



Cabinet

26 APRIL 2010

LEADER

Councillor Stephen Greenhalgh

FULHAM PALACE – TRANSFER OF THE MANAGEMENT OF THE SITE TO THE FULHAM PALACE TRUST

**Ward
Palace Riverside**

**DEPUTY LEADER
(+ENVIRONMENT)**

Councillor Nicholas Botterill

This report proposes that the management of Fulham Palace is transferred to a single managing body.

**CABINET MEMBER
FOR RESIDENTS
SERVICES**

Councillor Paul Bristow

A separate report on the exempt part of the Cabinet agenda provides exempt information about staff employment related issues.

**CABINET MEMBER
PARKS, CULTURE &
HERITAGE**

Councillor Frances Stainton

CONTRIBUTORS

DRSD
DFCS
ADLDS

Recommendations:

1. To agree the transfer of the management of Fulham Palace to an arms-length charitable trust.
2. To agree the grant funding agreement between the Council and the Fulham Palace Trust as outlined in Section 6.
3. To agree that the Council makes a financial commitment to enable the Trust to be established on a secure financial footing.
4. To delegate approval of annual service and business plans to the Director of Resident Services.
5. To agree a rationalised lease structure and a rent of £1 per annum payable to the Council by the Fulham Palace Trust.

<p>HAS A PEIA BEEN COMPLETED? YES</p>

1. BACKGROUND

- 1.1 The Council leases Fulham Palace from the site's freeholders – the Church Commissioners (CCs). The Head Lease, which lasts until 21 May 2075, places a number of restrictions on the use of the Palace. In particular it has prohibited the sale of alcohol, the hosting of civil weddings and the letting of office accommodation to commercial organisations. Following extensive negotiation between the Council and the CCs, deeds of variation (DoV) to the Head Lease were agreed on 19 January 2008.
- 1.2 The DoV permit the sale of alcohol, hosting of civil weddings and commercial office lettings therefore providing greater commercial opportunity but they also oblige the Council to take “all requisite steps to establish an arms-length independent charitable trust (the structure, composition and financial strength of which has been previously approved by the CCs, such approval not to be unreasonably withheld). The purpose of the new independent trust is to take over the running of all aspects of the Property including the Lessees’ responsibilities under the Lease and the sub-undertenant’s under the sub-underlease to Fulham Palace Trust for 60 years from 9 November 1990”.
- 1.3 Failure to meet this condition would result in the CCs serving notice on the DoV at either the first or any subsequent 5th anniversary of the date of the DoV. Termination of the DoV would result in the Council losing significant revenue from commercial offices rental, civil marriage ceremonies and the sale of alcohol which would negatively affect the financial viability of the facility

2. ESTABLISHING AN ARMS-LENGTH INDEPENDENT CHARITABLE TRUST

Background

- 2.1 To determine the best way of establishing an arms length independent charitable trust, the Council has:
 - a) Taken specialist advice from Burges Salmon Solicitors (BSS) – a legal practice with significant experience in transferring cultural assets from local authorities to independent charitable trusts.
 - b) Reviewed the Museums, Libraries and Archives Council's published advice to local authorities on transferring the management of cultural services to charitable trusts (MLA, *Moving to Museum Trusts: Learning from Experience*, 2006).
 - c) Reviewed a number of similar case studies.
 - d) Reviewed advice from BSS with the CCs.
- 2.2 In light of the above it is proposed to revise the role of the existing Fulham Palace Trust (FPT) by:
 - a) Rationalising the current lease structure and extending FPT's demise from its present extent (which comprises of around 1200 m² or around 40% of the interior of the Palace) to include the whole of the Palace,

outbuildings and grounds. This will greatly simplify what is currently an exceedingly complex lease structure and is an efficient way of transferring responsibility for and the management of the whole of the site to an existing tenant - FPT. In the event of FPT's bankruptcy, it will also ensure that responsibility for the management of the whole of the site would immediately revert back to the Council – under the current structure FPT's demise would revert back to the CCs who would be at liberty to relet the space as commercial offices on the open market.

- b) Providing an initial grant to FPT equal to the current annual revenue deficit so that it can pursue its charitable objectives and in so doing take over the running of all aspects of the Palace reducing the financial impact on the Council to £0 over a 5 year period. This will be achieved by continued business growth (especially of functions), new income streams (such as residential lettings, grants and donations) and reduced cost base (for example reduced national non-domestic rates and the removal of Council support service costs)

2.3 This would be subject to the following conditions:

- a) That the trust is incorporated so that FPT becomes a legal entity with limited liability to its trustees as opposed to its current unincorporated status in which all trustees share full financial liability. The principal benefits to the Council of FPT becoming incorporated are that it will greatly simplify administration between the two organisations (the trust as a single legal entity will form the contracting party rather than lots of individual and regularly changing trustees), and FPT will be better placed to recruit high quality trustees to manage its affairs (trustees are generally put off joining unincorporated trusts)
- b) That FPT's trustees have relevant experience and are active in the strategic management of and fund-raising for the Palace.
- c) That a robust grant funding agreement (GFA) is agreed between FPT and the Council to ensure that the Council receives full value for the funding it provides and that such funding is used to support Council priorities whenever possible (details of these requirements are summarised in 3.4)
- d) That a Community Interest Company (CIC) is created to manage the Palace's commercial activities

2.4 Amended memorandum of association and articles of association for FPT and the Fulham Palace Community Interest Company have been subject to discussion by all parties and will shortly be finalised.

Recruitment of the New Trust Board

2.5 As a registered charity, FPT must be operated for the public benefit and requires a diverse board with a range of skills. The recruitment process for the new trustees must be transparent and, save in the case of the appointments by the Council and the CCs, by way of open advertisement in accordance with Charity Commission best practice guidance. By law, the recruitment of trustees (other than those directly nominated in accordance with a Trust's

memorandum and articles of association) can not be influenced in any way by outside parties: this includes council members and officers.

- 2.6 FPT has confirmed that recruitment of new trustees will begin with the appointment of the Chair of the new Trust and that the selection panel will comprise of a representative from the Council, the Bishop of London and one other to be agreed by all parties including the existing Trust. The Council and the Bishop will then nominate a trustee each to the board. The Chair, nominated trustees and the Chair of the current FPT (see section 2.10) will then select the remainder of the board from submitted CVs. The proposed timetable for recruiting trustees is as follows:

Chair of the new Fulham Palace Trust

- Confirmation of selection panel 7 May 2010
- Advertise for expressions of interest (EOIs) 11 May
- Deadline for EOIs 21 May
- Appoint new Chair via panel 28 May

Trustee appointment

- Council and the Bishop of London confirm nominated trustees 28 May 10
- Advertise for expressions of interest (EOIs) 1 June
- Deadline for EOIs 18 June
- New Chair, nominated trustees and ex Chair of old Trust select remainder of board in accordance with agreed selection criteria 25 June
- Final meeting of current Trust board (existing plus shadow board) 30 June
- First meeting of new Trust board Tbc by new Board

Council officers will offer administrative support to the process.

- 2.7 Whilst it will be for FPT to determine the make-up of the new trust, it is likely that the board will comprise of no more than eight members with skills such as: commercial; fundraising; financial; legal; heritage and archaeology; museum and education; marketing.
- 2.8 Once appointed, under charity law all the trustees have a duty to act only in the best interests of FPT and independently of whoever appointed them. Trustees appointed by a local authority have the same duties as all other trustees. It should be noted that if a conflict of interest arises between the interests of the Council and FPT then any trustee who is also a councillor will need to declare an interest, withdraw and not vote on the relevant matter.

Responsibilities of the New Trust Board

- 2.9 All trustees will operate on a 'give, get or get off' basis with candidates selected for their relevant skills and experience. In line with Charity Commission best practice, the amended articles of association will require, *inter alia*, that:

- a) Trustees will be no fewer than three and not more than 12. The aim will be for a board of around seven committed and active trustees with a broad skills base and particular expertise in commercial and fund-raising activities.
- b) Trustees, including the Chair, will serve a three year term and trustees who have served two consecutive three year terms will retire and not be capable of reappointment for a minimum period of one year after retirement. This will ensure that the FPT board is periodically refreshed. For this to happen effectively a number of trustees will initially need to be appointed for less than three years.
- c) Trustees will appoint subsequent Chairs from nominees who will be proposed and seconded by written notices to the secretary of FPT. All resolution relating to the appointment or removal of the Chair will be by secret ballot. This will more easily facilitate the removal of a Chair if and when necessary.
- d) The authorised officer for the Council will have a right of veto over the appointment of any trustee or Chair of the trustees.
- e) The Council will be able to appoint a minimum of one trustee up to a maximum of 20% of the total number of trustees. This is in line with local government legislation and Charity Commission best practice guidelines but is a reduction on the maximum of six council-appointed trustees provided for within the current FPT deed.
- f) The Bishop of London will retain his right within the current FPT deed to appoint one trustee.
- g) The Council will be able to appoint observers. Observers will have the right to attend FPT board meetings but will have no voting rights.

2.10 It has been agreed with the FPT board that all current trustees will step down once single governance has been approved by the Council. The only exceptions will be the Chair (who will step down as Chair) and the Deputy Leader of the Council, both of whom will be retained for one year only to provide continuity.

Implications for the Council

2.11 The main advantages to the Council in devolving the running of Fulham Palace to an arms-length independent charitable trust are:

- a) *Reduced National Non-Domestic Rates* – a mandatory reduction of 80% will be applied to the cost of the Palace's NNDR.
- b) *Reduced staff costs* – in time this will reduce significantly as existing staff move on and new ones are employed directly under different terms.
- c) *Reduced support costs* – the Council will no longer be providing support to the Palace (such as financial monitoring and HR advice) – this will all be paid for by the Trust.
- d) *Greater access to grant giving individuals and organisations* – FPT will be eligible to apply for a far greater number of grants than the Council. This will be of particular benefit when raising funds to meet the cost of the final phase of restoration costs.

- e) *Increased opportunities for donations and legacies* – Individual and corporate donors will be more amenable to contributing funds to a charity than a local authority. Indeed, income tax relief on donations only applies to those made to charities.

2.12 The potential disadvantages to the Council are:

- a) *Operational control.* The Council will no longer manage the day-to-day operation of Fulham Palace. Staff will be employed by the Trust (see section 3.10) and will receive instruction from FPT rather than the Council. However, the agreement of the business and service delivery plans between the Council and the FPT will ensure that council priorities are met. A condition of the GFA (and KPIs contained within it) will ensure that high standards of customer service are maintained at all times.
- b) *Strategic control.* FPT will determine the long-term strategy of the Palace in partnership with the Council through the service and business planning process for the term of the GFA. It should be noted that the Council will appoint its own trustee to the FPT board (subject to responsibilities set out in section 2.8). Local accountability will be further ensured by the creation of a ‘community sub-committee’ that will advise the FPT board on matters relating to residents’ interests in general and those of the local amenity groups in particular.
- c) *Financial control* The Council will no longer provide day-to-day monitoring of the Palace’s finances. However, conditions of grant will ensure that FPT operates financial management systems and prepares accounts in accordance with the current Statement of Recommended Practice and the Charities Regulations 2008, and will need to submit annual accounts to the Council within six months of the end of each financial year. Financial accountability will be further ensured by the creation of a ‘finance sub-committee’ that will sit regularly throughout the year and comprise of key trustees. Conditions of the GFA give the Council the right to appoint finance officers to the finance sub-committee should it wish to increase its scrutiny of the Trust. The Council will also have the right to appoint a director to the Palace’s CIC for the same reason. The Council will retain robust and immediate step in rights in the event of FPT’s maladministration of funds.

3. DEFINING THE RELATIONSHIP BETWEEN THE COUNCIL AND FPT

3.1 In establishing an arms-length independent charitable trust it is vital that the following key issues are addressed:

- a) In return for the Council’s financial support, FPT must assist in the delivery of priorities defined within the Community Strategy/council priorities.
- b) FPT must be fully accountable for the funding it receives with robust and immediate step-in rights available to the Council in the event of financial maladministration.
- c) All staff seconded to or employed by FPT must adhere to effective recruitment and performance management policies.

- d) Council's grant funding of FPT will be reduced year-on-year achieving £0 between 5 and 7 years.
- e) The complex lease arrangement is rationalised so that FPT occupies the whole of the Palace site.
- f) The new structure is VAT efficient.

3.2 It is proposed to address these issues as follows:

- a) Agree annual service and business plans
- b) Agree clear grant funding terms
- c) Adopt robust step-in rights.
- d) Ensure council staff performance management systems are reflected in those established by FPT.
- e) Rationalise leases by assigning to FPT.

Service and Business Planning

3.3 In line with Council practice, FPT will be obliged under the terms of the GFA to prepare an annual service plan and a rolling three year business plan. Both plans will set out how FPT will support the Council's Community Strategy priorities and any other relevant priorities the Council considers to be deliverable at Fulham Palace. The three year business plan will set out FPT's strategy for making the Palace financially self-sustaining in the medium term, as well as raising funds for capital repair works and revenue programmes. The service plan will set out, *inter alia*, the Palace's budget for the financial year and key performance indicator (KPI) targets.

Grant Funding Agreement

3.4 A draft GFA has been prepared by BSS based on heads of terms agreed with the current FPT. A copy of the draft is contained in appendix 1 (on the exempt part of the agenda). The GFA is for five years and is renewable every five years thereafter with the agreement of both parties. The main requirements of the draft GFA are for FPT to:

- a) Submit annually to the Council a service plan that supports the Council's key priorities and is informed by all other relevant documents, plans and strategies.
- b) Submit annually to the Council a business plan comprising a detailed action plan for delivering strategic objectives during the coming year, forecasts of expenditure, income, capital budgets and grant requirements for the financial year starting on the subsequent 1 April and for the two subsequent financial years.
- c) Deliver KPIs agreed annually with the Council.
- d) Maintain the Palace in accordance with the requirements of the sub-lease .
- e) Not associate with products, services, organisations or events that will bring the Council into disrepute.
- f) Market and promote the Palace.
- g) Produce a publicly available annual report.

- h) Confirm an annual grant with the Council.
- i) Operate financial management systems and prepare accounts in accordance with the current Statement of Recommended Practice and the Charities Regulations 2008.
- j) Maintain such accounts as necessary to demonstrate compliance with the terms of the GFA and provide such information to the Council at such times agreed with the Council.
- k) Submit audited accounts to the Council not later than six months after the end of FPT's financial year.
- l) Assist the Council in the restoration and management of Bishops Park in accordance with the strategic plans prepared as part of the Parks for People grant application for Fulham Palace and Bishops Park.
- m) Assist the Council in the management and operation of the Borough Archives as required.
- n) Maintain contents insurance for the property of FPT including that transferred to it by the Council.
- o) Maintain public liability insurance to cover the Palace and grounds (including cover for functions, events and volunteers).
- p) Offer the Council one free weekend venue hire and five free weekday hires per annum for the purposes of Council business or community benefit, dates to be agreed between both parties.
- q) Offer the Council a discounted rate for hire of venue at certain times (to be agreed).

3.5 The main requirements of the draft GFA are for the Council to:

- a) Sub-lease the Palace to FPT
- b) Transfer assets at the Palace required by FPT for its management
- c) Monitor FPT's compliance with conditions contained in the GFA
- d) Have the right to appoint observers at meetings of the FPT board and sub-committees
- e) Arrange for the transferral of staff to FPT under the terms of the GFA
- f) Maintain buildings insurance in accordance with the conditions of the Head Lease.
- g) Instruct goods and services on behalf of FPT – in particular major works associated with the Palace's phased restoration.

Financial Monitoring Systems

3.6 FPT will be obliged under the terms of the GFA to:

- a) Operate financial management systems and prepare accounts in accordance with the current Statement of Recommended Practice and the Charities Regulations 2008.
- b) Maintain such accounts as necessary to demonstrate compliance with the terms of the GFA .
- c) Submit audited accounts to the Council not later than six months after the end of FPT's financial year.
- d) Ensure that they comply with EU procurement requirements when appropriate.

- 3.7 Additional financial monitoring could be provided at the Council's discretion through the appointment of an observer to FPT's board and/or the appointment of a director to the board of the Palace's CIC should the Council wish. Robust financial planning will be ensured through the provision of annual service and business plans.

Step-In Rights

- 3.8 The Council will exercise step-in rights and assume responsibility for the operational management of the whole of the Palace to FPT's exclusion if:
- a) FPT has not used the Council grant to further its charitable purposes in accordance with the GFA.
 - b) The Council resolves that FPT has not met the objectives and KPIs contained within the Strategic Plan allowing FPT reasonable time to improve its compliance with the service levels.
 - c) FPT has not remedied in all material aspects a substantial breach, or persistent minor breaches, of its obligations under the GFA.
 - d) FPT breaches any of its covenants under the sub-lease and does not remedy these breaches in accordance with the terms of the sub-lease.
 - e) FPT is responsible for any event of default under any funding agreement.
 - f) FPT's financial position is such that it, its directors, members or creditors are entitled to take steps to institute formal insolvency proceedings.
 - g) FPT is removed from the Register of Charities held by the Charity Commissioners.

Rationalisation of Leases

- 3.9 Changes to the proposed lease structure are summarised in appendix 2. The Council is proposing to re-organise the leases as follows:
- a) The CCs will continue as the freeholder and superior landlord with the Council as intermediate landlord under the superior lease and FPT as the undertenant of the Council.
 - b) FPT will control all current lettings and will grant all lettings in the future. The current intermediate underleases between the Council, the CCs and FPT will be surrendered simultaneously with a grant of underlease to FPT by the Council for 65 years (the remainder of its superior lease) at a peppercorn rent (the under-lease to be by reference to the Council's superior lease and subject to all current sub-leases held at the Palace).
 - c) Under the terms of the underlease, FPT will continue to pay the present rent of £62,500 per annum (subject to rent review) directly to the CCs. The Council will be liable to pay this rent in the event of FPT's default in the same way that it currently acts as guarantor to FPT under the intermediate underlease between the Trust and the CCs. It is being agreed with the CCs that this rent will be voided for the duration of the headlease pending completion of the restoration of the Palace.
 - d) In the event of FPT's insolvency the provision of re-entry shall apply and determine the underlease and all interests back to the Council.

- e) The CCs' consent will be required to the grant of the under-lease to FPT and the variation to the superior-lease.
- f) The rent between FPT and the CCs will attract stamp duty, however, as FPT is a charity it is exempt from payment.
- g) The process will take up to three months and a budget allowance has been made to cover internal legal costs.

VAT Provision

- 3.10. The Council has received advice from LAVat – specialist VAT consultants – on the most efficient way of establishing the Trust. A number of tax-efficient options have been suggested and each requires financial modelling. An allowance has been made within the budget for VAT.

4. FUNDING

- 4.1 The current Council budget set for Fulham Palace for 2010/11 is as follows:

Fulham Palace Budget 2010/11	£'s
Gross expenditure	905,300
Gross income	629,800
Net budget	275,500

In addition to the annual budget costs, Fulham Palace has experienced a budget variance deficit over the past three years. In 2009/10, although this has reduced from previous years budget variance, the year end projection is £190,000.

Taking this into account, the net contribution to support Fulham Palace under the existing governance arrangements for 2010/11 would be:

Total Council contribution for 2010/11 (under existing arrangements)	£'s
Net Budget	275,500
Projected budget adverse variance	190,000
Total Council contribution	465,500

The gross costs for the Palace are made up of gross expenditure and corporate service recharges (currently at £149,500pa). Typically these recharges represent finance ICT, HR and other support costs. Under the proposed new Trust arrangements, these corporate and departmental recharges will need to be reviewed across council budgets as the Trust will be acting independently and will incur its own support costs which have been included in proposed budgets.

- 4.2 Revised budgets for the proposed new single governance arrangements for Fulham Palace have been prepared for the next six years. In setting the budget it has been important to reflect the true costs and revenue-generating potential of the Palace so that FPT can operate on a sound financial footing

that will allow it to realise new fundraising opportunities. The budget has been informed by the following:

- Income** Income has been reviewed for:
- *Café* – Income targets have been set that reflect the operator's business plan and the opportunities that will be presented by the Palace's recently completed café kitchen extension.
 - *Function Hire* – Income targets have been set that reflect income generated in 2009-10 and incorporate recent changes made to the Palace's pricing structure as well as conservative objectives for growing corporate business – both of which will take effect during 2010-11
 - *Office Rental* – Income targets have been set that assume no voids within the next 12 months
- Expenditure** Allowances have been made for:
- Maintenance and repairs based on 2009/10 out-turn
 - Utilities
 - Reduced cost of National Non-Domestic Rates
 - Significantly reduced gallery operation with exhibitions now delivered biannually in partnership with others
 - Support costs such as ICT, finance etc.
- New Costs** Allowances based on competitive quotations have been made for:
- IT provision
 - Insurance (contents, events and PLI)
 - Costs of governance (including auditor costs)
 - VAT
 - One-off legal costs associated with the transferral to single governance in year 1 (2010/11)

4.3 The Council would provide estimated grant support to the Fulham Palace Trust, based on an assessment of current and predicted future income streams as outlined in Section 6 below. These will be calculated at a reducing rate per annum. These reductions would be required each year as part of the business plan agreement and will form a schedule to the Grant Funding Agreement.

4.4 It should be noted that there are three areas of financial risk to FPT going forward:

- a) **Obligations under the Head Lease.** As the lessee, the Council will continue to be liable for the rent to the Church Commissioners of £4,750pa and for the buildings insurance. This insurance is currently through the Church Commissioners preferred insurers and the annual

premium is £103,000. Through negotiation with the CCs and with the Council's insurance department, this can be reduced to £40,000 pa (or less), a saving of at least £63,000 per annum. Therefore there will be an ongoing financial responsibility for the Palace in addition to the grant fund of £45,000 pa (depending on final negotiations). This could be mitigated by requiring the Trust to offset these costs with a positive outturn but this is not likely to be achievable before 2016/17.

- b) **Office Lettings** – Currently the council has an anchor tenant that generates an income of £167K p.a. or 70% of total office revenues. Should the tenant relocate, based on experience of letting the space following the first phase refurbishment works, it is likely that a rent void of a year to 18 months would ensue. It may be assumed that such a loss of income would render FPT insolvent. It is proposed that in the event of a rent void, the Council will provide FPT with the minimum amount of financial assistance required to keep the trust solvent.
- c) **Boiler Replacement** – The Palace boilers are now 20 years old. The boilers are obsolete and both are in need of replacement. Replacement of the boilers, at a cost of c. £150K, is scheduled on the Council's planned maintenance programme for 2011/12. It is proposed that the Council retain responsibility for the replacement of the boilers in 2011/12 and this sum could be counted as the Council's contribution to the final stage of restoration of the Palace.

5. NEXT STEPS

- 5.1 Subject to Member approval, the next steps in the transfer of the Palace from the Council to FPT are to:
- Final agreement with the current FPT
 - Start recruitment process of new trustees
 - First meeting of the new Trust board
 - Complete lease restructure
 - Initiate new governance and operational support (banking, IT, payroll, auditors)
- 5.2 The aim will be to complete this process by the autumn of 2010

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 6.1 The revised budgets for the new Fulham Palace Trust, taking into account the opportunities to streamline costs and improve revenue, indicate a predicted deficit for 2010/11 of £240,000, decreasing in subsequent years. It is proposed that this overall net expenditure incurred by FPT will be covered by the Council by way of a grant (see table below). In addition, there will be continued costs for Fulham Palace which will remain the responsibility of the Council under the terms of the Head Lease. These are made up of a £5k pa payment for the Head Lease and an estimated £40kpa for buildings insurance. *(Under the current arrangements the Council pays £103k pa for*

insurance, however because of competitive pricing opportunities it is expected that this cost will reduce by at least £63k). It is proposed to negotiate the recovery of those costs from FPT from 2016/17.

- 6.2 Section 4.1 outlines the current projected council contribution to Fulham Palace for 2010/11 of **£465,500** (incorporating (£149,500 corporate recharges). The table below identifies the net costs to the council excluding these recharges (SLAs) which totals £316,000.

Year	Indicative Grant Fund by LBHF	On going costs incurred by the Council*	One-off costs 2010/11 (Legal fees)	Sub Total (assuming insurance costs at £40K)	2010/11 Net costs to the Council (Excluding SLAs)	Net Saving to LBHF based on 2010/11 costs
2010/11	£240,000	£45,000*	£5,000	£290,000	£316,000	£26,000
2011/12	£180,000	£45,000*	n/a	£225,000	£316,000	£91,000
2012/13	£100,000^{a)}	£45,000*	n/a	£145,000	£316,000	£171,000
2013/14	£50,000^{b)}	£45,000*	n/a	£95,000	£316,000	£221,000
2014/15	£0	£45,000*	n/a	£45,000	£316,000	£271,000
2015/16	£0	£45,000*	n/a	£45,000	£316,000	£271,000

a) and b) include grant to cover potential income risk from proposed letting of Gate Lodges

*Assumes buildings insurance at £40,000

- 6.3 FPT will be independent and the financial processes will not be part of the Council's accounting systems, however, as set out in the report, there are controls in place for the Council to inspect and review FPT's financial position on an ongoing basis. The reductions in the proposed grant contributions will count towards the MTFs targets.
- 6.4 The long term financial benefits to the Council, from the establishment of FPT, will only be realised if the Trust is operationally and financially successful. It is essential that the trustees have the necessary skill sets and experience to deliver the business plan and enable the Council's grant reductions to be met as scheduled in paragraph 6.1 above.
- 6.5 FPT can choose to register for VAT and once registered can treat the lettings of rooms and offices as exempt for VAT purposes. This will reduce the amount of VAT that can be claimed in relation to lettings and in recognition of this a VAT cost of £20k has been provided for in the budget projections.
- 6.6 Under the new arrangements, the exposure that the Council currently holds in the event that the Palace's financial targets are not met will be passed to the newly established trust and its trustees. Given that FPT will face some inherent financial risks, and that the Council is gaining a benefit in passing over this risk, it is appropriate that the Council makes some financial commitment to enable FPT to be established on a secure financial footing.

6.7 This commitment should take the form of a financial guarantee given by the Council on behalf of FPT up to a specified sum. Based on an analysis of historical financial outturns and the level of risks faced by FPT, a sum of £250,000 may be appropriate. It should be noted that the body of the report mentions a commitment to provide assistance in the event of a sustained void on the major office tenancy, and that this commitment would need to be considered alongside any other financial support proposed.

7. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

7.1 The legal implications are largely set out in the body of the report. The Council's position is somewhat constrained by the terms of the existing leases and the existence of the current trust. The recommendations, if adopted, should both protect and improve the Council's position in so far as this can be achieved and will ensure that it meets all its legal obligations. In this regard the proposed arrangements have been drawn up in consultation with specialist charity lawyers and the in-house team in relation to procurement, employment and landlord and tenant matters. Advice will continue to be provided as the project progresses.

7.2 The Council does not consider FPT to be a contracting authority within the terms of the Public Contracts Regulations and therefore does not consider the proposed arrangement to constitute the procurement of services. Rather the Council is providing a grant to FPT to further its charitable objectives by supporting the Council in delivering its own priorities as defined within the Community Strategy. As such, public tendering is not required and it is appropriate for the Council to negotiate directly with FPT.

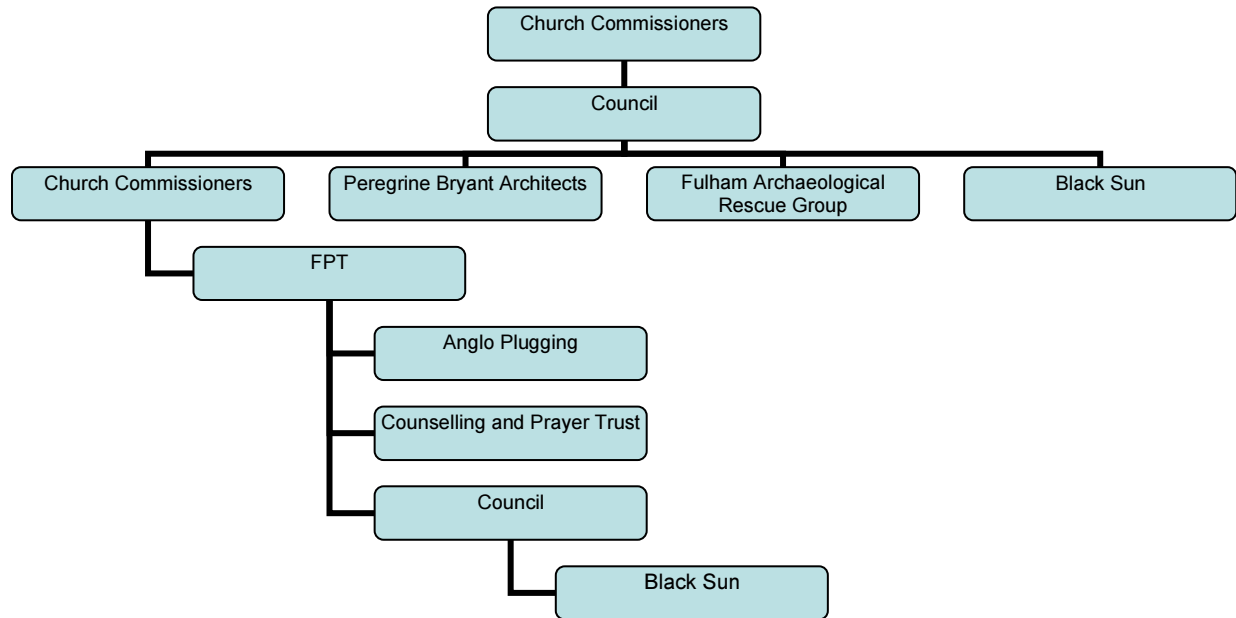
LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext. of Holder of File/Copy	Department/ Location
1.	Burges Salmon Solicitors: Draft Memorandum of Association of Fulham Palace Trust (2009)	Scott Cooper 020 76107161	RSD, Fulham Palace
2.	Burges Salmon Solicitors: Draft Articles of Association of Fulham Palace Trust (2009)	Scott Cooper 020 76107161	RSD, Fulham Palace
3.	Burges Salmon Solicitors: Draft Memorandum and Articles of Association of the Fulham Palace Community Interest Company (2009)	Scott Cooper 020 76107161	RSD, Fulham Palace

4.	Burges Salmon Solicitors: Draft Fulham Palace Service Level Agreement (2009)	Scott Cooper 020 76107161	RSD, Fulham Palace
5.	Burges Salmon Solicitors: Fulham Palace Trust – Issues Paper on Governance (February 2006)	Scott Cooper 020 76107161	RSD, Fulham Palace
6.	Deeds of Variation to the Fulham Palace Head Lease (January 2008)	Scott Cooper 020 76107161	RSD, Fulham Palace
7.	Museums, Libraries and Archives Council, <i>Moving to Museum Trusts: Learning from Experience</i> (2007)	Scott Cooper 020 76107161	RSD, Fulham Palace

**APPENDIX 2 - LEASE STRUCTURE
FULHAM PALACE – TRANSFER OF THE MANAGEMENT OF THE SITE TO FPT**

The current lease structure is:



It is proposed to simplify the lease structure as follows:

