

**MINUTES OF THE ALEXANDRA PALACE AND PARK PANEL  
THURSDAY, 22 NOVEMBER 2007**

**PRESENT:**

Councillors \*Cooke (Chair), \*Egan (Vice-Chair), \*Peacock, \*Hare and \*Oakes

Also present:

Councillor Neil Williams

Mr Iain Harris – Trust Solicitor

Mr Clifford Hart – Clerk to the Panel – LB Haringey

<b>MINUTE NO.</b>	<b>SUBJECT/DECISION</b>	<b>ACTION BY</b>
<b>APSC23.</b>	<p><b>APOLOGIES FOR ABSENCE</b></p> <p>An apology for absence was received from Mr David Liebeck – Observer to the Board.</p> <p><b>NOTED</b></p>	
<b>APSC24.</b>	<p><b>URGENT BUSINESS</b></p> <p>The Clerk advised that whilst there were no additional items of urgent business in addition to Item 4 which had been circulated with the agenda, the Trust Solicitor – Mr Harris would give a brief outline of further legal advice obtained in respect of questions asked by Members to him prior to the meeting.</p> <p><b>NOTED</b></p>	
<b>APSC25.</b>	<p><b>DECLARATIONS OF INTEREST</b></p> <p>There were no declarations of interest.</p> <p><b>NOTED</b></p>	
<b>APSC26.</b>	<p><b>APPOINTMENT OF A DIRECTOR TO THE BOARD OF ALEXANDRA PALACE TRADING COMPANY - REPORT OF THE TRUST SOLICITOR</b></p> <p>In introducing the report before the Panel the Trust Solicitor – Iain Harris advised that he was reporting to the Board in the absence of the General Manager (due to vacation).</p> <p>Mr Harris advised the meeting that the report resulted from a matter that arose at the Board meeting of 30 October 2007 in relation to seeking the nomination and the agreement that said nominee act as a Director of the trading company – Alexandra Trading Limited of which the Charity is the sole shareholder. The Board had resolved that consideration of the appointment of a further Board member to serve on the Board of Directors of Alexandra Palace Trading Ltd. be deferred pending</p>	

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clarification of whether the duty to allocate seats to political groups applied.

Mr Harris advised that advice had now been received from the Local Authority's Legal representatives in this respect and this advice was set out in paras 5.1-5.4 of the report before this Panel. Mr Harris advised that in essence the legal advice given stated that having considered the position and specifically whether the "political balance rules" in Sections 15-17 of the Local Government and Housing Act 1989 apply to the appointment of Directors of the trading company (APTL) the **conclusion** is that the political balance rules do not apply.

In respect of the advice received Mr. Harris commented that points of clarification had been received from Councillor Oakes which had stated that the Liberal Democrat members of the Alexandra Palace and Park Board were of the opinion that the advice given relied exclusively on Local Government law and that since Local Government law did not concern itself with Charities, it was not surprising that it took no account of a situation like APP/APTL, which was an independent Charitable Trust. The advice made no reference to Charity Law, and certainly not to a charity run by a local authority.

It was believed that good practice for a charitable public body where the voting members consisted entirely of elected councillors would mean proportionality and political balance when it comes to the selection of Directors. It was therefore considered that the trust was duty-bound to seek independent legal advice on this point, from a practice specialising in Charity law, and that this be done urgently, before this meeting.

Mr Harris advised that following Councillor Oakes's request the company secretary of APTL had sought advice from the firm of Solicitors – Bates Wells and Braithwaite – the solicitors who originally been involved in the drafting of the articles of Alexandra Palace Trading Limited (APTL) which he had emailed to all members of the Board at approx 17.58hrs the previous evening (21/11/08) which clarified the points raised by Councillor Oakes. In seeking clarification from Members as to whether they had received and read the contents of the letter Mr Harris, and following Councillor Hare confirming he had opened the email at 03.18hrs that morning, but had not studied its contents, Mr Harris then read its contents as follows (a copy of said letter will be interleaved with the minutes)

***“Alexandra Palace Trading Limited (“APTL”) – Constitutional matters***

*You have asked me to advise on the composition of the Board of directors of Alexandra Palace Trading Limited specifically, whether the four directors who are also trustees of the Charity and are appointed by the Charity should be politically representative of Harringay Council.*

*APTL is an independent trading company limited by shares which is wholly owned by Alexandra Palace and Park Charitable Trust (“the Charity”). Article 7.2.1 of APTL's Articles of Association provides that four directors shall be trustees of the Charity. Article 8 provides that*

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*those four directors are appointed by resolution of the Charity. The Charity may also, by written notice, remove any of the directors (Article 9.7).*

*Article 19 provides that the directors of APTL may appoint one of their number to be the Chair of the Board who, under Article 16, has a second or casting vote in the event of an equality of votes.*

*This is the extent of the provisions in the constitution of APTL governing the appointment of those four directors of APTL. There is no requirement that the four directors appointed under Article 7.2.1 should be, in any way, politically representative of the Council.*

*If the trustees of the Charity either wish or are under an obligation to select their four appointee directors in accordance with any criteria, be they political or otherwise, they are at liberty to do so. But that is a matter for the Board of the Charity. It does not arise from the constitution of APTL itself. If the Charity wished to provide for such criteria to be included in APTL's constitution, they have power to change the Articles of Association of APTL by Special Resolution.*

*In considering whether any such resolution is necessary, the Board of Trustees of the Charity must, of course, act in the best interests of the Charity and not APTL or the Council."*

*Mr Harris then read the contents of his covering email to the letter which had stated 'we have been asked to reply to the email below prior to tomorrow morning's meeting.*

*Advice has now obtained from Bates Wells Braithwaite which acted upon the incorporation of the trading company.*

*A copy of its letter of advice dated 21 November 2007 is attached. As can be noted BWB advise that there is no requirement that the four directors appointed to the trading company under Article 7.2.1 should be in any way politically representative of the Council.*

*Accordingly, as we have advised in our report the Panel is free to nominate and appoint any charity trustee as a director, regardless of his or her political affiliation.*

*We wish to reiterate yet again our oft repeated advice.*

*Charity trustees and directors of the trading company must act exclusively in the best interests of the charity/trading company. They must put aside any political stance and views. Whilst they are charity trustees because they are elected councillors their sole duty is to the charity.*

*We cannot help expressing the view that in the current debate sight may be being lost of this fundamental principle"*

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Mr Harris concluded that the matter was now for the Panel to consider in terms of the recommendations as stated within the report, and that the matters that had been sought clarification of had now been clarified.

The Chair asked if there were any questions of Members.

Councillor Hare, with reference to the advice from the Local Authority, and backed up by independent clarification, commented that in fairness he would have been much surprised if the LGA 1989 or Company Trading rules had actually made specific reference to the type of issue before the Panel today. In reference to the current 3:1 ratio on the APTL – in effect being three Labour and 1 Liberal Democrat members, in reality this meant that as the 1 lone Liberal Democrat member it was most difficult to raise specific issues for the APTL Board to consider or request an urgent meeting of the APTL Board. Councillor Hare referred to the numerous emails and requests to the Council and Trust requesting information relating to APTL and the position of the Firoka Group, which had not been responded to or answered - and such legitimate concerns raised in public and otherwise, and as 1 amongst 4 Directors on APTL was vulnerable to requisition a special meeting of the APTL Board. In the spirit of best practice/openness and fairness the Councillor Membership of APTL should roughly reflect the proportionality of the Council. Councillor Hare concluded that the lack of response to any of the points he had raised in the past months to obtain information, given the urgency of the situation with the Palace and APTL, was an absolute disgrace.

Councillor Oakes commented that in respect of the advice received from Bates Wells and Braithwaite he felt that the he could not have confidence in much of the advice, particularly the advice in the penultimate paragraph in regard to political stance and that in his view political evenness must be maintained by a 50/50 balance.

The Chair observed that from the comments of both Councillors Hare and Oakes they wished to disregard or ignore this advice. He commented that the Board had to act in the interest of the Charity and that best practice should be observed in doing so.

Councillor Hare responded that Councillor Cooke's implied comments inferred that he and Councillor Oakes did not have the interests of the Palace at heart and this was totally not the case. He commented that if other members had the interests of the palace at heart then they would have allowed two members of the Liberal Democrat Group who sat on the Board, membership of APTL Board. He also referred to the fact that the change in Chair-ship of the Board should not have resulted in delays to meetings of the APTL Board. Councillor Hare reiterated his earlier comments in relation to why he had raised various issues within the public domain.

Mr Harris referred to the point raised by Councillor Hare relating to calling a meeting as an APTL Director and referred to clause 16 of the Articles of Association of APTL which clearly allowed for an individual

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Director to request a meeting of APTL.

The Chair MOVED the recommendations before the Panel.

Councillor Hare, in anticipating the nomination of a Labour nominee to the APTL felt that if the Panel were to nominate a labour member then one other labour appointee to APTL should step down voluntarily and allow a replacement based on merit to assist in the functions of APTL and reflecting political balance, which in accordance with the APTL's memorandum of association would constitute best practice as a charitable body. Councillor Hare asked that his comments be recorded.

Mr Harris repeated the advice that APTL was an independent trading company and was not a charity and therefore not bound by either the LGA 1989 or Charity Law.

The Chair therefore MOVED recommendation 3.1 'that the Board accepts the Advice of the Council's Legal Service'.

On a vote there being 3 (Councillors Cooke, Egan and Peacock) and 2 against (Councillors Hare and Oakes) the MOTION was carried.

The Chair then, in respect of recommendation 3.2 that the Board appoint a director to APTL sought nominations.

Councillor Egan nominated Councillor Cooke as Director to the APTL.

Councillor Hare nominated Councillor Oakes as Director to the APTL.

On a vote for Councillor Cooke be appointed as Director of APTL there being 3 for (Councillors Cooke, Egan and Peacock) and 2 against, and on a vote for Councillor Oakes being appointed as a Director of APTL, there being 2 for (Councillors Hare and Oakes) and 3 against (Councillors Cooke, Egan and Peacock) – it be agreed that Councillor Cooke be appointed as Director of APTL.

**RESOLVED**

- i. That the advice of the Council's legal service in relation to proportionality and political rules in relation to appointment and membership of Alexandra Palace Trading Limited (APTL) be accepted; and
- ii. That Councillor Cooke be appointed as a Director to Alexandra Palace Trading Limited (APTL).

Councillors Hare and Oakes asked that their dissent be recorded in respect of resolutions (i) & (ii).

In response to a question from Councillor Hare requesting an urgent meeting of the APTL the Clerk advised that this was not a matter for this Panel to consider.

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	<p>There being no further business to discuss the meeting ended at 09.30hrs.</p> <p><b>Councillor Matt Cooke</b> <b>Chair</b></p>	
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