the Firoka licence was provided by Laurie Heller of BLP.

46. Councillor Charles Adje, a serving London Borough of Haringey Councillor, was Chair of the Trust during the time of the licence development and was also Chair of the limited company.

47. All of the above were interviewed as part of this review process.

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SECTION THREE

THE MAJOR DRIVERS FOR ENTERING INTO A SHORT TERM LEGAL RELATIONSHIP

The relationship with Firoka

48. This section of the report deals with the events that culminated in the signing of the licence to operate with Firoka in May 2007. It seeks to try to understand why any early or additional agreement with Firoka was necessary.

49. Councillor Adje summarises it as follows:

'Councillor Adje wanted to bring some certainty into the situation for the staff and those who represented them. He wanted to ensure that the agreed arrangements with Firoka would be maintained until the formal completion of the charity commission order and the subsequent period for challenge and he wanted to transfer the risk of a potentially failing operation in a way that would minimise the risk of any insolvent trading.'

50. This strategic aim is supported by Keith Holder in his comments on the licence development:

Keith authored the licence with the assistance of Laurie Heller and David Loudfoot. He was working to a concept outlined in discussions between his Chair and Firoka that the licence should reflect a situation as close as possible to that which would exist after the lease had been enacted.

51. 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. A request was made to Firoka to invite their view and they responded as follows: "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"

52. Keith Holder, in his interview, describes the context as follows:

'The strategy from the charity perspective had been one of risk transfer since the early 1990's. Arising from discussions between Firoka and his Chair, Keith was aware of the potential for the deal with Firoka to fail given the time that had elapsed since the original tender was submitted. He knew that discussions had taken place between his Chair and Firoka and that offering the opportunity for Firoka to trade in circumstances as closely allied to the lease agreement would be one way of securing Firoka's continued commitment.'

'The grant of the licence would assist with that commitment. It would also ensure that the company directors did not trade illegally (resulting from potential insolvency) and it transferred the trading risk.'

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'In response to supplemental questions, Keith explained that the 'risk' arose from the very tight margins that existed in most of the contracts envisaged during that period. Experience indicated that contribution to overheads from such events may be as low as under 7% of gross income and that this could easily be absorbed by part three costs.

Nb:

(part 3 costs are those ancillary services that the operator needs to perform to support any event such as shuttle busses)

53. David Loudfoot's view accords with this

'This was a period of extreme sensitivity in the relationship with Firoka. Two years had elapsed since the original bid work and the master agreement, project agreement and lease had been signed for some considerable time.

The market was changing both in regard to building costs but also opportunity for business development. The Wembley arena had reopened and the Excel centre was a fast developing competitor. Changes in client requirements including the need for advanced technology were becoming difficult to achieve without additional investment.

Firoka were indicating that they were not prepared to continue with the present position which appeared to suggest that yet more months could pass before the Lease would be completed. The long term strategic aim of securing an outsourcing partner for the palace was under severe threat with its consequent cost implications for the trust and the borough.

The provision of the licence allowed for Firoka to begin benefitting from experience of running the Palace prior to the lease coming into force. It reduced the risk of the deal collapsing and may have gone some way to secure future trading by allowing customers to be approached without explaining the issues of a impending transfer. In many ways it was doing little more than implementing aspects of the agreed lease at an earlier stage than would otherwise have been possible.

Importantly, it allowed a phased approach which meant that significant issues relating to employment, pensions etc. could be resolved without this delaying the stability mentioned above

54. Iain Harris, in notes provided as part of the investigation process does suggest that concerns existed about this overalls strategic direction taken from a note he made of a conference call he states:

'Conference call KH, IH and LH. My attendance note of 20 April, 3023225.

Not prudent for Trustees to complete before expiration of 1 month period in the Master Agreement. "Keith has spoken directly with Kassam and between them they seem very anxious for Firoka to move in, even if on a management only basis as soon as the Order is approved. Both LH and I were cautious and hesitant about this, not least because what Kassam says to Keith is not necessarily borne out by what Lewis Silkin say to us."

55. In a subsequent email Iain Harris gives further advice:

"Keith

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Legally speaking S 8 of the AP Act enables the Trustees to enter into agreements with respect to exercise of their functions. This would in my view include any interim arrangement for conduct of business pending grant of the lease.

The question is whether or not this is commercially prudent for the Trustees. The risk is that the CC decision is successfully challenged resulting in termination of the obligation to complete the lease.

The interim arrangement could continue but the prospect must be that Firoka would wish to end it and there would then be unravelling and accounting exercises which may have a degree of complexity.

Having waited this long for the outcome the prudent course would be to wait until the 1 month period has expired.

The need for immediate urgency

56. In the emails prepared by the General Manager there is clearly a desire to settle these matters urgently and, in one email, a date of the 15th May 2007 is quoted. Clarification was sought by Councillor Adje on this issue:

'Councillor Adje believes the significance of this date is that it was the Group AGM and subsequent of the Council. It was potentially possible that he would change office at this time and this would have led to a lack of continuity at a particularly sensitive time if the licence arrangements had not been finalised. It was a cut off point.'

57. In his interview on the 23rd April Mr. Holder was asked to comment on the 15th May deadline. His response generally confirms that of Councillor Adje.

'A group meeting of the Labour Group was to take place around this date and the Chair wished to confirm to his fellow members that the matter had been settled by this date.'

58. In a subsequent exchange of Emails with Mr. Holder the question was asked why any action was needed at all. Why, given the virtually immediate nature of the charity commission order and once a suitable period for potential judicial review had passed, couldn't the full lease have been entered into negating the need for any short term 'locking in'. His response was:

Although the legal advice at the time was that a JR application was unlikely to succeed the arrangements with Firoka were not to be irrevocable. I recall this being part of the debate at 24th April meeting of the Board of Trustees but have not checked back on the minutes to establish whether this particular point is recorded.

In fact it was Laurie (Heller) *who suggested that the whole arrangement covered by the Licence to operate could have been dealt with by a simple exchange of letters given the advice and position as they were known at the time.*

Entering into the lease and master agreement within the initial four week period would have made it incredibly difficult to unravel if an application for JR did succeed and relief was granted [as turned out to be the case].It has to be remembered that this was

not just a property transaction but included the transfer of all contracts in the pipeline yet to be undelivered and the transfer of the entire workforce.

Subsequently an undertaking had to be given by the charity to both the Treasury Solicitor acting on behalf of the Charity Commission and the Attorney General as an interested party that the lease would not be completed until the JR had either been heard by the Court and dismissed or otherwise disposed of.

59. The other major issue which contributed toward the need to transfer risk was the trading situation within the company. Keith Holder comments:

The trading situation, and in particular its achievement of net income, had deteriorated in the previous years prior to Keith undertaking the two day role with the company. It was this and the lower "conversion to profit" rate which lead to the removal of the previous Managing Director.

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. Keith explained 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 directors would not therefore be able to give the statutory declaration of solvency required for the members voluntary liquidation process to the liquidator when appointed at end of July.

60. David Loudfoot similarly reports

During the year preceding the granting of the licence other venues had been refurbished and had attracted back some of the concert business. Staffing issues has been complicated due to the imminence of the transfer for example; the sales manager had decided to leave. Christmas events had not been fully realised and concern existed that from year end, going into a short financial period before the lease was effected that the company was close to a position of insolvency which it could not trade out of due to the winding up process that would follow the transfer . These circumstances could have been unlawful for the Directors.

61. The above explanations appear to support the case for transfer of risk. Certainly the combination of a low level of trading combined with poor financial returns on such trading would give considerable cause for concern. It is difficult in retrospect to question why this financial situation evolved. According to David Loudfoot in a separate email, 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.

62. A further issue that needs to be taken into account is one raised by Councillor Adje. This was 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. His view of the situation at that time is presented below:

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March and April of 2007 were difficult months for the Board. The uncertainty surrounding the transfer had a detrimental effect on staff morale and this had led to resignations in some key posts. Individual Staff and the Trade Unions were expressing concern as to this uncertainty and the lack of resolution on issues such as TUPE and other related conditions of service. The staff also complained to me that they were never told what was happening within the organisation on a daily basis and the strategic direction of the organisation and felt isolated. They however did not want me to take action as they feared it may rebound on them. There were also issues between (deleted) who was brought in as part of the agreement before my arrival as Chair on how the business should be run. Even given the traditionally low trading situation at this time of year, the forthcoming months were presenting a very concerning picture and there remained a potential that the company would be trading insolvently.

Just less than two years had elapsed since the original submission of the tender from Firoka. Kassam was constantly expressing concern about the continued delays relating to the Charity Commission Order and the impact this delay had upon his predictions. Although he was aware of the relatively imminent signing of the order he remained concerned that the potential for a judicial review would prove another delay. There was no way of knowing whether his anxieties would actually lead to withdrawal but the financial consequences of this with its implications of having to go back to the market to seek another partner based upon an updated capital spend would have been very expensive and the prudent course of action was to seek to retain his full interest.

63. 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 taken at face value then there was certainly a strong business case to support early intervention along the lines of a licence or similar mechanism.

64. There is some ambiguity as to how this impression of potential withdrawal arises although it must be accepted that their recollections relate to over a year ago. 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.

65. It is also clear that the Trading Company was in danger of being viewed as insolvent. Anticipated income was at a level where insolvency was a clear possibility. Although explanations are given, the cause of this is,

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however, less clear. David Loudfoot is clear that this situation was not engineered but it does appear that the decline in revenues in that year is exceptional when taken in context of both the previous year and the budgeted expectation for the subsequent year.

66. The situation on the potential for delay relating to the possibility of a Judicial Review is contradictory. Statements made by Iain Harris and Keith Holders suggest that the risk of this happening appears to be so low that the licence agreement takes place but, according to the statement of Keith Holder, not so low as to prevent the early development of the full lease.

Summary – section three

67. 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, if the views of those involved are accepted, they do represent a case for the development of the licence or a similar mechanism.

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SECTION FOUR

HOW WAS THE LICENCE DEVELOPED

68. 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.

69. There does not seem to have been any consideration whatsoever to 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, therefore, have resulted. No such options appear to have been considered. It would appear that a mechanism was needed to engage with Firoka. Laurie Heller suggested a licence as one such mechanism and it was developed accordingly.

70. Keith Holder, in a reply to an email asking if an assumption that no other mechanisms were considered and no other options appraised, states:

I note your comment about your assumption and this is correct. At its inception it was intended that the license would only have a short life and as I stated previously the licence reflects the arrangements discussed between the then Chair of the Board and Kassam. There were no other options and therefore an options appraisal document was not an issue.

I am also certain that no such document was produced after the termination of my role as general manager but David will need to confirm that position. However he is out of the country until Monday, 19 May.

71. The structure and framework for the licence originated from the form of the 2002 APTL licence held by Howard Kennedy. Iain Harris was concerned as to how this took place.

Keith Holder developed the revised licence using an electronic version of the previous licence which was prepared by Howard Kennedy in 1999/2002 for grant to the Trading Company. Iain was concerned by the fact that a document prepared for a previous transaction by his firm had been adapted for use in granting a licence to Firoka. He wanted to make very plain that the licence granted to Firoka was not one which his firm had drafted for that purpose and that neither he nor any of his colleagues had advised on the transaction or the appropriate documentation for it.

72. 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

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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. The correspondence from him, provided by Iain Harris reads:

David,

Thank you for the copy of the last version of the Licence on your system.

This document is fairly central to the stage of our discussions with Firoka, not to mention the questions being raised by the Trustees and Haringey. Neither Iain and I have a copy of the Licence as it was completed; there are clearly terms which were added later or which are collateral to it. You will recall that it was drafted in your offices; I commented and revised some of its terms but did not deal with it directly otherwise. Neither Iain nor his colleagues had any hand in it although it is apparently modelled on a draft prepared by Howard Kennedy for an earlier transaction having nothing to do with this one (that explains the HK reference on the document). We need to know the full terms which have operated as between APTL and the Firoka.

Accordingly, may we please have a fully copy of the completed document and any collateral arrangements which have been made?

73. Ken Harrington who is both the Company Secretary and Head of Finance alleges that he had little involvement in the drawing up of this crucial document. His response in 2008 to documentation was that 'I am afraid that I do not have any correspondence on my files about the drawing up of the licence'. He states that Chair of Directors, Cllr. Charles Adje was driving the processes and, as chair of the charity was interfacing with the Local Authority over the arrangements.

74. His absence from the process is generally confirmed by his exclusion from the email correspondence that took place.

75. This contrasts with Councillor Adje's position as stated in his interview that he wasn't involved in the detail of what mechanism should be used to bring about the strategy that was considered necessary. He understood that all detailed discussions would have been held by Keith Holder but accepts that Keith was in contact with him over some small matters. He maintains that the development of the licence was a matter for officers to resolve.

76. David Loudfoot produces on 22.2.08 a pack of information which includes a letter from him (which adds little). 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.

77. He states:

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David became aware of the strategy to develop a licence just before the board meeting in April 2007 and was involved in contributing in small ways to that licence development. This was primarily working on two issues, TUPE and Insurance Indemnities. David recalls being at a meeting toward the very end of April with Keith Holder and Cllr. Charles Adje where it was made clear that he would have the responsibility of signing the licence once the Charity Commission Order was through.

78. A letter was provided from Edwin Holder Associates (Keith Holder) dated 21st February which encloses six versions of the licence. He is adamant that he wants these to be read in the following context.

- *Aptl was not forecasting to generate sufficient income to cover direct costs.*
- *Liquidator appointments would have left aptl wrongfully trading as technically insolvent.*
- *Seeking further financial support from the Trustee would have been embarrassing.*
- *The chair of the board was dealing directly with the leader of the council on how to unlock the Firoka (Alexandra Palace) Ltd process.*
- *Legal advice was that the likelihood of the judicial review succeeding was remote.*

79. Keith Holder and David Loudfoot have produced a detailed pack of emails relating to the process of drawing up the licence. They have been used to draw the following information.

80. It would appear that the process commenced around the 20th 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 15th May. I have specific reason for asking which I cannot divulge at the moment'*

81. On the 24th April (the date of the Board Meeting) Keith Holder in an email to Iain Harris, Laurie Heller and Kevin Bichard refers to an earlier email asking assistance in how to 'lock Kassam in'

82. He states that *'in our conversation (Kassam?) there was some suggestion that an agreement for him to take control of the business (and staff?) was possible but it was not discussed further at that time. If there is a legitimate way of achieving this outcome it would be extremely useful?'*

83. 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.

84. He then gives advice that the ending of the licence will be complex and require accounting exercises. He concludes by say that

'Having waited this long for the outcome the prudent course would be to wait until the 1 month period has expired'.

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85. On 26th April 2007 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.*

86. He concludes that he is working on the assumption that the Judicial Review challenge will not proceed.

87. Between 26th April and the 4th 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.

88. I have no correspondence relating to the financial issues and, indeed, no actual replies from Firoka (Alexandra Palace) Ltd. Some correspondence is available from Goodrich 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'.

89. 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.

90. Councillor Adje states:

Councillor Adje could not recall having any specific briefings. He was given a general awareness of the amounts involved in issues such as the staff secondment and recalled figures of the cost of the licence deal being around £400,000 although he was informed that most of these costs would have had to have been met by the Trust in any event. He regularly visited the Palace and his discussions and information would have been derived, informally, from these occasions. At no time was he offered any formal briefings from any other officer either from the Palace or the local Authority other than that given by Keith Holder.

Councillor Adje wanted it to be noted that although these sums are vague even at their most pessimistic they still represent a very small proportion of the costs to the Trust and the Authority should Firoka have withdrawn from the contract bearing in mind the size of the investment.

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The Financial consequence

91. I have not examined the information to determine the consequences of this decision to the London Borough of Haringey. This is presently the subject of discussion between the London Borough of Haringey, the Trustees and Firoka.

92. 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.

93. Keith Holder confirms this analysis in his interview notes:

> *As Keith had stated earlier, the objective was to place Firoka in as close a trading position as was possible to that which would be experienced following the enactment of the lease. It was not possible to achieve this in regard to the buildings or staffing.*
>
> *Keith clarified that the costs incurred by the Firoka were those which directly arose from trading such as catering, casual labour, marketing etc. The costs retained by the company and the Trust were the indirect costs relating to the infrastructure and the cost of designated posts seconded to Firoka for the period the licence was in operation.*
>
> *The inclusion of the income from the Ice Rink was to compensate for the acceptance by Firoka of risk.*

94. Iain Harris in the report of December 2007 makes reference to the arrangement in the following terms:

> *'It was never part of my remit to give advice as to the commercial prudence of this arrangement. I understood that the commercial aspects would have been considered by the board of the trading company from the perspective of the trading company's future trading position and the rather thin order book as it stood in April/May 2007'*

95. I can find no reference to the Trading Company considering the commercial aspects in this way.

96. 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

97. A report to the Trustees at the time of David Loudfoot's appointment as the General Manager specifically included the role of monitoring and

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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.

98. 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.

Summary Section Four

99. 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.

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SECTION FIVE

THE LICENCE TO OPERATE

100. A key recommendation as part of this process was the decision to assign the APTC 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.

101. In order to undertake the operations at the site, around 2002 the Alexandra Park Trading company was given a licence to operate by the Charitable Trust. This licence covered the ability to carry out activities in the majority of the site but withheld the Ice Rink and some other activities which were to be performed and managed directly by the Trust. In May 2007 this was withdrawn and a new licence to operate was given to Firoka (Alexandra Palace) Ltd. It should be remembered that in the absence of any agreed lease, Charity Commission approval and any other authority, this was the key operating document held by Firoka (Alexandra Palace) Ltd.

102. It appears likely that the original licence was conceived by Howard Kennedy. The extent to which the licence was enforced or monitored has not formed part of this review. The licence was unsigned during its period of operation but it could be assumed that custom and practice would make this document have legal standing.

103. At first glance this (the unsigned licence) would seem to be a regrettable position however, it is not untypical and it should be remembered that the directors of the trading company were drawn from council members largely and that these were often synonymous with the Trustees on the board of the Trust. The Directors of the trading company had no personal gain or interest and the profits of the company fell to the Trust by gift aid.

104. The licence given to the trading company in 2002 covers all matters of security and health and safety but is, essentially financially driven. It tied the trading company into maximising the use of the buildings; ensured regular payments to the Trust of any profits made (through a tax efficient gift aid system) and ensured that it was restricted in its use of any profit.

105. On the 4th 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.

The Licence

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

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- 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.

107. 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 8th 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.

108. The licence is signed by Loudfoot, Harrngton and Firoka (Alexandra Palace) Ltd

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

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- 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.

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

Observations

110. 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 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.

Summary Section Five

115The 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. The Firoka licence differs in very many respects to the original 2002 APTC licence.

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SECTION SIX

AUTHORITY TO ENTER INTO LICENCE

111. 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.

112. The licence was signed as referred to above on 4th May 2007. This followed a meeting of the Alexandra Palace and Park Board on the 24th April 2007 which considered a report which is not attributed to any one individual or individuals but is assumed to be the report of the General Manager.

113. The report, on a matter of significant financial costs and implications, was, effectively, tabled.

114. 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.

115. 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.

116. 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

117. 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.

118. The Trustees approved these actions.

119. There is nothing relating to financial consequences in the report or to the extensive changes in management structures and costs. The report is

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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 Director of Finance. I can find no documentation that suggests that the details of the new licence were made available to the Board.

120. David Loudfoot comments in his statement:

David recognises that the final licence with Firoka differed in many respects to the company operating licence. However, it was his understanding that the Members of the Trust had been briefed on the strategy and that in signing the changed licence he was fulfilling their decision.

121. Indeed, Councillor Adje, the Chair of the Trust states:

Councillor Adje was not aware of the detail neither of the APTL licence nor given any indication of any major changes that may be necessary.

122. David Loudfoot confirms this position:

David does not believe that any additional background papers were produced for any of the above, or at least, not with his contribution. David was of the understanding that the financial consequences had been made clear to Council Members via Charles Adje briefing the group.

David is clear, however, that as the licence progressed, and in particular regard to its being allowed to run on without formal extensions before and again after the Judicial Review, that Cllr. Adje was informed as to the financial consequences of the licence provisions. David recalls exchanging text messages and conversations with Cllr. Adje on this issue.

123. In his interview, Councillor Adje states:

On the issue of pro-activity, Councillor Adje did wish to make the point that the opportunity to advise him on any issues surrounding this matter either before, on the night of, or after the board meeting, was fully available to all staff servicing the board. All the major officers of the Board were present at the meeting and if any had felt that the Trustees were making an incorrect decision or one based upon insufficient information then they had every opportunity to raise the matter. Equally, had the officers recognised that the actual licence that was developed was not really in keeping with the understanding of the board or its formal resolution then they had every opportunity to bring this to his notice. This did not occur.

124. On the 1st May 2007 the provisions in the 'phased transfer' report were agreed by written action.

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Authority to make the decision

125. 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.

126. However, Iain Harris in his interview comments upon the authority to sign the licence as follows:

Iain's view was that in normal circumstances on matters relating to entering in to significant legal agreements in respect of property the Board would specifically authorise the Borough Solicitor to sign on behalf of the trustee. This did not happen in this case.

127. 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 is wholly different in content, intent and substance to that given to APTL which is considerably beneficial to the Trust financially and culturally.

128. 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.

129. Iain Harris in his interview commented on what he thought was meant by the proposal within the report to assign the APTC licence:

Iain was unaware that it meant anything other than what is stated. He was not aware of any other discussion or additional papers at the meeting which would imply any different operating model. He did observe that the previous licence to the trading company had never been completed, despite his colleague who dealt with the matter pressing for completion.

130. Councillor Adje, in response to questions on this issue states:

Councillor Adje knew that the report sought the authority for the Officers to conclude a licence with Firoka. It also gave agreement to the secondment of staff. The Trustees were given no more detail about the content of the new agreement. Indeed, he was surprised that further information was not provided at the time of seeking the resolution to cease trading.

Councillor Adje was unaware that there had been significant changes to the licence from the one utilised by APTL and was unaware that the licence had not been reviewed by any legal representative prior to its signature. He had at no time, either before or after the meeting on the 24th, been given any written statement or briefing of the effects of the changes to the licence. He expected legal to have at least been involved in the formulation of the licence agreement and was very surprised that neither the Trust solicitor/other legal advisers nor an accountant were involved.

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131. 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.

132. 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.

133. At the meeting of the 24th April, following the appointment of David Loudfoot, it was made clear to the Board by Mr. Harris that the role of the General Manager was monitoring and assessment.

134. In the report of the Trust Solicitor 5th December 2007 it is stated by Mr. Holder the Firoka (Alexandra Palace) Ltd Group paid for salaries and utilities and general running costs I can find no such provision in the licence.

135. In summary it must be concluded that the approval process is weak.

Governance

136. The Alexandra Palace and Park Trust has no formal code of Governance. According to its Legal Advisor, Iain Harris:

The trust does not have any formal code. I think the nearest it gets is in the annual induction I give to the new Boards. That aside as the Board is a committee of the Council the local authority rules apply. The committee clerk is the expert on these and comments and guides wherever necessary.

137. 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.

138. 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 tabled
- No opportunity was given to any external advisor to comment

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- 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

139. 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. He comments:

140. *Keith saw this as a framework within which to develop the new licence. At the time of the meeting the detail was not known. Keith believed that the Trustees present had been briefed by the Chair as to the strategy to transfer the risk earlier that the lease would allow and that the licence development was following. He was not certain as to whether the Liberal Democrat Members had been similarly briefed but was aware this had happened in the past on other issues.*

141. 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.

142. It is known that the Internal Audit Division of the London Borough of Haringey are tasked by the Director of Corporate Resources at the London Borough Of Haringey carry out a review and to assist the APPT and the company with their governance procedures and to carry out a

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review of existing arrangements. Furthermore that a broader review of governance and consultation arrangements has been requested by the current Chair of the Board.

143. The shortfalls in governance demonstrated in this section stress the immediacy and importance of that review.

Summary Section Six

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 with the actual outcomes.

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SECTION SEVEN

THE LOCAL AUTHORITY INVOLVEMENT

144. 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. This last appointment is considered the most crucial. 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.

145. The appointment of the Local Authority Director provides a direct information flow in matters relating to the actions of 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.

146. 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 either by staff at the Alexandra Palace. Similarly no briefing note was left by the outgoing Director.

147. 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.

148. There is a clear, close, relationship between the then Chair of the Trust, Cllr Adje and the General Manager and the Consultant, Keith Holder. Both Keith Holder and David Loudfoot make reference to being given strategic direction by Cllr. Adje and they quote that he is in discussion with the Leader of the Council over these issues.

149. An officer, Daliah Barrett, commented on the premises licence issues but this was in a very constrained capacity. An assistant Chief Executive attended the meeting on the 24th April 2007 but was there to simply comment on issues arising from the appointment of the new General Manager.

150. In his interview councillor Adje raises concerns about the relationship with the Local Authority Officers:

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Councillor Adje was concerned about the lack of liaison that took place over Alexandra Palace matters. In part this was necessary given that the Trust had to show that it was not an organ of the Local Authority and acted independently both in its actions and how it sought advice. However, the lack of liaison extended beyond this and appeared to result from bad past experiences in both quarters. He was not aware; however, that the licence details had been compiled without any discussion with the Local Authority Officers and that there had been no opportunity for them to contribute to either the outcome or the method of achieving it.

151. This distancing from the Local Authority is similarly commented upon by Iain Harris:

It is extremely important to have in mind the independence of the charity from the local authority. Although the local authority is trustee, it exercises trusteeship through the board members. The board members must make their decisions solely with regard to what is in the charity's best interests. Board members must put aside any political or other non trust considerations. All fairly obvious stuff I know, but failure to follow has caused many previous problems.

152. This position is similarly presented by Keith Holder:

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. The Chair of the Board of Trustees was dealing with the matter at a high political level.

Given that the report of the 24th 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.

153. As previously commented upon, a view persists throughout the interviews with the officers of the APPT that liaison was effected through Councillor Adje. David Loudfoot presents this as follows:

David saw the key contact with the Local Authority as through the Trustees of the Board and, in particular, the Chair of the Trust.

154. Councillor Adje's position on this has already been stated.

When informed that others making statements had indicated that they thought he was undertaking all liaisons with other Trustees and local authority staff Councillor Adje was very surprised, angered and disappointed that they should have made such a surprising suggestion given that the responsibility for ensuring that the Trustees were fully briefed had to be an accountability of the officers

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SUMMARY SECTION SEVEN

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.

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SECTION EIGHT

SUBMISSIONS

Each person interviewed was invited to provide any further information that they felt was pertinent to the review but had not been considered in the questions placed. This section presents their views if not utilised elsewhere in the report

155. Mr. Keith Holder

Keith was keen throughout the interview to ensure that this very complex issue was not seen simplistically. In discussion it was recognised that had the Firoka withdrawn from the project then the costs of remounting the tender exercise would have been very significant c.£1.25m and that there was no basis to conclude that any future bid would either materialise or offer the benefit that the Firoka submission gave the trustees. Since the original bidding round the costs of building repair and subsequent investment by Firoka would have risen by an estimated £9m from inflationary adjustments alone. It is currently unclear what additional costs the further deterioration in the fabric over the period would bring.

156. Mr. Iain Harris

Iain wanted it to be noted that any conclusions to the review should be taken within the context of the situation that existed at the time of the grant of the licence in May 2007; the fragility of the relationship with Firoka, the poor trading position and the surprising outcome to the judicial review having regard to the fact that counsel's advice was that the prospect of defeating the application was in the order of 65 to 70%..

157. Mr. David Loudfoot

Although acknowledged through this note, it must be made clear that David would wish to stress the different context between when the decision to enter into the licence was taken and that currently experienced.

There was clearly a strong political desire to conclude the lease and in order to ensure that this took place it was seen as necessary to take a short term expedient decision to maintain relations with Firoka which were at a very difficult state.

It was the view of all who advised David and his colleagues that the likelihood of a judicial review was remote and that if there was one then it would not succeed and as such it was simply a matter of time before the lease could be enacted.

That the apparently risk limited decision to agree the licence should be taken in the context of the overall benefit to the Trust that would have incurred had the lease with Firoka proceeded.

158. Mr. Ken Harrington

Ken wished to have his concern about this matter recorded and his inability to assist Local Authority officers when making earlier enquiries. This arose particularly following written requests by Julie Parker and subsequently requests by Gerald Almeroth where he was unable to provide a robust response to their letters as he was not armed with the facts .He wished to

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stress that this was not because of any lack of desire to help but because he did not have access to the necessary files and papers.

He stressed again that he was physically remote from the strategic discussion over the lease and the licence and was not asked to be involved although he would have happily been so if requested.

Ken was keen to give any further assistance should it be required.

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SECTION NINE

CONCLUSION

159. 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 stated in section three appear to suggest that the use of a mechanism such as a licence was warranted.

160. 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.

161. Firoka have declined the opportunity to comment on this issue.

162. 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.

163. 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.

164. 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:

165. Was it the most appropriate way forward and did other options exist. If so, they were not explored with the Trustees formally nor were the financial consequences considered?

166. 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

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aware that the Ice Rink would be subsumed into this licence rather than the 'management agreement' approved?

167. 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 political sensitivity 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?

168. Were the directors of the Trust 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?

169. Were the inherent safeguards in any charitable company maintained by the officers of that company, in particular in the performances of the Company Secretary and Director 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.

170. 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?

171. 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 and unacceptable.

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ANNEX 3

COMMENTS OF THE TRUST SOLICITOR ON THE REPORT OF THE DCS AND CFO TO THE BOARD ON 26 SEPTEMBER 2008.

1. As set out in the Report, the charity trustees are advised upon the outcome of the review commissioned by the Council's Director of Corporate Resources, using S 151 officer powers, into the circumstances and consequences arising from the granting of the licence to Firoka in May 2007.

2. The charity trustees are provided with a copy of the summary and fuller reports (see paragraphs 9.3 and 9.4.)

3. The Board is reminded that in June 2005 the then Director of Finance and Head of Legal Services submitted a report to the Board on practical measures for the delivery of governance arrangements.

4. The Board resolved to seek advice from the Charity Commission in relation to various issues arising from those recommended practical measures. The then Chair wrote to the Commission on 1 July 2005. Whilst the Charity Commission indicated in its reply of 8 September 2005 that the question asked was not an appropriate subject for advice it did in fact go on to advise that:

(a) the question whether the financial affairs of the Charity are also the financial affairs of the Council is a question of law which the Commission is unable to determine;

(b) it is for the Charity trustees to decide whether to accept the proposals made by the Council as local authority, taking account of their obligation to act at all times in the interests of the Charity; and

(c) the Charity needs to consider, with its legal advisers, whether agreement to the proposed arrangements would compromise the management of the conflicts of interest inherent in the dual role of the Council as local authority and as trustee of the Charity.

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5. The then General Manager instructed us to take an Opinion from Leading Counsel on the governance matters generally. That Opinion was provided in February 2006.

6. By that date the charity trustees had selected Firoka as its proposed development partner (this was done on 30 January 2006) and the issue of governance took second place in the context of the work required on the development project. It was not subsequently put back before the Board.

7. Clearly, in the light of Firoka's withdrawal of interest, the issue of governance is once again of importance, particularly in the light of the report commissioned by the Council's S 151 officer and now presented to the Board.

8. The key outcome should the Board accept the recommendations, which as the Trust's solicitor we support, is that realisation of the action plan proposed by the General Manager will entail Board members spending a significant amount of time upon reading, debate and discussion to achieve an agreed mode of governance. This process is also highly likely to entail additional special meetings.

Iain Harris
Howard Kennedy
16 September 2008.