h&f putting residents first	**London Borough of Hammersmith & Fulham** **CABINET** **8 APRIL 2013**
FULHAM PALACE TRUST – PROPOSED FINANCE ARRANGEMENTS	
Report of the Deputy Leader (+ Residents Services) – Councillor Greg Smith	
Open Report	
Classification - For Decision **Key Decision**: Yes	
Wards Affected: Palace Riverside	
Accountable Executive Director: Lyn Carpenter, Environment Leisure & Residents Services	
Report Author: Donna Pentelow, Head of Culture	**Contact Details:** Tel: 020 8753 2358 donna.pentelow@lbhf.gov.uk

1. EXECUTIVE SUMMARY

1.1 The Council agreed to the transfer of the management of Fulham Palace to an arms-length charitable trust at 26th April 2010 Cabinet. The trust was set up and has been running as an arms length organisation since April 2011. As part of the Grant Funding Agreement (GFA) the Council was committed to ensuring that the Trust was established on a sound financial footing. In April 2012 there was a Cabinet Member Decision agreeing to a grant of £50,000 for 2012/13 to enable Fulham Palace Trust (FPT) to balance their budget for 2012/13 (reduced from £101,000 for 2011/12).

1.2 Additionally, the GFA sets out a financial guarantee from the Council to provide financial assistance of up to £250,000 to offset any circumstance during the term of the GFA where the Trust encounters costs or suffers losses which the Council agrees could not reasonably have been foreseen or which were mainly caused by matters beyond the effective control of the Trust; and cannot be accommodated within the budget previously approved by the Council in the Service Plan for that Financial Year.

1.3 For subsequent financial years, the GFA states that any additional grants will be determined by agreement between the Trust and the Council with reference to the

Requested Grant, Service Plan and the financial projections set out in the Business Plan.

1.4 In December 2012, the Council received a formal request for additional funds from FPT following their Finance Committee and the Trust Board meetings. The Trust requested the following:

1) A grant from LBHF every year until the end of the grant fund agreement period (31 March 2016). £50,000 is requested in 2013/14.
2) The transfer of the £250,000 emergency fund to Fulham Palace Trust as a 'loan' in order to provide reserves for the Trust.

1.5 FPT have suggested another option of LBHF paying off a £350,000 loan (plus interest) owed to the Architectural Heritage Fund (AHF) for the renovation of the Gothic Lodges. This would allow FPT to keep the £60,000-70,000 annual rental income to balance the Trusts budget each year, meaning no annual contribution would be required from the Council going forward.

1.6 One of FPT's key strategies is to be financially self sustaining which is in line with the council's ambition for the management of Fulham Palace. The Trust's strategic plan 2011-13 aims to increase income, reduce costs and improve tenant management. The strategic plan is due for review in late 2013. The next plan will run from 2014/15 for another three years to 31 March 2017.

1.7 The forecast deficit in FPT's budgets from 2013/14 is due three factors: salary costs linked to the Heritage Lottery Fund grant; lower than expected function income associated with the café operator (Foodshow) being unable to fulfil contractual obligations around guaranteed levels of income; and rental income from the lodges being ringfenced for loan repayment. The refurbishment of the lodges is now complete. The loan was secured from the Architectural Heritage Fund to a maximum cost of £350,000, for which the Council has acted as the loan guarantor. A 5 year payback is expected on the loan, after which time the Palace is expecting to generate circa £70,000 in rental income per annum. FPT need to put the income aside to repay the loan and assume that the Architectural Heritage Fund and LBHF will agree to extending the loan to a 9 year payback. If this is not agreed FPT will need to take an additional loan of £185,000 to pay it back by 2017.

1.8 FPT want to build up a reserve and to have the £250,000 in their accounts (or a joint account with LBHF) to comply with what they believe to be the requirement of the Charity Commission guidelines on reserves and to demonstrate to potential donors that the Trust is financially stable. FPT have requested this £250,000 reserve as a loan and would start to pay this back from 2018/19.

1.9 To summarise, FPT have requested **EITHER** a £50,000 annual grant to 31 March 2016 (£150,000 in total) **OR** a one off grant of £350,000 (plus interest estimated at £17,500) to pay off the AHF loan **AND** the transfer of the £250,000 reserve into FPT's own account or a joint account with LBHF.

1.10 The Trust have stated that they are unwilling to enter the new financial year forecasting a budget deficit. If the financial situation cannot be resolved by providing **either** an annual grant of £50,000 **or** a one off grant of £350,000 (plus interest) **and** loaning FPT £250,000, then the trustees feel there is no other option than to resign.

1.11 There are a number of considerations:

(i) Provide £50,000 grant per year until 31 March 2016 (total £150,000) and £250,000 reserve as a loan to FPT.
FPT forecast that an annual £50,000 grant until 31 March 2016 combined with its new café operator, Bovingdons, performing above the minimum guarantee, would to cover its forecast deficit. The loan would have conditions attached to it that set out on what it can be spent as well as the terms for payback to the Council. FPT would need to use the lodge rental income to payback the AHF loan until the end of the current loan period. There is currently no provision in the Council's budget to fund an annual grant of £50,000 for 3 years from 2013/14. By FPT's own forecast the Council would not see the £250,000 loan start to be repaid until 2018/19 and that is based on Phase 3 of the restoration taking place.

The Charity Commission guidance on reserves is just guidance. The reserves are available if FPT require them in an emergency. Reassurance to potential investors that the Trust has reserves can be provided via the GFA.

(ii) Pay FPT a one off grant of £350,000 (plus interest) and provide the £250,000 reserve as a loan to FPT.
As above, by providing this loan to FPT they will be able to hold it in their reserves and draw it down as they wish. In addition, this option would further incentivise FPT to continue to reduce its overall net cost as the less that is required to be drawn down from the reserve each year, the more that is retained and the quicker FPT will achieve their target £500,000 reserves level. FPT will be able to pay off the loan to the Architectural Heritage Fund and retain the annual rental income from the lodges. The annual rental income is estimated at between £60,000 and £70,000 per year and would balance FPT's budgets from 2013/14. The interest is estimated at £17,500. Alternatively, FPT could hold this lump sum in their accounts to form a reserve, maintain the repayments to the AHF under the current loan terms and use some of it to off set any deficit each year. This would further incentivise FPT to continue to reduce its overall net cost as the less that is required to be drawn down from the reserve each year, the more that is retained and the quicker FPT will achieve their target £500,000 reserves level.

(iii) Refuse the increased grant request and recruit new trustees.
The current board of trustees has been unable to achieve the objective of making the Palace self financing by 31 March 2016, which is mainly due to the failure of their appointed catering contractor. FPT has stated that they remain committed to the long term management of FP and do believe that the current financial pressures can be addressed through the recommendations they have made to the Council. If the council decided to not support the request from FPT then there is a risk that all Trustees could resign on mass. The council would then face a potential lengthy and costly recruitment process. The uncertainty could also adversely impact on the catering business. There are no guarantees that with new trustees the financial situation will or could improve. The existing

Board are very hands on and have a year's worth of valuable experience that would be lost with the appointment of new trustees, should there be a pool of candidates from which to recruit.

1.12 There is no obvious provision for the Council to extract itself from the 100 year lease (made in 1975) with the Church Commissioners (CC) that would enable the palace to return to the CC. The advice received from Legal Services is that this option would only be available after the term of 100 years of the lease (there are 62 more years to run). However, Clause 4 (Provisos) provide for CC to re-enter and take possession of Palace in the following events:

- Council's failure to pay the rent after 21 days of becoming payable
- Council is wound up (never happens to local authorities) or
- Council's failure to observe and comply with any other covenants in the lease.

It is the view of Legal Service that if the Council refused to pay the rent, the CC would be more likely to take us to court for non payment than forfeit the lease

1.13 Neither does the lease provide for the Palace to return to the Council to run on 1st April 2013. We will be in breach of the Office and Social Deeds of Variations of 2008, which varied the headlease to allow the Council to office and social letting of parts of the Palace.

1.14 To minimise the impact on revenue, any grant given should be funded from the Council's mainstream resources (capital receipts). The Council is able to make capital grants to third parties under provisions known as Revenue Expenditure Funded from Capital Under Statute (REFCUS). Such grants can be funded from the Council's capital resources. At present all of the Council's surplus mainstream resources are earmarked for debt reduction. Given that any grant to FPT has not been provided for through in the Capital Programme, any amounts agreed to be passed over would reduce debt reduction by a corresponding amount. This would also be the case if the Council chose to loan any funds to FPT.

1.15 The recommendations appear below.

2. RECOMMENDATIONS

2.1 That approval be given to a payment of £367,500 (£350,000 plus anticipated loan interest of £17,500) to Fulham Palace Trust as a one off grant to repay the Architectural Heritage Fund loan, therefore enabling the Trust to use the annual rental income from the lodges to balance their budget each year.

2.2 That approval be given to a loan of £250,000 to Fulham Palace Trust to create reserves, to be held in a separate bank account, to be repaid to the Council once the Trust starts to make a surplus.

2.3 That the approval of the final conditions of the grant and loan be delegated to the Cabinet Member for Residents Services, in consultation with the Executive Director for Environment, Leisure & Residents Services.

3. REASONS FOR DECISION

3.1 To agree the funding for Fulham Palace Trust to enable it to continue to run as an arms length organisation to the Council.

4. INTRODUCTION AND BACKGROUND

4.1 See section 1 of the report.

5. FULHAM PALACE TRUST'S FINANCIALLY SELF SUSTAINING OBJECTIVE

5.1 In accordance with the GFA, Fulham Palace Trust will submit to the Council annually a service delivery plan which supports the Council's strategic objectives (as they relate to the Palace site) and includes the Trust's budget and its Key Performance Indicators. FPT's delivery plan sets out its strategies to ensure that its vision and values are met. One of these strategies is to make the Palace financially self-sustaining. It is expected that this will be achieved through 3 major priorities - namely to increase income, reduce costs and improve tenant management. The 2012/13 service delivery plan is summarised below:

Increase Income
"The priority here is to generate new income through the redevelopment of the two Lodges within the Palace grounds, thereby making them available for commercial let. In the shorter term, the rental income from the lodges will be ringfenced in order to pay back the loan. The Palace is looking to grow income through a targeted increase on functions income, enabled by a robust marketing and sales strategy in close working with the sole caterer under a new agreement that guarantees a minimum amount of income."

The refurbishment of the lodges is now complete and the income expected from the rental of the lodges has been ringfenced to repay the refurbishment loan and so is not included in the budget projections for 2013/14 and beyond. The loan was secured from the Architectural Heritage Fund to a maximum cost of £350k, for which the Council has acted as the loan guarantor. A 5 year payback is expected on the loan, after which time the Palace is expecting to generate circa £70,000 in rental income per annum. FPT need to put the income aside to repay the loan and assume that the Architectural Heritage Fund and LBHF will agree to extending the loan to a 9 year payback. If this is not agreed FPT will need to take an additional loan of £185,000 to pay it back by 2017.

Reduce costs
"Although the focus for reducing the net operating cost of the Palace is to grow income, the Trust has also reviewed all operating costs and scaled down where possible. Notable cost reductions have been made through reduced business rate charges (as the Trust is now entitled to the 80% charities discount) and reduced staffing costs through a reorganisation of the teams. The Trust is now VAT registered thereby allowing them to minimise their net VAT expense going forward."

Improve Tenant Management
"Office space rental makes up approximately 35% of the Palace's total budgeted income. Fulham Palace Trust have a strategy to maximise this income through a review of all leases to ensure that they are current and fit for purpose and to ensure that all service charges are fully defrayed. The Trust is also looking to implement an active tenant management framework which is expected to improve satisfaction through a programme of regular meetings".

6. FULHAM PALACE FINANCIAL PERFORMANCE

6.1 The table below summarises the financial performance for Fulham Palace over the past few years as well as FPT's draft budget proposals to 2014/15. This shows that there has been a phased cost reduction in the overall service since 2008/09, with over £100k of cost being removed in 2009/10 due to savings on staffing and the cleaning contract. Under a single governance arrangement, net costs were able to be reduced by a further £185,000 (from £281,000 to £96,000) in 2011/12 for the reasons set out in FPT's financially self-sustaining strategy set out above (reduced business rate savings and increased lettings and functions income).

	Council Operated			FPT Operated			
	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Actual	2012/13 Projection	2013/14 Draft Budget	2014/15 Draft Budget
	£000	£000	£000	£000	£000	£000	£000
Café	(33)	(17)	(27)	(25)	(24)	(29)	(29)
Events	13	(2)	0	(11)	(1)	(3)	(3)
Functions	(80)	(100)	(159)	(361)	(350)	(332)	(287)
Rents	(143)	(198)	(201)	(269)	(311)	(344)	(351)
Retail	0	0	0	(3)	(4)	(2)	(2)
Learning & Outreach	64	61	62	(6)	(21)	(4)	(4)
Collection Care & Exhibition	31	35	16	3	74	74	74
Operations	538	405	489	648	524	587	587
Gardens	0	100	101	12	88	84	84
Lodge Rents	0	0	0	8	0	0	0
TOTAL	390	284	281	(5)	(25)	31	69
Exclude Council Contribution	0	0	0	101	50		
Adjusted TOTAL	390	284	281	96	25	31	69

6.2 The 2013/14 draft budget excludes fund-raising income as this is ring fenced to fund the set up of the new fund-raising team. From 2014/15 onwards FPT will build up fund-raising income, however, this may be linked to specific projects and therefore unable to fund existing operational costs.

6.3 The expected budget deficit is made up of the following factors:

- **Salaries –** The Heritage Lottery Fund (HLF) and LBHF part fund the posts of Head Gardener, Gardener, two apprentice gardeners and the Learning Officer. FPT has put in an Administrator post at its own cost (£24,000 pa). HLF advised that this post was required due to the growing schools and volunteer programme and it did form part of the proposed staff restructure. All other posts, e.g. Caretaker, Book-keeper, have been regularisation of previous agency posts. The Hospitality Manager became General Manager and this enabled the deletion of the Facilities Manager post. FPT aim to replace the LBHF/HLF funding for the five posts by 2015/16.

- **Functions –** the agreement with Food Show (the previous sole caterer) to guarantee £404,000 in calendar year 2013 and £436,000 in calendar year 2014 was unachievable. Food Show notified FPT in November 2012 that they would not be able to meet this guarantee and that the tender process was not properly understood by them. FPT have subsequently negotiated a 4 year deal with a new sole caterer, Bovingdons. However, their minimum guarantee for 2013 is £380,000 and £320,000 in subsequent years (a reduction of £24,000 for 2013/14 and £116,000 beyond that). FPT asked Bovingdons to front load the guaranteed income to clear the deficit in the first 3 months of 2013. FPT expect them to do better than the minimum from 2014, but have not put in more than the minimum guarantee in future budgets.

- **Rents –** from 2013/14 FPT will be renting the PSLA building commercially at c. £30,000 pa. A 3 month void for 2013/14 has been built in to cover any delays in getting tenants on board (£7,500 part year effect for 2013/14). This is still higher than any previous contractor has delivered

6.4 Additionally, FPT spent around c£20,000 on legal costs in 2012/13. This relates to negotiations for the Black Sun lease variation and pre-exemption agreement and getting licences for the works to the lodges. FPT have to pay for its own legal costs as well as those of LBHF and The Church Commission. The forecast legal costs have been reduced in future years, but the costs in 2011/12 and 2012/13 have reduced FPT's ability to build up reserves that might have covered the deficit in the next few years.

7. HERITAGE LOTTERY FUND COMMITMENT

7.1 FPT had projected that they would be financially self sustaining by 2013/14, albeit with some associated risks. FPT and LBHF jointly approached The Heritage Lottery Fund (HLF) to negotiate some reduction in expenditure. Some of the salary expenditure is a condition of the HLF grant for the Phase 2 restoration of the Palace and Bishops Park.

7.2 The HLF state that:
These (salary) costs form part of the Approved Purposes of the project on which the contract is based. The Council confirmed that all partnership funding was in place on the "Permission to Start" form submitted in May 2010. HLF and Big Lottery Fund are partners in Parks for People projects and both organisations consider the staffing of parks as essential to protecting their capital investment and ensuring that the refurbished park continues to be maintained to a high standard and to meet the needs of the community.

The contract provides for an immediate repayment of any grant paid to you should the Approved Purposes not be achieved.
Should the Trust cease to exist these posts will have to be taken on by the Council in order to fulfil the HLF contractual obligations.

7.3 The HLF did advise that FPT would be eligible to apply to a new Transition Funding scheme of £10-100,000 from April 2013. This fund is available to organisations who have previously received HLF investment, to identify ways of achieving greater sustainability. It is not yet known whether this is one off funding and there are no guarantees that FPT will be successful.

8. RESERVE FACILITY

8.1 FPT is requesting a loan transfer of the £250,000 reserve facility to their own account or a joint account with the Council. This assumes that the Council has readily available ring fenced reserves of £250,000 to transfer. The grant funding agreement refers to a sum of £250,000 set aside by LBHF to offset any circumstance where the Trust encounters costs or suffers losses which the Council agrees:

(i) Could not reasonably have been foreseen or which were mainly caused by matters beyond the effective control of the Trust; and
(ii) Cannot be accommodated within the budget previously approved by the Council in the Service Plan for the Financial Year.

8.2 FPT state that they operate at such a marginal level financially that it is essential that the funds are transferred/loaned to FPT to enable it to operate according to the recommendation of the Charity Commission on reserves.

8.3 The Charity Commission's document "CC19 Charities & Reserves" states there is no single level or even a range of reserves that is right for all charities. Charities of any significance expect to operate with a reserve of between 3 months and 6 months expenditure[1] (estimated as £245,000-£489,000 for 2013/14). The Commission recommends that reserves should be readily realised as cash, when needed. This remains the case if LBHF holds the reserves.

8.4 FPT feel that the reserves would assist with their fund-raising campaign by giving greater certainty to potential investors - an organisation that has no reserves could be considered as more likely to be out of business at relatively short notice. However, FPT do have reserves; they just sit with the council rather than in their own account. FPT were asked to confirm whether they could provide this certainty to potential funders by providing details of the GFA with the council and on 2 January 2013 responded via the Chief Executive to say;

"We would not consider the £250,000 staying with LBHF as the Trust is so marginal operationally that the trustees are only happy to continue if we have easy access to this as a reserve. It would be misleading to tell funders that we have a call on this money when it

[1] http://www.charity-commission.gov.uk/Publications/cc19.aspx#a3

has been demonstrated that we can only access this fund with your approval and following the lengthy LBHF approval process."

8.5 FPT propose that they will start paying back the £250,000 loan once their reserve has reached £500,000 (this will include FPT's own accumulated reserve of £250,000, plus the council loan of £250,000). They forecast achieving reserves of £500,000 by April 1st 2018. They propose that after the £500,000 reserve has been reached and the Trust makes a surplus, that surplus will be transferred back to LBHF until such time as the £250,000 loan is repaid to the Council. Such an arrangement is not reflected in the GFA. The £250,000 reserve was always envisaged as being used in an emergency, not handed over to FPT to be retained as a reserve. FPT suggest that the funds could be placed in a designated client account or separate bank account with joint access. There is a risk with this that FPT use the reserves to cover budget deficits and end up spending it all with no means of repaying the loan to the Council. FPT had originally intended to build up reserves of their own, over time.

8.6 In terms of timescale, it is anticipated that it will be after the Phase 3 restoration works to the Palace in 2017 that the Trust will start to build up a surplus. The Church Commission will waive FPT's rent of £62,500 once the restoration works are complete. This could be used to help offset any budget deficit from 2017.

9. THE GRANT FUNDING AGREEMENT

9.1 The grant request is as per the Grant Funding Agreement, which states that the amount of the grant each year until the end of the agreement on 31 March 2016 'will be determined by agreement between the Trust and the Council with reference to the Requested Grant, Service Plan and the financial projections set out in the Business Plan'.

9.2 The Grant Funding Agreement also states that "The Trust acknowledges that its objective will be to achieve self-funding (without payment of any grant from the Council) by the Expiry Date (31 March 2016)". This formal request for grant funding of £50,000 per annum until 31 March 2016 would suggest that the Trust may be unable to fulfil this objective.

9.3 The GFA provides for the Council to make available to the Trust a revolving loan facility of up to maximum amount of £50,000 to cover cashflow differences and/or budget shortfalls of the Trust. FPT have already taken up the maximum permissible loan which transferred to FPT soon after the Trust was formed in April 2011. The payback conditions of this cash flow loan require FPT to pay back half of any year end surplus each year, with the other half of any surplus being paid into FPT's own reserves. For the reasons set out in this report, it is unlikely that this will be repaid in full for some 10-20 years.

9.4 The GFA provides for the Council to step in and assume the running of the Palace if FPT:

- has not substantially met the Key Objectives and Key Performance Indicators. The Council has to make fair and reasonable allowances for the prevailing economic and financial conditions, other matters which were beyond the effective control of the Trust; issues which could not reasonably be foreseen by the Trust.

- the Trust's financial position is such that either it, its trustees/directors, members or creditors take or are entitled to take steps to institute formal insolvency proceedings

9.5 However, the lease with the CC does not provide for the Palace to return to the council to run on 1st April 2013. The Council would be in breach of the Office and Social Deeds of Variations of 2008, which varied the headlease to allow the Council to office and social letting of parts of the Palace.

10. CONSIDERATIONS

10.1 There are a number of options available to the Council.

(i) Provide £50,000 grant per year until 31 March 2016 (total £150,000) and provide the £250,000 reserve as a loan to FPT.

FPT forecast that an annual £50,000 grant until 31 March 2016 combined with Bovingdons performing above the minimum guarantee, would to cover its forecast deficit. The loan would have conditions attached to it that set out on what it can be spent as well as the terms for payback to the Council. FPT would need to use the lodge rental income to payback the AHF loan until the end of the current loan period. There is currently no provision in the Council's budget to fund an annual grant of £50,000 for 3 years from 2013/14. By FPT's own forecast the Council would not see the £250,000 loan start to be repaid until 2018/19 and that is based on Phase 3 of the restoration taking place. FPT's current forecast budget deficit for the next two years is £100,000, which is based on some less optimistic assumptions around income. This has been suggested to FPT previously, who responded that they did not see this as a reasonable way forward and they would only be satisfied if the £250,000 reserve was loaned to them in full.

The Charity Commission guidance on reserves is just guidance. The reserves are available if FPT require them in an emergency. Reassurance to potential investors that the Trust has reserves can be provided via the GFA.

(ii) Pay FPT a one off grant of £350,000 (plus interest) and provide the £250,000 reserve as a loan to FPT

By providing this loan to FPT they will be able to hold it in their reserves and draw it down as they wish. The loan would have conditions attached to it that set out on what it can be spent as well as the terms for payback to the Council. FPT would need to use the lodge rental income to payback the AHF loan until the end of the current loan period. This option would further incentivise FPT to continue to reduce its overall net cost as the less that is required to be drawn down from the reserve each year, the more that is retained and the quicker FPT will achieve their target £500,000 reserves level.

By providing this one off grant to FPT, they will be able to pay off the loan to the Architectural Heritage Fund and retain the annual rental income from the lodges. This is estimated at between £60,000 and £70,000 per year and would balance FPT's budgets from 2013/14. Alternatively, FPT could hold this lump sum in their accounts to form a reserve, maintain the repayments to the AHF under the current loan terms and use some of it to off set any deficit each year. This would further incentivise FPT to continue to reduce its overall net cost as the less that is required to be drawn down from the reserve each year, the more that is retained and the quicker FPT will achieve their target £500,000 reserves level.

(iii) Refuse the increased grant request and recruit new trustees.
The current board of trustees has been unable to achieve the objective of making the Palace self financing by 31 March 2016. However, recruiting new trustees can be lengthy and costly. The uncertainty could also adversely impact on the catering business. There are no guarantees that with new trustees the financial situation will improve. The existing Board are hands on and have a year's worth of experience that would be lost with new trustees. There is also the option of creating a new trust.

10.2 The 1975 lease makes no obvious provision for the council to extract itself from the 100 year lease with the Church Commissioners (CC). The advice received from Legal Services is that this option would only be available after the term of 100 years of the lease (there are 62 more years to run). However, Clause 4 (Provisos) provide for CC to re-enter and take possession of Palace in the following events:

- Council's failure to pay the rent after 21 days of becoming payable
- Council is wound up (never happens to local authorities) or
- Council's failure to observe and comply with any other covenants in the lease.

10.3 It is the view of Legal Service that if the Council refused to pay the rent, the CC would be more likely to take us to court for non payment than forfeit the lease.

10.4 Neither does the lease provide for the Palace to return to the Council to run on 1st April 2013. We will be in breach of the Office and Social Deeds of Variations of 2008, which varied the headlease to allow the Council to office and social letting of parts of the palace. Both deeds very clearly state that failure of the Council to do the following will entitle the Church Commissioner to terminate the deeds of variations:
"Establish an arm-length independent charitable trust to take over the running of all aspects of the palace including the Council's responsibility under the headlease (and at the time the sub-lease to the old FPT)."

11. FINANCIAL IMPLICATIONS

11.1 This paper is seeking Cabinet approval to make a capital grant to the Fulham Palace Trust of £367,500 (£350,000 plus anticipated loan interest of £17,500). This will enable the Trust to repay their loan to the Architectural Heritage Fund.

The Council is able to make capital grants to third parties under provisions known as Revenue Expenditure Funded from Capital Under Statute (REFCUS). Such grants can be funded from the Council's capital resources. This grant would not be repayable.

11.2 The paper further proposes that the Council provide a loan facility to the Trust of up to £250,000. This would be repayable, however any repayments must be treated by the Council as a capital receipt. Given this sum would be repayable, the Trust would need to recognise this loan as a liability and not as part of their reserves. It is not proposed that interest is charged on this loan. This may require the Council to undertake 'soft-loan' accounting although this may be avoidable on grounds of materiality.

11.3 Typically, all loans should be signed off by Full Council. However, under the Council's Constitution the Leader's functions include "Determining applications and the approval of grants and loans to firms, community and voluntary organisations, charities and trusts for the purposes of economic development and employment within the borough that fall within this portfolio." As such, the Leader has the power to approve a loan to FPT.

11.4 In accordance with regulation, both the grant and the loan would need to be treated as capital expenditure and funded accordingly. Any amounts agreed would represent growth in the capital programme. In the event both options are agreed, the Council would incur capital expenditure of £617,500.

11.5 It is recommended that any amounts agreed be funded from the Council's surplus mainstream resources (capital receipts), thereby preserving revenue resources. However, it should be noted that given all surplus mainstream resource is currently earmarked for debt reduction, any amounts agreed to be passed to the Trust will reduce debt reduction by a corresponding amount.

Financial comments verified by Christopher Harris, Head of Corporate Accountancy & Capital, ext 6440.

12. TIMETABLE FOR IMPLEMENTATION

12.1 This would need to be implemented in time for the new financial year 2013/14.

13. EQUALITY IMPLICATIONS

13.1 There is little or no impact on S149 of the Equalities Act as a result of the recommendations in this report.

14. LEGAL IMPLICATIONS

14.1 Fulham Palace Trust is a charitable trust (under the Charities Act) registered as a company limited by guarantee (under the Companies Act 2006). As a company limited by guarantee it has members rather than the traditional shareholders of a company limited by shares. As a charitable trust the directors of the company are also trustees under the Charities Act.

14.2 Under FPT's articles of association, only the trustees can be members, and the trustees automatically become members. Therefore individuals will be both members and trustees, but the two positions are distinct.

- Members - Membership of the FPT can cease by resignation unless after the resignation, there would be less than two (2) members. The members make decision by way of general meetings. To be quorate (and therefore able to make a decision) there must be a minimum of the greater of (i) three (3) members or (ii) of one fifth of the total members.

- Trustees - The articles of association state that:

    - there are not to be less than three (3) (or more than twelve (12)) trustees.
    - the Council can appoint two (2) trustees (but is not required to do so)
    - the Bishop of London can appoint one (1) trustee (but is not required to do so)
    - Trustees (other than those appointed by the Council or the Bishop of London) are appointed by FPT acting by its members or by a decision of the Trustees.
    - Trustees can cease to be a trustee by giving notice of resignation but only if at least two trustees will remain in office when the notice of resignation is to take effect.
    - For a meeting of trustees to be quorate there must be at least two (2) trustees. However, if the number of trustees is less than the number fixed as the quorum, the continuing trustees or trustee may act only for the purpose of filling vacancies or of calling a general meeting.

14.3 It is understood that the Chief Executive of FPT believes that it is not possible for all the trustees to resign 'en masse', as the representative for the Church Commissioners would need to remain and there is also a Council place on the Board. It should be noted that this Council place is currently not occupied following the resignation of Councillor Botterill in December. Legal Services consider that this view is in conflict with the provisions of the articles of association. Furthermore, the Companies Act 2006 states that a company must have at least one director. If it does not, the Secretary of State can require the company to rectify the situation. That said, if all the trustees were to purport to resign with effect from the same point in time it is not clear which would be deemed the last two and therefore who was still a trustee and who was not. In the event that all the trustees did (successfully) resign, in order to enable the trust to make decision and function again, it would be open to the Council to appoint one or two trustees and for those trustees to appoint other trustees (and therefore members). If it is considered that it is likely that the trustees will all attempt to resign at the same time, it is recommend that expert legal advice is obtained on the consequences and effect of this.

Legal comments verified by Rachel Silverstone, Conveyancing Lawyer, ext 2210.

15. COMMENTS OF THE DIRECTOR OF BUILDING AND PROPERTY MANAGEMENT

15.1 The lease from the Council to the Fulham Palace Trust (FPT) specifies that LBHF are responsible for the replacement of the boilers and that the FPT are to keep them maintained in good and substantial repair. FPT are currently seeking tenders for this work to be carried out. These works have been budgeted for in the Council's planned maintenance programme (£120,000) for this financial year and this will need to be rolled forward into next years programme.

15.2 Additionally, under the terms of the lease with the FPT the Council is responsible for arranging and for paying the premium for the building insurance. The current premium for the building insurance and terrorism cover is £44,544.17. There is no vehicle for the recovery of the premiums from the FPT.

Property management comments verified by Miles Hooton, Head of Asset Strategy, ext 2835.

16. RISK MANAGEMENT

16.1 The report identifies and illustrates the principal and underlying causes that affected the financial performance of Fulham Palace Trust. The residual risks and plans to address them are incorporated in the report and include the replacement of a contractor, increasing income, improved tenancy management and reducing cost. A number of risks remain, to be managed within the ELRS risk management framework, that include the potential recruitment of new trustees, appointment of a council representative, uncertainty and consequential adverse impact on the catering business and therefore revenue, areas which are highlighted within the report content.

Risk Management comments verified by Michael Sloniowski, Principal Consultant Risk Management, ext 2587.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
	None		