

Report Title: **The Way Ahead - Governance Review and Vision**

Report of: **Rebecca Kane, Managing Director, APTL and Project Manager on behalf of Andrew Gill, Interim General Manager, APPCT**

1. Purpose

- 1.1 To update Trustees with the progress made, and key milestones to come for this project and confirm that they are comfortable with the general direction in which this work is progressing.
- 1.2 To seek trustee adoption in principle of a code for *Good Governance*.
- 1.3 To report back on the pros and cons identified to date on a number of potential structural models.
- 1.4 To outline the ongoing engagement activity required to support this work.

2. Recommendations

- 2.1 To endorse the adoption of the NCVO *Good Governance* code (Key principles: appendix One)
- 2.2 To note that the NCVO code has been presented to both the Statutory Advisory Committee and to the Consultative Committee. The SAC will meet on 17 March to discuss governance and feed back to trustees.
- 2.3 To note the pros and cons of the various structural options currently available for comment which have been subject to scrutiny of KPMG and officers; some of which were also discussed at the Trustee and Stakeholder away days (Appendix 2).
- 2.4 To note that this project will be delivered within the budget available to year end.
- 2.5 To note the proposed time frame for the project and key milestones which includes an Open Day and a roadshow to broaden engagement (Appendix 3).
- 2.6 That nominated trustees visit or host visits to AP from charities operating similar venues and parks in a bid to learn more about effective governance in action.

Report Authorised by: **Rebecca Kane, Managing Director, APTL**

Contact Officer: **Rebecca Kane, Managing Director, Alexandra Palace & Park, Alexandra Palace Way, Wood Green N22 7AY Tel No. 020 8365 4343**

3. Executive Summary

- 3.1 Major barriers to current governance were identified at both away days and common ground for how to progress with the future of AP&P captured around the following headings: a) Objectives, b) Principles and c) Processes. Trustees recommended to adopt the NCVO *Good Governance* code. More work to implement the code will be undertaken during the May induction process. In time, the code will be made bespoke to suit the preferred structure of the trustees and reflect the work already completed by trustees and stakeholders on the three areas above.
- 3.2 Four key criteria emerged from the away days by which the pros and cons of structural options were assessed by attendees. KPMG have also tested a number of models against tax, charitable law and governance criteria.
- 3.3 Revisions to the Communications Strategy and a revised timeline have brought the work within existing budgets.
- 3.4 Further engagement with trustees, stakeholders, the Council and the Charity Commission is planned. It is anticipated that decisions will be sought later in the year when further legal/tax analysis will also help inform decision making.

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

- 4.1 The Chair and Board of Trustees agreed on 30 June 2009 to adopt a new approach to the governance review (as previously outlined in Sept '08) and took the opportunity to undertake a thorough analysis of the current structures and processes which underpin the Trust.

5. Local Government (Access to Information) Act 1985

Reports referred to in preparing this paper:

- Review and stress test of governance arrangements, KPMG, Sept 2009
- Minutes of APPCT Board meeting, 30 June 2009
- Combined Report Trustees Away Day and Stakeholder Forum, Nov 2009

6. NCVO *Good Governance* Code

- 6.1 The following objectives were endorsed by Trustees to guide the governance review:
To develop effective systems and processes which ensure the overall direction, effectiveness, supervision and accountability of AP&P.

To make ourselves 'fit for purpose' to deliver a long-term and sustainable future for Alexandra Park & Palace

- 6.2 At both the Trustees' Away Day and the Stakeholder Forum the main barriers to success for creating a sustainable venue for future generations were presented as:

- Lack of continuity and long-term vision
- High turnover of chair and Board members
- Highly politicised decision making
- Lack of non-political/independent perspectives
- Risk of commercially sensitive papers in public domain
- Skill set of Board limited
- Structure ineffective and ambiguous
- Questions over 'going concern' status
- Lack of trust and high levels of scrutiny

6.3 Both sessions resulted in a number of areas of common ground for how to progress with the future management of AP&P and its governance. These were summarised under three headings a) Objectives b) Principles c) Processes and detailed comments captured in the Combined Report available online:

http://www.alexandrapalace.com/Community/Stakeholders_Reports.html

6.4 In the meantime, it is recommended that the Trustees adopt the existing NCVO 'Good Governance' code (Appendix One) in order to answer the immediate need to have some improved, formal governance arrangements in place. This will be implemented using recommended toolkit activity as part of the annual induction process for new trustees.

6.5 In time, this code will be further developed and made bespoke to address the specific requirements of AP&P. Making the code bespoke to AP&P will also enable it to take account of the work already produced by trustees and stakeholders.

7. Structural Models – assessment to date

7.1 The assessment of the pros and cons of each structural option considered by attendees at the two away days was based on the following key criteria that the new structure should satisfy:

1. A better mix and skills base of trustees to drive change
2. Clarity of responsibilities and levels of authority for trustees, staff and stakeholders
3. Access for stakeholders to influence decisions
4. Accountability of trustees to funders.

7.2 KPMG were commissioned to undertake a 'stress test' of alternative structural options on behalf of the trustees before they met in September 2009. KPMG's remit was then extended in October 2009 to include a review of the three additional models to emerge from the Stakeholder Forum. They applied a variety of tax, charitable law and governance criteria to the models. The pros and cons of each model, as analysed by KPMG (where indicated) and attendees at the two away days are available at Appendix Two.

8. Budget and work to year end

8.1 Project Steering Group were tasked with reviewing the communications strategy to ensure that it meets the overall project deliverables. As a result of the review and changing timescales the remaining activity can be achieved within existing budgets.

9. Programme Overview (Appendix 3)

- 9.1 An informal meeting with the Charity Commission (3 Feb) allowed the Project Manager to bring the Commission up to speed with the work to date and seek advice re potential processes that need adhering to if significant change is agreed for the future.
- 9.2 It is suggested that four trustees meet senior managers from two similar trusts (TBC) and explore their governance systems to help inform future decision making.
- 9.3 It is essential that all stakeholders and the wider public are kept fully engaged in this process. The NCVO 'Good Governance' code was tabled at both the Statutory Advisory Committee (SAC) and the Consultative Committee (CC) meetings on 9 and 16 February respectively for information.
- 9.4 The pros and cons of all the structural options currently under review will be posted on the community web page following the 2 March APPCT Board meeting.
- 9.5 On 13 March an Open Day event and roadshow the following week is planned where interested parties can showcase their involvement/role at AP&P and we can present all the work to date on the structural options under consideration and answer queries directly re the future of AP&P.
- 9.6 Following further stakeholder and public engagement a steer will be sought from trustees and Full Council before further legal and tax work will be carried out. Then the conclusions will re-presented to trustees for a final decision. The nature of this work will very much depend on the level of change decided upon both in the short and medium term.

10. Legal Implications

- 10.1 The Trust's solicitor has been consulted in respect of the preparation of this report. The Trust's solicitor, BWB (lawyers to APTL) and the legal advisor to the London Borough of Haringey will be further engaged in working up any preferred structural options in the future.

11. Financial implications.

- 11.1 The LBH Chief Financial Officer has been provided with a copy of this report. His comments are provided below:
The full implementation of the revised governance arrangements are important and should not be delayed. Any additional costs arising from the recommendations in this report need to be contained within existing budgets.

12. Use of Appendices / Tables / Photographs

- 12.1 Appendix 1 NCVO *Good Governance* code: seven key principles
- Appendix 2 Pros and cons of structural models to date
- Appendix 3 Key project milestones

Appendix 1

Cross reference codes that relate the NCVO code elements with the Governance Outputs that emanated from the Trustees' Away Day and the Stakeholder Forum are:

O = Objective x

Pi = Principle x

Po = Process x

Principle One: Board Leadership	
Comments: Every organisation should be led and controlled by an effective Board of trustees which collectively ensures delivery of its objects, sets its strategic direction and upholds its values. The supporting principles are	
<p>The role of the Board: Trustees have and must accept ultimate responsibility for directing the affairs of their organisation, ensuring it is solvent, well-run, and delivering the outcomes for which it has been set up.</p> <p>Pi6 O3</p>	<p>Strategic direction: Trustees should focus on the strategic direction of their organisation, and avoid becoming involved in day to day operational decisions and matters (except in the case of small organisations with few or no staff). Where trustees do need to become involved in operational matters, they should separate their strategic and operational roles</p> <p>Pi1, Po7</p>
Principle Two: The Board in Control	
Comments: The trustees as a Board should collectively be responsible and accountable for ensuring and monitoring that the organisation is performing well, is solvent, and complies with all its obligations. The supporting principles are	
<p>Compliance: The Board must ensure that the organisation complies with its own governing document, relevant laws, and the requirements of any regulatory bodies.</p> <p>Pi5 Po11</p>	<p>Internal controls: The Board should maintain and regularly review the organisation's system of internal controls, performance reporting, policies and procedures.</p> <p>Po2,3,4,5,10,11,12,13</p>

<p>Prudence: The Board must act prudently to protect the assets and property of the organisation, and ensure that they are used to deliver the organisation's objectives.</p> <p>Pi1,8 O2,5,8</p>	<p>Managing risk: The Board must regularly review the risks to which the organisation is subject, and take action to mitigate risks identified.</p> <p>Po3,6 Pi4</p>
<p>Equality and diversity: The Board should ensure that it upholds and applies the principles of equality and diversity, and that the organisation is fair and open to all sections of the community in all of its activities.</p> <p>Pi1,5,8</p>	
<p>Principle Three: The High Performance Board</p>	
<p>Comments: The Board should have clear responsibilities and functions and should compose and organise itself to discharge them effectively. The supporting principles are</p>	
<p>Trustee duties and responsibilities: Trustees should understand their duties and responsibilities and should have a statement defining them.</p> <p>Po3,4,5,11,12</p>	<p>The effective Board: The Board should organise its work to ensure that it makes the most effective use of the time, skills and knowledge of trustees.</p> <p>Po4,5,6,7,8,9</p>
<p>Information and advice: Trustees should ensure that they receive the advice and information they need in order to make good decisions.</p> <p>Pi3,7 Po1,5,8,9,13</p>	<p>Skills and experience: The trustees should have the diverse range of skills, experience and knowledge needed to run the organisation effectively.</p> <p>O1</p>
<p>Development and support: Trustees should ensure that they receive the necessary induction, training and ongoing support needed to discharge their duties.</p> <p>[Not addressed in consultations to date]</p>	<p>The chief executive: The Board should make proper arrangements for the supervision, support, appraisal and remuneration of its chief executive.</p> <p>Po12</p>
<p>Principle Four: Board Review and Renewal</p>	
<p>Comments: The Board should periodically review its own and the organisation's effectiveness, and take any necessary steps to ensure that both continue to work well. The supporting principles are:</p>	

<p>Performance appraisal: The Board should regularly review and assess its own performance, that of individual trustees, and of sub-committees, standing groups and other bodies.</p> <p>[Not addressed in consultations to date]</p>	<p>Review: The Board should periodically carry out strategic reviews of all aspects of the organisation's work, and use the results to inform positive change and innovation.</p> <p>[Not addressed in consultations to date]</p>
<p>Renewal and recruitment: The Board should have a strategy for its own renewal. Recruitment of new trustees should be open, and focused on creating a diverse and effective Board.</p> <p>[Not addressed in consultations to date]</p>	
<p>Principle Five: Board Delegation</p>	
<p>Comments:</p> <p>The Board should set out the functions of sub-committees, officers, the chief executive, other staff and agents in clear delegated authorities and should monitor their performance. The supporting principles are:</p>	
<p>Clarity of roles: The Board should define the roles and responsibilities of the chair and other honorary officers, in writing.</p> <p>Po4</p>	<p>Effective delegation: The Board should ensure that staff, volunteers and agents have sufficient delegated authority to discharge their duties. All delegated authorities must have clear limits relating to budgetary and other matters.</p> <p>Po5</p>
<p>Terms of reference: The Board should set clear terms of reference for subcommittees, standing groups, advisory panels, etc.</p> <p>Pi2 Po2,8,9</p>	<p>Monitoring: All delegated authorities must be subject to regular monitoring by the Board.</p> <p>[Not addressed in consultations to date]</p>
<p>Principle Six: Board and Trustees Integrity</p>	
<p>Comments:</p> <p>The Board and individual trustees should act according to high ethical standards, and ensure that conflicts of interest are properly dealt with. The supporting principles are:</p>	

<p>No personal benefit. Trustees must not benefit from their position beyond what is allowed by the law and is in the interests of the organisation. Pi1,7,8</p>	<p>Dealing with conflicts of interest Trustees should identify and promptly declare any actual or potential conflicts of interest affecting them. Pi2,8</p>
<p>Probity: There should be clear guidelines for receipt of gifts or hospitality by trustees. Pi2,8</p>	
<p>Principle Seven: Board Openness</p>	
<p>Comments: The Board should be open, responsive and accountable to its users, beneficiaries, members, partners and others with an interest in its work. The supporting principles are</p>	
<p>Communication and consultation: Each organisation should identify those with a legitimate interest in its work (stakeholders), and ensure that there is a strategy for regular and effective communication with them about the organisation's achievements and work. O7,8 Pi2,3 Po1,8,9</p>	<p>Openness and accountability: The Board should be open and accountable to stakeholders about its own work, and the governance of the organisation. Pi2</p>
<p>Stakeholder involvement: The Board should encourage and enable the engagement of key stakeholders, such as users and beneficiaries, in the organisation's planning and decision-making. O7 Pi2,3 Po1,8,9</p>	

This Code covers all the Principles and Processes put forward by Trustees and Stakeholders. It also covers Objectives 1-3, 5, 7 and 8.

APPENDIX TWO - Pros and cons of structural models to date

Pros	Cons
<p>Governance Implications</p> <ul style="list-style-type: none"> • Board has greater oversight and cohesion of vision. • Widened skill set of Board. • Independent Chair. • Independent Board members could include local residents from SAC. • Single Senior Officer holds accountability to the Board for all aspects of operational management. <p>Tax Implications</p> <ul style="list-style-type: none"> • Income and corporation tax implications remain the same if legal structure remains. <p>Charities Implications</p> <ul style="list-style-type: none"> • Independence is created through the introduction of independently appointed representatives. • There is no need for primary legislation change to implement this model. 	<p>Governance Implications</p> <ul style="list-style-type: none"> • Independent members of Board have no voting rights = limited influence. • Involvement of Trustees within Management Committee may create conflicts of interest. <p>Tax Implications</p> <ul style="list-style-type: none"> • Depending on how two Boards are combined, a VAT charge could arise upon the transfer of asset. • Appropriateness of current VAT arrangements? <p>Charities Implications</p> <ul style="list-style-type: none"> • Charity guidelines require that Trustees be independent however there is a conflict between the Local Government and Housing Act 1989 which states only LBH Councillors can vote.
<p>1. Management Committee</p>	
<pre> graph TD LBH[London Borough of Haringey] --- BOT[Board of Trustees] BOT --- SO[Senior Officers from LBH] BOT --- TA[Trading Arm] BOT --- MC[Management Committee] SAC[Statutory Advisory Committee] --- MC MC --- EMG[Executive Management Group led by Single Senior Officer] </pre>	

Pros

Governance Implications

- Trustee skill set is widened.
- SAC provides stakeholder voice.
- Specialist advisors appointed on the enlarged Board.
- Mitigation of continuity risk.
- Single set of Board papers for whole entity.

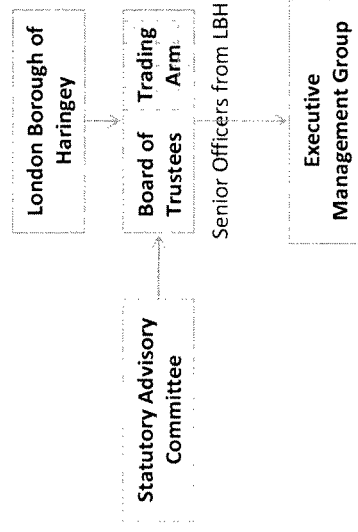
Tax Implications

- Income and corporation tax implications remain the same if legal structure remains.

Charities Implications

- Some independence is created through the introduction of independently appointed reps.
- The removal of the ability of LBH to appoint Trustees means they are breaching the legislation which requires their appointment of Councillors to the Charity.

2a. Streamlined



Cons

Governance Implications

- Board of Trustees retain political interest.
- Independent members of Board have no voting rights therefore remain limited in influence.

Tax Implications

- Depending on how two Boards are combined, a VAT charge could arise upon the transfer of asset.
- May be necessary to consider the appropriateness of current VAT arrangements.

Charities Implications

- Charity guidelines require that Trustees be independent however there is a conflict between the local Government and Housing Act 1989 which states only LBH Councillors can vote.

Pros

Governance Implications

- Trustee skill set is widened.
- SAC provides stakeholder voice.
- Specialist advisors appointed on the enlarged Board.
- Mitigation of continuity risk.
- Single set of Board papers for whole entity.
- Independent members of Board have voting influence.

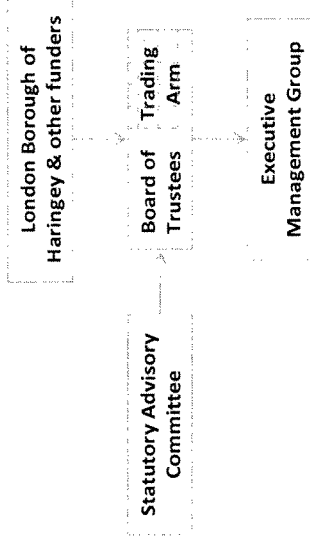
Tax Implications

- Income and corporation tax implications remain the same if legal structure remains.

Charities Implications

- Some independence is created through the introduction of independently appointed reps.
- The removal of the ability of LBH to appoint Trustees means they are breaching the legislation which requires their appointment of Councillors to the Charity.

2b. Commissioning



Cons

Governance Implications

- Board of Trustees retain political interest.

Tax Implications

- Depending on how two Boards are combined, a VAT charge could arise upon the transfer of asset.
- May be necessary to consider the appropriateness of current VAT arrangements.

Charities Implications

- Charity guidelines require that Trustees be independent however there is a conflict between the local Government and Housing Act 1989 which states only LBH Councillors can vote.

Pros

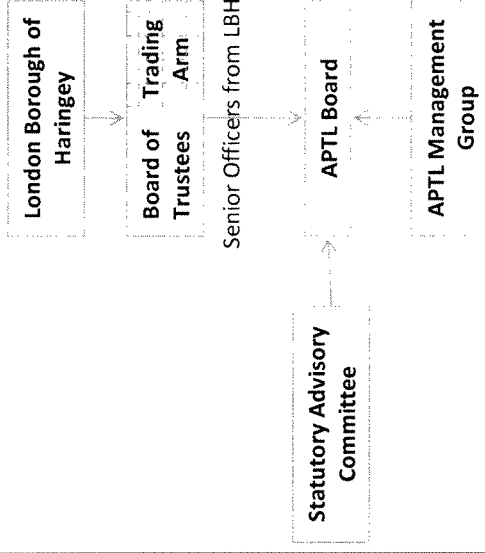
Governance Implications

- Activities of APPCT are brought under the umbrella of APTL thus streamlining governance arrangements.
- APTL have control of estate and drive income earning potential upwards.
- Broader skill set on the Boards.

Charities Implications

- Trustees have ultimate responsibility but can delegate certain powers to agents (Trustee Act 2000).

3. Delegation to APTL



Cons

Governance Implications

- The incorporation of all APPCT activities into the trading arm required careful public communication as it may be challenged.
- Careful due diligence required to ensure objects of charity are safeguarded.
- Possible loss of control by LBH if decision-making powers transferred to another body.

Tax Implications

- A VAT charge could arise if assets are transferred with the transfer of function.
- May be necessary to consider the appropriateness of current VAT arrangements.
- The disposal of the estate from APPCT to APTL will be a capital disposal for income tax purposes and will be treated as taking place at market value.
- Capital gains arising in APPCT on the disposal of the estate should be exempt from capital gains tax but only to the extent that the gains are applied for charitable purposes.

Cons

Tax Implications cont.

- Risk that capital gains will not be exempt from tax as APPCT's charitable objectives would be transferred to APTL with the estate.
- APTL will need to consider how it raises funds to acquire the estate.
- APTL subject to Stamp Duty Land Tax.
- There is a risk that APTL may not have sufficient cash to make gift aid payments to fully mitigate its taxable profits if obligated to use generated income on refurbishing the estate.
- Model could result in a tax liability arising on income which could have fallen within charity tax exemptions or Gift Aid.

4. Patron's

Pros

Governance Implications

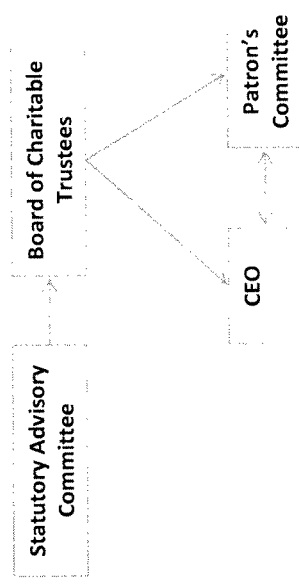
- Trustee skill set is widened.
- SAC provides stakeholder voice.
- Specialist advisors appointed on the enlarged Board.
- Single set of Board papers for whole entity.

Tax Implications

- Income and corporation tax implications remain the same if legal structure remains.

Charities Implications

- Some independence is created through the introduction of independently appointed representatives.



Cons

Governance Implications

- Board of Trustees retain political interest.
- May not provide mitigation of Trustees being annual members.
- Independent members of Board have no voting rights.
- Role of the Patron's Committee risks duplication of responsibilities with other parts of structure.

Tax Implications

- Depending on how two Boards are combined, a VAT charge could arise upon the transfer of asset.
- May be necessary to consider the appropriateness of current VAT arrangements.

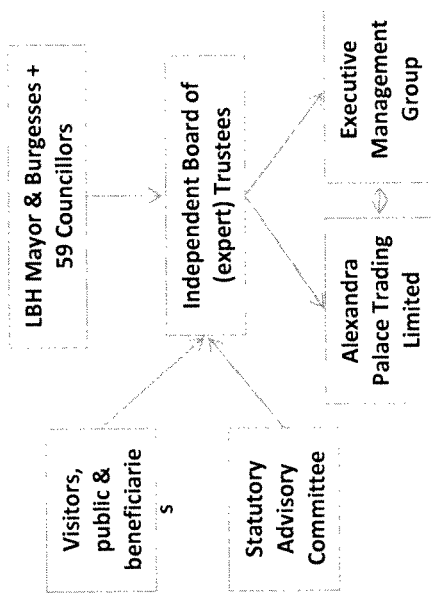
Charities Implications

- Charity guidelines require that Trustees be independent however there is a conflict between the local Government and Housing Act 1989 which states only LBH Councillors can vote. This model has not addressed the role of LBH in appointing Trustees.
- Charity could not trade for certain activities therefore needs a trading subsidiary.

Pros

- Governance Implications**
- Broader skill set on the Boards.
- Charities Implications**
- Some independence is created through the introduction of independently appointed reps.

5. Beneficiaries



Cons

- Governance Implications**
- Careful due diligence required to ensure objects of charity are safeguarded.
 - Possible loss of control by LBH if decision-making powers transferred to another body.
 - The ability to take single control over Park and Palace estate and to use this leverage to drive income earning potential upwards. Is limited due to the need to have two separate Board (between the Trustees and APTL).
 - Financial arrangements (particularly Gift Aid (from LBH to Trustees) is not clear and may hinder medium term financial planning.

Tax Implications

- A VAT charge could arise if assets are transferred with the transfer of function.
- May be necessary to consider the appropriateness of current VAT arrangements.
 - The disposal of the estate from APPCT to APTL will be a capital disposal for income tax purposes and will be treated as taking place at market value.

Cons

Tax Implications cont.

- Capital gains arising in APPCT on the disposal of the estate should be exempt from capital gains tax but only to the extent that the gains are applied for charitable purposes.
- Risk that capital gains will not be exempt from tax as APPCT's charitable objectives would be transferred to APTL with the estate.
- APTL will need to consider how it raises funds to acquire the estate.
- APTL subject to Stamp Duty Land Tax.
- There is a risk that APTL may not have sufficient cash to make gift aid payments to fully mitigate its taxable profits if obligated to use generated income on refurbishing the estate.
- Model could result in a tax liability arising on income which could have fallen within charity tax exemptions or Gift Aid.

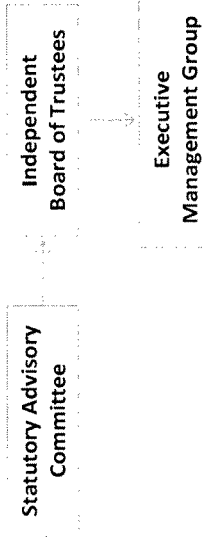
Charities Implications

- Charity guidelines require that Trustees be independent however there is a conflict between the local Government and Housing Act 1989 which states only LBH Councillors can vote.

Pros

- Unlocks goodwill and possible funding.
- LB Haringey removed.
- Lending funding to APPCT is wrong.
- Debt free.
- Brings boarder expertise to Board - skills (x 3 tables). Independence and degree of freedom (x 3 tables) - if funding can be resolved.
- Credibility in public's minds.
- Attract national heavyweights to bring attention to Alexandra Palace.
- Be clear that SAC is a combination of SAC and Consultative Committee.
- Flexibility to rally support from different groups.
- Liberation from political shackles.
- Simplicity/less layers (x 2 tables).
- Non-political.
- Clarity.
- Board must be professional with successful charity experience.
- People would want to join an independent Board of importance.
- Board has to listen to the SAC.
- SAC to include local people.
- Gives stakeholders influence.
- Provides accountability to funders.

Ultimate Solution



Cons

- Funding - where does it come from? (x 2 tables).
- Could LB Haringey give a grant rather than a loan?
- Appropriate developers?
- Appropriate funds?
- Only works if SAC is properly consulted.
- Needs a transitional stage [see record of Trustees Away Day discussion of this].
- Financial uncertainty.
- Needs a dowry from LB Haringey.
- What happens to the historic debt?
- [Requires] change in legislation.
- Danger of ineffective management.
- Concern about abuse of power - no accountability, detrimental decisions could be taken (x 2 tables).

APPENDIX 3 – KEY PROJECT MILESTONES

KEY MILESTONES: MARCH 2010 – MAY 2010

	Feb 2010	March 2010	March/April	May 2010	Summer 2010	Late Summer 2010
	<ul style="list-style-type: none"> • Informal meeting with the Charity Commission and SAC and CC presentation of NCVO code • Consider pros and cons of structural options at APPCT Board • Open Day and public roadshow 	<ul style="list-style-type: none"> • Meet trustees of similar venues 	<ul style="list-style-type: none"> • Induction for new trustees 	<ul style="list-style-type: none"> • In principle support for a preferred structure • Further legal/tax analysis commissioned 	<ul style="list-style-type: none"> • Trustee decision • Full Council decision 	