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THIS AGREEMENT is made on 20[ ]

**BETWEEN:**

- (1) **[LONDON LEGACY DEVELOPMENT CORPORATION LIMITED** of Level 9, 5 Endeavour Square, Stratford, London E20 1JN] OR **[LOCAL PLANNING AUTHORITY]**<sup>1</sup> (the "**LPA**");
- (2) **[xxx]**<sup>2</sup> (the "**Owner**"); and
- (3) **TRANSPORT FOR LONDON** of 5 Endeavour Square, Stratford, London E20 1JN ("**TfL**").

**RECITALS**

*Parties*

- (A) The London Legacy Development Corporation ("**LLDC**") is the local planning authority for the area within which the Developer's Land, the Original Site and the Revised Site is located for the purposes of Part 3 of the 1990 Act and is the local planning authority by whom the obligations contained in the Original Agreement are enforceable. Where in this Deed the LLDC is referred to in its capacity as the local planning authority, the LLDC is termed the "**LPA**".
- (B) The LLDC is also the freehold owner of the Developer's Land. Where in this Deed the LLDC is referred to in its capacity as freehold owner it is termed the "**LLDC Landowner**".
- (C) The Owner is the ([freehold/leasehold] owner of [\*\*] details of which are set out in and shown on the plan appended at the Schedule to this Deed).
- (D) TfL is the provider of public transport services and is also the highway authority responsible for certain roads in the vicinity of the Original Site.

*Background*

- (E) The Olympic Park Legacy Company ("**OPLC**") submitted the Original Planning Application to the Olympic Delivery Authority (as local planning authority) on 30 September 2011 for the legacy redevelopment of the Queen Elizabeth Olympic Park (defined in the Original Agreement as the "**Development**").
- (F) On 1 April 2012, the Secretary of State for Communities and Local Government created the LLDC pursuant to the London Legacy Development Corporation (Establishment) Order 2012 as the successor organisation to the OPLC. LLDC took on responsibility for promoting the application submitted by the OPLC for the Development.
- (G) On 26 June 2012 the Olympic Delivery Authority (as local planning authority) resolved to grant the outline planning permission pursuant to the Original Planning Application for the Development subject to the completion of an agreement pursuant to section 106 of the 1990 Act.
- (H) On 28 September 2012 the Olympic Delivery Authority ("**ODA**"), LLDC (as developer) and TfL entered into the Original Agreement and planning permission was granted ("**the Original Planning Permission**").

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<sup>1</sup> Insert details of successor LPA in the event the transfer of LLDC PPDT's planning powers to another entity triggers the entering into of this deed.

<sup>2</sup> Insert details of LLDC's successor in title or person deriving title under LLDC as appropriate  
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- (I) On 1 October 2012 the ODA's planning functions and powers were transferred to LLDC and LLDC became the local planning authority for the area within which the Original Site is located for the purposes of Part 3 of the 1990 Act. The effect was that the LPA and the Developer became the same legal entity. Because LLDC could not contract with itself, LLDC could not vary the Original Agreement if changes were required to be made to it while LLDC was both landowner and local planning authority.
- (J) The Original Agreement is drafted so that it attaches not only to development carried out under the Original Planning Permission, but also to development carried out pursuant to any variations to the Original Planning Permission, or planning permission for any development on the Developer's Land which is related to or carried out in substitution for development authorised under the Original Planning Permission.
- (K) Since the grant of the Original Planning Permission a number of permissions have been granted pursuant to section 73 of the 1990 Act, the net effect of which is the slotting out of PDZ 1, PDZ 2 and PDZ 8. The most recent of these permissions was the Fifth S73 Permission.

#### *Fifth S73 Permission*

- (L) On [\*\*\*\*] 2023 the LPA granted the Fifth S73 Permission which slotted out SPDZ 8A. The Fifth S73 Permission has implications for the quantum of and timing of delivery of the mitigation measures secured in the Original Agreement, and accordingly a draft Deed of Variation was agreed to ensure that appropriate mitigation continues to be provided and that it is delivered at the appropriate time.

#### *The Unilateral Undertakings*

- (M) On the date that the Fifth S73 Permission was issued, LLDC was both the LPA and owner of the Developer's Land. As explained above for this reason LLDC could not complete the Deed of Variation.
- (N) To ensure that the provisions set out in Clause 7 of the Deed of Variation would nonetheless be legally binding, the LLDC Landowner gave a unilateral undertaking to the LPA and TfL on [\*\*\*] 2023 to observe and perform the terms of the Original Agreement in relation to the Developer's Land as though it had been varied by the Deed of Variation ("UU1"). UU1 was given under section 106 of the 1990 Act and is binding on both the LLDC Landowner's interests in the Developer's Land and on the interests in that land of any successors in title.
- (O) In return for UU1, the LPA and TfL gave a reciprocal undertaking under section 201 of the 1990 Act on [\*\*\*] 2023 in which (conditional on the performance of the Original Agreement as deemed to be varied by the Deed of Variation) it was bound to only enforce the Original Agreement as though it had been effectively varied by the Deed of Variation ("UU2"). UU2 was given for the benefit of any owner of the Developer's Land from time to time.
- (P) If LLDC's planning function is transferred to a successor organisation, it is expected that UU2 will be transferred to and binding on the successor local planning authority under a formal scheme of transfer.
- (Q) UU1 and UU2 by themselves do not vary the Original Agreement. Instead, they are binding promises on the part of the owners of the Developer's Land and on the part of the local planning authority to treat the Original Agreement as though it had been varied in accordance with the terms of the Deed of Variation.
- (R) UU1 requires at Clause [3.3] certain persons acquiring title to all or any part of the Developer's Land to enter into a Deed of Variation or (if a Deed of Variation has



already been completed) a Confirmatory Deed. The purpose of the Deed of Variation and Confirmatory Deeds (once completed) is to create certainty particularly as to how the LPA will manage the amended development. UU1 also requires LLDC Landowner at Clause [3.6] to procure that the owners of certain leasehold and freehold interests granted prior to the date of UU1 enter into a Deed of Variation or (if a Deed of Variation has already been completed) a Confirmatory Deed.

*Deed of Variation and this Confirmatory Deed*

- (S) A Deed of Variation was completed on [\*\*\*] and accordingly the Owner is entering into this Confirmatory Deed. Both the Deed of Variation and this Confirmatory Deed are drafted as a simple deed of variation to the Original Agreement to be made under section 106A of the 1990 Act. The variations are effected by Clause 7 of the Deed of Variation.
- (T) Neither the Deed of Variation nor this Confirmatory Deed is itself made under section 106 of the 1990 Act. The reason for this is to simplify the process of any future variations to the Original Agreement. Should these become necessary, the intention is that they will be effected by varying just the Original Agreement (as already amended) and UU1 and UU2 without also having to vary the Deed of Variation, this Confirmatory Deed and any other Confirmatory Deeds.
- (U) Notwithstanding the fact that this Confirmatory Deed is not itself made under section 106 of the 1990 Act, once completed the Original Agreement as varied by the Deed of Variation will be enforceable against the parties to this Confirmatory Deed and their successors in title because of the binding nature of the Original Agreement described in Recital N above and because of the effect of UU1 described below.
- (V) Because this Deed seeks to vary site-wide obligations, section 106A of the 1990 Act requires any party against whom such obligations are enforceable be a party to this Deed.
- (W) The LPA recognises that some interests affected by the amendments secured by the Deed of Variation may not be willing or able to be a party to a Confirmatory Deed. In these circumstances, the LPA considers that a Confirmatory Deed (incorporating appropriate amendments) need only be completed by the LPA (from time to time) and the third party required to enter into this Deed by Clauses [3.3] and [3.6] of UU1. As regards the amended site-wide obligations secured under UU1, other parties can rely on and enforce the LPA's and TFL's promises given for their benefit in UU2.

**OPERATIVE PROVISIONS:**

**1. INTERPRETATION**

- 1.1 In this Deed (which shall include the Recitals, Schedule and Appendix hereto) the following words and expressions have the following meanings:

**Deed of Variation** means the Deed of Variation dated [ ] entered into between the LPA, TFL, and [ ] giving effect to variations to the Original Agreement;

**Plan** means the land shown xxx on the plan in Schedule 1

- 1.2 All words and phrases defined in the Deed of Variation shall have the same meaning in this Deed save where the context otherwise dictates.
- 1.3 In this Deed:

1.3.1 unless otherwise indicated references to the singular include the plural and references to the plural include the singular and words importing any gender include every gender;

1.3.2 unless otherwise indicated words importing persons include firms, companies, other corporate bodies or legal entities and vice versa.

1.4 The Interpretation Act 1978 shall apply to this Deed.

1.5 The "Deed" includes the Schedule, Appendix and Recitals to this Deed.

1.6 If any provision of this Deed is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of the Deed is (if and to the extent that it may properly and lawfully be construed as such) to be unaffected.

## 2. **EFFECT OF THIS DEED**

2.1 This Deed is made pursuant to:

2.1.1 section 106A of the 1990 Act; and

2.1.2 [sections 201, 205 and 206 of the 2011 Act, section 156, Schedule 10 and Schedule 11 of the Greater London Authority Act 1999 and all other powers so enabling.]<sup>3</sup>

## 3. **VARIATION OF ORIGINAL AGREEMENT**

The Parties enter into this Confirmatory Deed to record their agreement that the Original Agreement is varied as set out in the Deed of Variation (and for the avoidance of doubt subject to the same conditionality as set out in Clause 3 of the Deed of Variation).

## 4. **EXCLUSION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Parties to this Deed do not intend that any term of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

## 5. **JURISDICTION AND LEGAL EFFECT**

5.1 This Deed shall be governed by and interpreted in accordance with the law of England.

5.2 The provisions of this Deed (other than this Clause 5.2 which shall be effective in any event) shall be of no effect until this Deed has been dated.

## 6. **EXECUTION**

The Parties have executed this Deed as a deed and it is delivered on the date set out at the front of this Deed.

<sup>3</sup> Amend with relevant local authority powers if LLDC is not a party to this Deed as the LPA.  
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SCHEDULE

Owner's interest[s] in the Site

**Annex 3 – Enforcement Protocol**



## LONDON LEGACY DEVELOPMENT CORPORATION

### s106 ENFORCEMENT PROTOCOL

#### 1. INTRODUCTION

- In March 2012 the London Legacy Development Corporation (LLDC) was established as a Mayoral Development Corporation with responsibility for regenerating an area of east London focused on the Queen Elizabeth Olympic Park. Subsequently, various transfer schemes transferred land including the Olympic Park to LLDC.
- On 1 October 2012, LLDC also became the local planning authority for the land within its area. LLDC's planning powers were delegated by a resolution of LLDC's board to the Planning Policies and Decisions Team (PPDT)<sup>1</sup>, a directorate within LLDC which reports to LLDC's Board.
- From a planning perspective, LLDC combines in a single legal entity two distinct roles; firstly as landowner/developer whose land is already bound by several agreements made under S106 of the Town and Country Planning Act 1990 (a S106 Agreement), secondly as the planning authority responsible for enforcing compliance with those agreements.
- As a matter of common law, a single entity can neither contract with itself, nor can it enforce contracts against itself.
- The effect of this is twofold:
  - obligations in existing S106 Agreements cannot be enforced at law by PPDT against LLDC or by LLDC against PPDT. NB: this does not affect PPDT's ability to enforce the same obligations against any third party who acquires title to the bound land from LLDC nor does it affect such third party's ability to enforce the obligations against PPDT. Nor does it affect the ability of any successor organisation of PPDT's planning function to enforce those obligations against both LLDC as landowner/developer as well as against such a third party.
  - if any changes are needed to any existing S106 agreements binding LLDC land, then a legally binding deed of variation to which LLDC is a party cannot be entered into.
  
- This protocol has been prepared in respect of any planning obligations whether secured by a bilateral or unilateral deed made under s. 106 of the Town and Country Planning Act

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<sup>1</sup> In this note "LLDC" refers to LLDC in its role as landowner or developer and "PPDT" refers to LLDC in its role as local planning authority.



1990 to which LLDC is a party as landowner<sup>2</sup> and which relates to development of land within the area for which PPDT is the local planning authority (a Principal Agreement). It sets out the steps that LLDC and PPDT are committed to taking to manage compliance with such Principal Agreements as well as setting out the approach that LLDC and PPDT are willing to adopt to deal with any variations to such deeds.

- In applying this protocol both LLDC and PPDT commit to act reasonably.

## 2. OPERATION OF S106

- Notwithstanding the deeds made under s. 106 by LLDC as landowner cannot now be enforced by PPDT, LLDC and PPDT commit to comply with their terms as if they could be enforced.
- Annual update reports to be submitted by LLDC within 20 working days of the end of each financial year on what S106 obligations have been triggered, whether such obligations have been discharged, whether there have been any "ghost" deeds of variation to the Principal Agreement (see paragraph 3 below), whether there have been any S106 agreements entered into where third parties have taken an interest in the site to which the Principal Agreement relates (see paragraph 3 below), whether there have been any disputes and the outcome of such disputes. Report to be approved by PPDT as a true reflection of the status of the relevant Principal Agreement in the past year and reported to the PPDT Planning Committee for noting. The Annual update reports to be made public so there is transparency.
- In the event of dispute regarding the interpretation of the terms of a Principal Agreement:
  - initially to be dealt with between the director of PPDT and LLDC's director of Real Estate. A note will be made of the outcome of the meeting and placed on the relevant planning file.
  - if the dispute is not resolved internally, it will be referred to a jointly instructed and external, independent legal expert appointed in accordance with the provisions attached at Annex 1 to this Protocol whose decision is binding.
- In the event of non-compliance with a term of the relevant deed made under s. 106:
  - PPDT to serve a written notice on LLDC identifying any breach and the steps required to remedy it. LLDC to respond within 10 working days either setting out a reasonable timetable and confirming the steps it intends to take to remedy the breach, or (if

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<sup>2</sup> This includes deeds made under s106 relating to land which has been transferred to LLDC

relevant) disputing the breach. Unless the procedure described below is triggered, LLDC will carry out the steps in accordance with the proposed timetable.

- If there is a factual dispute as to whether there has been a breach or as to the appropriate steps to be taken to remedy any breach, this will initially be dealt with between the director of PPDT and LLDC's director of Real Estate. A note will be made of the outcome of the meeting and placed on the relevant planning file. Follow-up meetings will be arranged as necessary.
- If the above steps do not lead to a mutually acceptable solution, each party will prepare and submit a report on the matter, including a recommended solution, to their respective committees. In the case of LLDC, the relevant committee is the LLDC Investment Committee and in the case of PPDT, the Planning Committee. Both committees shall consider the matter and the recommended solution.
- If either committee rejects the recommendation made to it, the rejecting committee shall instruct its officers on what further steps to take to try to resolve the dispute.
- If both committees endorse the recommendations set out in the respective reports (and assuming that the recommendations of the two reports conflict), the matter shall be referred to the Board for consideration. The Board's decision will be binding on both parties.

### 3. **VARIATIONS TO S106 AGREEMENTS / UNILATERAL UNDERTAKINGS**

- In the event that variations to an existing section 106 agreement or unilateral undertaking to which LLDC is a party as landowner (a Principal Agreement) are required, LLDC and PPDT will negotiate a draft deed of variation to reflect the changes notwithstanding it cannot be lawfully entered into as a bilateral agreement (a "Ghost Agreement"). A copy of the Ghost Agreement will be placed on PPDT's public planning file.
- Where appropriate, LLDC will bind itself (and its successors in title) by unilateral S106 undertaking to abide by the terms of the Ghost Agreement. In return for such an undertaking, PPDT will confirm by a reciprocal undertaking that it will only enforce the relevant Principal Agreement in a manner that is consistent with the Ghost Agreement. This reciprocal undertaking is intended to be binding on PPDT's successors in function.
- LLDC to ensure that any transfer to a third party of LLDC land against whom the Ghost Agreement could be enforced will be subject to a condition requiring completion of the Ghost Agreement by the transferee following completion of the land transfer.

### **Annex 1: Dispute Resolution Procedure**

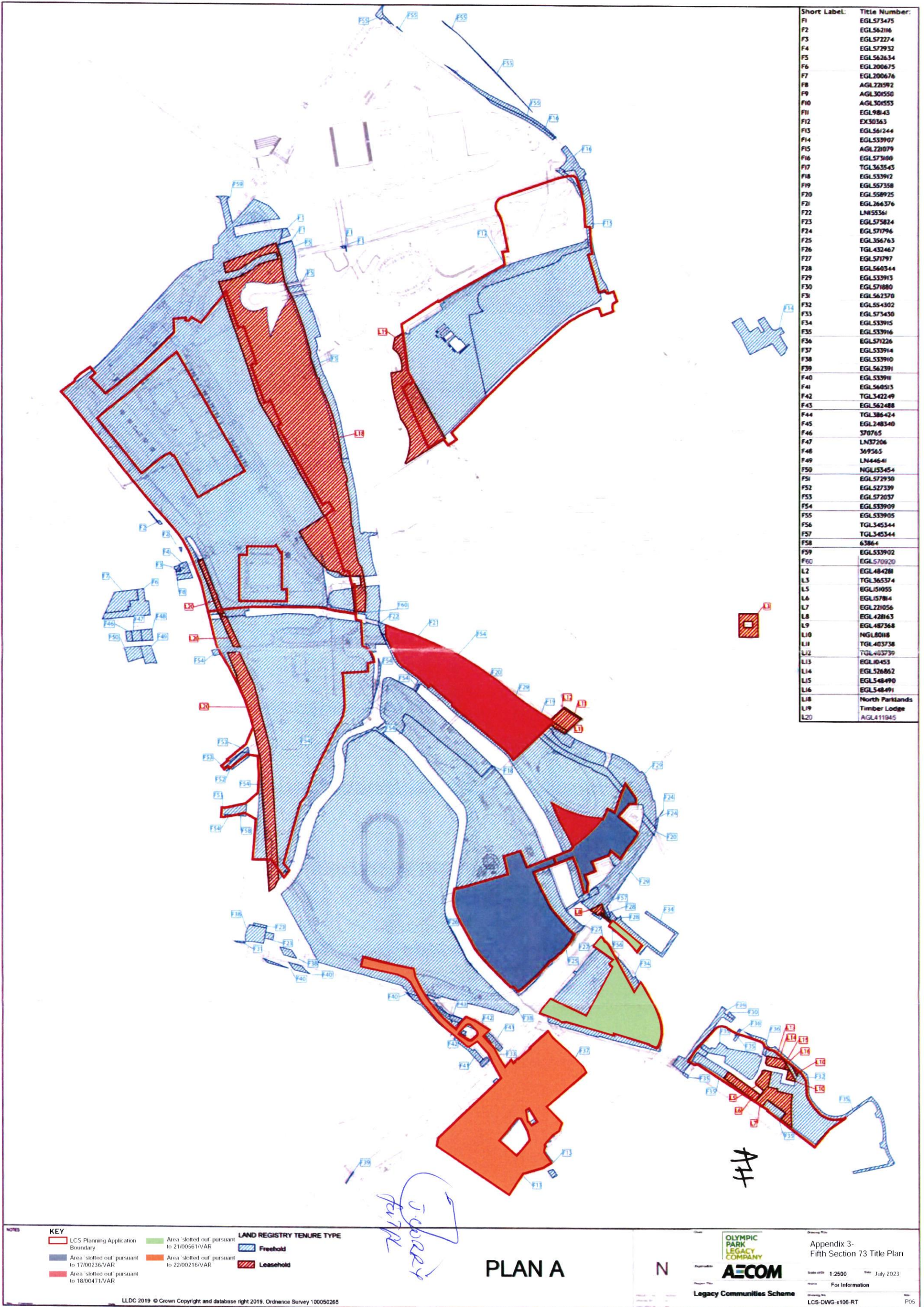
- 1) LLDC or PPDT may by serving notice on all the other (the "Notice") refer a dispute to an Expert for determination.
- 2) The Notice must specify:
  - a) the nature, basis and brief description of the dispute;

- b) the Clause or paragraph of a Schedule or Appendix pursuant to which the dispute has arisen; and
  - c) the proposed Expert.
- 3) In the event that the parties are unable to agree who to appoint as the Expert within 10 (ten) Working Days after the date of the Notice then either party may request the President of the Law Society (except where paragraph 7 provides otherwise) to nominate the Expert at their joint expense.
  - 4) The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and the Expert's cost shall be awarded at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the dispute in equal shares.
  - 5) The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 20 (twenty) Working Days from the date of his appointment to act (or such longer period as is agreed in writing between the parties).
  - 6) The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 (ten) Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 5 (five) Working Days in respect of any such submission and material.



**Annex 4 – Plan 1**





Short Label:	Title Number:
F1	EGL573475
F2	EGL562116
F3	EGL572274
F4	EGL572932
F5	EGL562634
F6	EGL200675
F7	EGL200676
F8	AGL221592
F9	AGL301550
F10	AGL301553
F11	EGL98143
F12	EX30363
F13	EGL561244
F14	EGL533907
F15	AGL221079
F16	EGL573100
F17	TGL363543
F18	EGL533912
F19	EGL567358
F20	EGL558925
F21	EGL266376
F22	LN55361
F23	EGL575824
F24	EGL571796
F25	EGL356763
F26	TGL432467
F27	EGL571797
F28	EGL560344
F29	EGL533913
F30	EGL571880
F31	EGL562370
F32	EGL554302
F33	EGL573430
F34	EGL533915
F35	EGL533916
F36	EGL571226
F37	EGL533914
F38	EGL533910
F39	EGL562391
F40	EGL533911
F41	EGL560513
F42	TGL342249
F43	EGL562488
F44	TGL386424
F45	EGL248340
F46	370765
F47	LN37206
F48	369565
F49	LN44641
F50	NGL153454
F51	EGL572930
F52	EGL527339
F53	EGL572037
F54	EGL533909
F55	EGL533905
F56	TGL345344
F57	TGL345344
F58	63864
F59	EGL533902
F60	EGL570920
L2	EGL484281
L3	TGL365374
L5	EGL151055
L6	EGL157814
L7	EGL221056
L8	EGL428163
L9	EGL487368
L10	NGL8018
L11	TGL403738
L12	TGL403739
L13	EGL10453
L14	EGL526862
L15	EGL548490
L16	EGL548491
L18	North Parklands
L19	Timber Lodge
L20	AGL411945

KEY		LAND REGISTRY TENURE TYPE	
	LCS Planning Application Boundary		Freehold
	Area 'slotted out' pursuant to 21/005617/VAR		Leasehold
	Area 'slotted out' pursuant to 17/00236/VAR		
	Area 'slotted out' pursuant to 22/00216/VAR		
	Area 'slotted out' pursuant to 18/00471/VAR		

*J. GORRY*  
*for MR*

# PLAN A



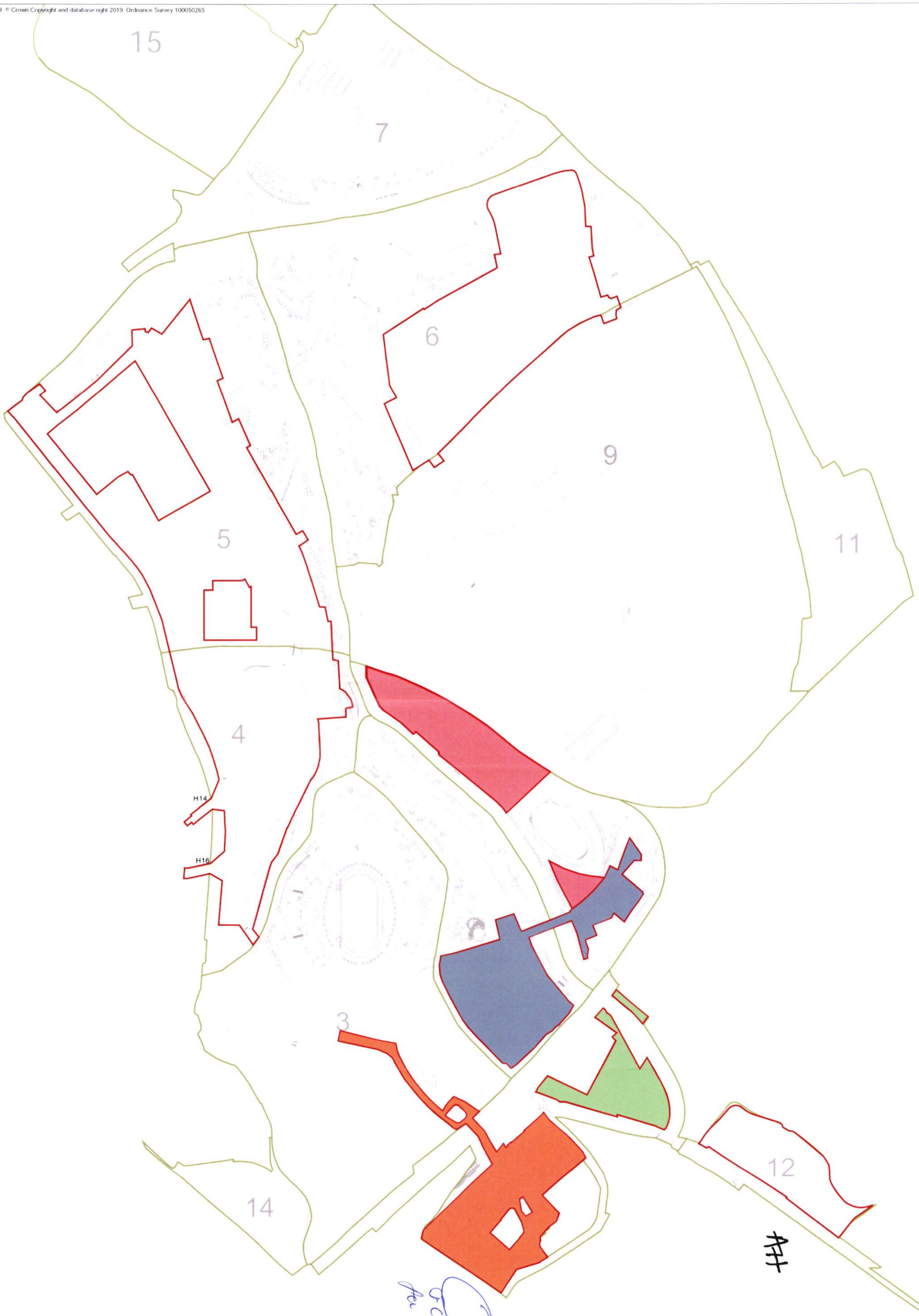
OLYMPIC PARK LEGACY COMPANY  
**AECOM**  
 Legacy Communities Scheme

Appendix 3-  
 Fifth Section 73 Title Plan  
 Scale: 1:2500 Date: July 2023  
 For Information  
 LCS-DWG-106-RT P05



**Annex 5 – Plan 2**





KEY

- LCS Planning Application Boundary
- Planning Delivery Zone
- Area 'slotted out' pursuant to 17/00236/VAR
- Area 'slotted out' pursuant to 18/00471/VAR
- Area 'slotted out' pursuant to 21/00561/VAR
- Area 'slotted out' pursuant to 22/00216/VAR

<p>Client: OLYMPIC PARK LEGACY COMPANY</p> <p>Organization: <b>AECOM</b></p> <p>Project Title: Legacy Communities Scheme</p>	<p>Drawing Title: Plan of the Site and Planning Delivery Zones S106 Appendix 1</p> <p>Scale (AS): 1:2500 Date: August 2022</p> <p>Status: For Approval</p> <p>Drawing No: LCS-DWG-APP-RED-PAR-GLB-001</p>
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**Annex 6 – Existing Variations to the Original Agreement**

Planning permission / approval / reserved matters reference number	Date of unilateral undertakings	Summary of Variations to the Original Agreement	Date of Bilateral Deed of Variation
14/0035/AOD and 14/00036/VAR	11 August 2014	Variations to clause 2.3, 2.9A, 2.12, 4.1.6, and 22, the triggers for the bus contributions, family housing and affordable housing targets for PDZs 4 and 5 and site wide, new confidential appendix and consequential variations to the viability review schedule	At the date hereof not yet entered into
14/00461/NMA	4 September 2015	Variations to Schedule 8 in relation to the First Primary School	At the date hereof not yet entered into
16/00039/REM and 16/00066/NMA	27 May 2016	Variations to Schedule 8 in relation to the Second Primary School	At the date hereof not yet entered into
16/00035/FUL and 16/00197/NMA	27 January 2017	Variation in relation to the Secondary School	At the date hereof not yet entered into
17/00236/VAR and 18/00208/NMA	3 May 2018	Variation to Schedules 2, 3, 4, 6, 7, 11, 12 and 15, namely a reduction in transport contributions, affordable and family housing targets and the triggers for commencement of	At the date hereof not yet entered into

		<p>the provision of healthcare facilities, SNT and Community facilities, education facilities, non-potable water supply and consequential variations to the viability review schedule to reflect the slotting out of PDZ 1.2 and PDZ 2.</p>	
<p>18/00471/VAR and 19/00220/NMA</p>	<p>25 July 2019</p>	<p>Variations to Schedules 2, 3, 4, 6, 7, 12 and 15, namely a reduction in transport contributions, affordable and family housing targets and the triggers for the provision of healthcare facilities, SNT and Community facilities, education facilities and consequential variations to the viability review schedule to reflect the slotting in of the Stratford Waterfront development and the reduction in overall floor space of development as a result of the slotting out of PDZ1.1 and the remainder of PDZ1.2</p>	<p>9 November 2021 between (1) LLDC as LPA (2) Chobham Manor LLP (3) London &amp; Quadrant Housing (4) TfL</p>



20/00197/NMA	11 May 2021 (binding in respect of the Developer's Land in PDZs 4 and 5 only)	Variations to Schedules 3, 4, 6 and 15 namely amendments to affordable and family housing targets/triggers and consequential variations to the viability review schedule to reflect the increase in residential floorspace in PDZs 4 and 5, as well as amendments to reflect discussions with CCG on Healthcare Facilities in PDZ4.	At the date hereof not yet entered into
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21/00561/VAR and 22/00146/NMA	13 April 2023	Variations to Schedules 2, 3, 4, 7, 8, 9 and 15, namely a reduction in transport contributions, revisions to affordable and family housing targets, deletion of requirement to provide SNT Space in PDZ8, amendments to triggers for the provision of Nursery Facilities and Managed Workspace and consequential variations to the viability review schedule to reflect the slotting out of PDZ 8.1 and PDZ 8.4.	At the date hereof not yet entered into
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