

Appendix 7 – Implications of Local Authority Influenced Companies

The following advice was provided by Russell Cooke solicitors:

- 1.1 The Trust may be a local authority ‘influenced’ company. This will be the case if it is deemed to have a ‘business relationship’ **and** a ‘personnel association’ with the authorities (meaning Ealing or Hounslow or both of them taken together).
- 1.2 There is a ‘business relationship’ if **any** of the following apply:
 - 1.2.1 in the preceding 12 months, more than half of the Trust's turnover is made up of payments from the authorities or from companies under their control;
 - 1.2.2 more than 50% of the Trust's turnover in a financial year is derived from exploiting assets in which the authorities (or companies under their control) have an interest – assuming the lease is the asset referred to then the Trust will satisfy this in due course;
 - 1.2.3 the total of the following exceeds 50% of the net assets of the Trust:
 - (a) grants made either by the authorities (being expenditure for capital purposes) or companies under their control; and
 - (b) the nominal value of shares in the Trust which are owned by the authority or companies under their control;
 - 1.2.4 the total of grants, shares and loans or other advances made or guaranteed by the authorities or by companies under their control exceeds 50% of the fixed and current assets of the Trust;
 - 1.2.5 the Trust occupies land by virtue of an interest obtained from the authorities or companies under their control at less than best consideration reasonably obtainable – again this appears that it will be satisfied if the Lease is assigned to the Trust; or
 - 1.2.6 the Trust intends to enter into or complete a transaction and when that is done there will be a business relationship under any of the above.

It appears that given the proposal for the lease to be transferred from the CIC to the Trust at least 1.2.2 and 1.2.5 would be satisfied.

- 1.3 There is a ‘personnel association’ if **any** of the following apply:
 - 1.3.1 at least 20% of the total voting rights of members are held by persons associated with the authorities;
 - 1.3.2 at least 20% of the Trustees are persons associated with the authorities; or
 - 1.3.3 at least 20% of the total voting rights at a Trustee meeting are held by persons associated with the authorities.

A person is ‘associated’ with an authority if they are (a) a member or officer of the authority, (b) both an employee of the authority and a director, manager, secretary or similar officer of the Trust, or (c) if they have been a member of the authority within the preceding four years.

- 1.4 Under the current proposals, at least two out of up to 16 Trustees will be persons associated with the authorities (and the number may be higher if any trustees other than the nominated trustees are also associated with the authorities). If at any meeting those persons associated with the authorities exercise more than 20% of the votes then the Trust could be under local authority influence. If there are no less than 11 people at any meeting at which both local authority trustees are present then this should not apply.

- 1.5 If the Trust is a local authority influenced company it will be subject to a number of requirements. Some of the requirements aren't a concern for the Trust because they relate to making payments to directors and publishing party political material, which the Trust is already restricted in doing under charity law. The remainder of the requirements are:
 - 1.5.1 the Trust must state on all business letters, notices etc. that it is a company influenced by Ealing and Hounslow;
 - 1.5.2 the Trust must provide certain information about its affairs to the local authority's auditors and members;
 - 1.5.3 depending on the circumstances, the Trust must allow for public inspection of the minutes of any general meeting for four years after the meeting (it's unlikely that the Trust will hold general meetings going forward so this may not have a practical impact);
 - 1.5.4 the Trustees must be removed if they become disqualified from membership of a local authority; and
 - 1.5.5 any financial support for the Trust, or possible liability for the authority associated with the Trust, will have to be included in any assessment of the authority's finances under the prudential framework for capital investment by local government.
- 1.6 The Trust could avoid local authority influenced status in the following ways:
 - 1.6.1 The 'business relationship' could be avoided if it's possible to ensure that the relationship between the authorities and the Trust doesn't trigger any of the conditions in section 1.2 above. This appears unlikely.
 - 1.6.2 The 'personnel association' could be avoided by amending the Articles to ensure that they would not allow the number of local authority associated members, trustees or votes to exceed the 20% limit (please see comments and annotations in the amended constitution).
- 1.7 Note that if the Trust is a local authority influenced company, this does not mean that the CIC is automatically an influenced company as well (if the Trust was a local authority 'controlled' company, this would make the CIC a controlled company too). However, the CIC may be an influenced company in its own right if it satisfies the same tests above. It seems likely that the CIC would have a 'business relationship' with the authorities based on our understanding of the relationship, and there may be a 'personnel' relationship if any of the LA Trustees are also directors of the CIC.