

Date: 11 February 2011

Paper no. 1

FOR DECISION

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## Olympic Stadium legacy – Recommendation for Preferred Bidder

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**Purpose:**

- This paper sets out background information on the Olympic Park Legacy Company's ("the Company") recommendation of a preferred bidder to negotiate the terms of an Agreement for Lease and Lease for the disposal of the Olympic Stadium island site.

**Responsible officer:**

- Andrew Altman, Chief Executive

**Prepared by:**

- Malcolm Ross, Executive Director of Operations and Venues

**Supplementary reports:**

- Financial and commercial due diligence report - PricewaterhouseCoopers
- Commercial review reports – Gardiner & Theobald
- Real estate financial assessment – Jones Lang LaSalle
- State Aid report - Eversheds
- Heads of Terms summary comparison - Eversheds
- Outline Business Case ('Green Book' appraisal)

The above documents are available for Board members to read as supplementary information to this Board report.

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### 1 MATTER FOR CONSIDERATION

- 1.1 This report sets out the background to the Company's recommendation to the Founder Members for a preferred bidder to lease the Olympic Stadium ("the Stadium") site. The Company has been in negotiations with two shortlisted parties since late November 2010; upon the selection of a preferred bidder, the Company will begin further detailed negotiations leading to the signing of an Agreement for Lease for the Stadium island site.

- 1.2 The Company received Final Offers from two consortia ("the Bidders"):
- Tottenham Hotspur FC with AEG; and
  - Newham Council and West Ham United FC.
- 1.3 The Company has undertaken a full and wide ranging evaluation of the bids covering financial, commercial, technical, legal and community matters. The supporting reports and analysis have informed the content of this paper and the Company's recommendation. The Board is now asked to consider the recommendation and to take a decision on choosing a preferred Bidder.

## 2 RECOMMENDATION

- 2.1 The Board is invited to **NOTE** the content of this report and the supplementary reports that are available as supporting information.
- 2.2 On the basis of the information set out in this Board report and the supplementary reports, the Board is asked to **APPROVE** the Company's recommendation that the consortium comprising the London Borough of Newham and West Ham United Football Club be appointed as the Preferred Bidder to enter into negotiations with the Company for an Agreement for Lease and Lease for the Olympic Stadium site, subject to approval by Founder Members in accordance with paragraph 10.1 of the Members' Agreement (as varied).

## 3 TIMING

- 3.1 The Company requires selection of a preferred Bidder so that it remains on course to reach a settled position on the future of the Stadium. The successful Bidder will then have to commence its town planning, design and construction procurement processes to ensure that their proposed Stadium solution is operational as rapidly as possible following the 2012 Olympic and Paralympic Games ("the Games"). Stadium transformation activity will thus be able to commence on site immediately once LOCOG has removed its temporary Games overlay from the Stadium. The target date for LOCOG to complete this is the end of 2012.
- 3.2 The Bidders' solutions require planning consent and extensive design and construction planning between now and the Games. If the Company does not proceed with either of the current bids, it could still adopt the ODA's proposed transformation scheme for a 25,000 seat athletics stadium (the base case). For the ODA to begin planning transformation of the Stadium to the base case scheme, it requires the Company to provide confirmation of this decision by Spring 2011.
- 3.3 The Board is requested to reach a decision at this meeting. Founder Members will then consider the Board's recommendation before confirming their approval or any alternative requirements.
- 3.4 Once Founder Members approve the Board's decision, the Company will immediately begin detailed negotiations with the preferred Bidder to develop full legal and commercial documentation leading to the signature of an Agreement for Lease for the Stadium site. In parallel, the Company will also require the preferred Bidder to meet all pre-conditions which the Company may have set.

## 4 REPORT STRUCTURE

- 4.1 This report provides Board members with the necessary information to recommend a preferred Bidder to the Company's Founder Members. Where relevant, the report references the supplementary documents containing more detailed information on specific topics. The remainder of this report is set out as follows:

**Section 5** – contains important background information about the Stadium project, in particular the sequence of events since 2005 and the ODA's 'base case' legacy

scheme. This section also sets out the project objectives and how the Company has been working to resolve the Stadium legacy;

**Section 6** – outlines the current bid process and the Company's evaluation of each Final Offer against the project objectives;

**Section 7** – contains a State Aid legal assessment;

**Section 8** – summarises the findings from the Company's financial and commercial due diligence, including independent assessments of Bidders' proposed capital costs and the wider value for money implication of their proposals;

**Section 9** – contains additional information for Board members. This includes an overview of the Company's public sector business case; the heads of terms for the Agreement for Lease and Lease; wider economic impacts; the World Athletics Championships; Premier League approvals; and input from the Metropolitan Police;

**Section 10** – addresses how this project takes account of the Company's policy themes;

**Section 11** – outlines the town planning requirements for the project;

**Section 12** – introduces how the Company will manage risk in relation to the preferred bidder solution during the next phase of the project; and

**Section 13** – contains important legal notices that set the context for the Board's decision.

## **5 BACKGROUND AND CONTEXT**

5.1 The Stadium will stage the track and field athletics events during the Games as well as the opening and closing ceremonies. Its use in legacy has been the subject of intense public and political debate. However, no viable legacy end user has ever been identified even given the opportunities created by over £500m of public investment already committed for the planning, design and construction of the Stadium. A number of possible legacy uses have been offered since London's Olympic bid in 2005 but none of these have carried any funding commitments to operate a legacy Stadium.

5.2 This section summarises the history of Stadium legacy work since the ODA's design process through to the current OPLC work to secure a credible long term solution. It describes:

- The legacy options considered by the ODA in designing the Stadium together with background to the Olympic Board's approval of the ODA 'base case' in 2007;
- Why no legacy tenant or operator has been identified for the Stadium up until the Company's formation;
- The market testing which the Company undertook to obtain robust evidence and insight into potential Stadium legacy options;
- The project objectives which the Founder Members have set for the Company; and
- The current formal bid process that the Company has managed through a pre-qualification stage and now through detailed negotiations with the two shortlisted Bidders.

### **The ODA base case**

5.3 We understand that the ODA's legacy Stadium scheme (i.e. to reduce the Stadium from its Games-time mode to a 25,000-seat athletics facility) was endorsed by the

Olympic Board at its meeting on 7 February 2007. In the months leading up to the Olympic Board's decision, the ODA had considered four legacy Stadium options:

1. A small capacity athletics stadium;
2. Conversion to a football stadium with a new athletics stadium built alongside;
3. Conversion to a football stadium with athletics moved elsewhere; and
4. Conversion to a mixed-use football and athletics stadium.

5.4 Based on advice received from the ODA, the Olympic Board unanimously supported the ODA's design brief for a Games time Stadium of 80,000 seats that would then be converted to 25,000 seat 'living stadium' in legacy based on a core athletics use. This decision was seen as consistent with the London 2012 bid book commitments which had stated that for legacy, the Stadium would be converted to a '25,000 seat multi-purpose venue with athletics at its core'. However, concerns had been expressed during the Olympic Board's discussions over the rejection of Premiership football to provide long term sustainable commercial viability for the legacy. At least two football clubs had expressed interest in becoming the legacy anchor tenant for the Stadium. Both UK Sport and Sport England were further concerned over the potential loss of grass-roots funding to athletics due to the amount of public subsidy that a 25,000 seat legacy Stadium would require; the ODA had estimated a [REDACTED] operational loss over the first five years of operations.

5.5 Following the Olympic Board's decision, the ODA identified a capital budget of [REDACTED] to convert the Stadium from 80,000 to 25,000 seats post-2012. The ODA's design remains the 'base case' against which both Bidders' schemes have been compared alongside the Company's assessment against the project objectives. The base case remains the consented scheme that the ODA could deliver should the Company consider that neither of the Bidders offers a viable alternative.

#### **Market testing**

5.6 The ODA's design provides for a basic athletics stadium with features that have made it particularly unattractive to potential operators in legacy. For example, there would be no roof for stadium spectators other than for one stand, there is no space in the stadium for revenue generating concession space, the west stand hospitality space is removed and there is no provision of vital equipment for events such as stadium control. Furthermore, the lack of a warm up track means that the Stadium would not fully meet UK Athletics' (UKA) requirements for hosting elite events. As a minimum, UKA ideally would like the legacy Stadium to be fit for modern day competition use which means it needs a full roof, ancillary space for event control, back of house provision, warm up facilities for athletes and flexibility to expand for one off events. In June 2010, UKA confirmed in writing to the Company that there were important economic and operational arguments against the ODA base case scheme from a UKA perspective.

5.7 Since 2005, and up to the point of the Company's formation in 2009, both the ODA and London Development Agency (LDA) have had responsibility for Stadium legacy at various times. Despite all the public interest, no operator from either the public or private sector was ever identified for the legacy Stadium. The [REDACTED] budget for conversion has not proven sufficient to create something of interest to the operator market or to address UKA's ideal requirements. This situation was further confirmed by the results of the soft-market testing that the Company undertook in 2010.

### **OPLC soft market testing**

- 5.8 The Company's motivation in launching the soft market testing has been to take a fresh look at Stadium legacy options to be confident that a credible long term solution is available. The solution will have a significant and early impact on the Park, including its ability to be an attractive destination for local communities, investors and visitors.
- 5.9 The Company's aim has been to improve on the 'base case' by addressing the operational and financial challenges of this unfunded legacy, including identifying a viable end user for the Stadium.
- 5.10 In March 2010, the Company began the market testing exercise to test potential Stadium solutions and to ascertain levels of demand from tenants, operators and investors. A total of 136 separate organisations/individuals accessed the Company's data room or were contacted directly about the opportunity.
- 5.11 The market testing received global media coverage and included engagement with a wide range of investors, operators, developers, and sports clubs. Responses showed some demand for the legacy use of the Stadium. The majority of respondents (who had specified a seating capacity) preferred a Stadium larger than the ODA base case scheme. The market testing also confirmed that there is a narrow range of viable uses for the legacy solution, given the limitations of the Stadium's Games-time design and in particular the ODA's decision not to provide a full roof for all spectators.
- 5.12 In short, no demand was forthcoming which featured athletics as the core proposition as this proposition is not commercially viable in a small stadium. This is further evidenced by the fact that small athletics stadia throughout the UK are generally supported by ongoing public subsidies. In addition, the market testing process supported the premise that there is some demand for the legacy use of the Stadium at larger capacities provided that the configuration is suitable for the inclusion of professional football.
- 5.13 UKA was unwilling to take responsibility for operating the Stadium legacy. The Company's market testing demonstrated that if the public sector requires a long term commercially sustainable stadium legacy without further recourse to public sector capital and operational funding, the most appropriate solution is likely to include professional football as part of the solution.

### **Project objectives**

- 5.14 Following the conclusion of the Company's market testing in June 2010 the Company consulted with its Founder Members to agree five key objectives for the project. The Stadium is located in the southern part of the Olympic Park and will be a crucial anchor for delivering the Company's wider regeneration objectives, for integrating Park development and enabling the Park to become a major visitor destination.
- 5.15 The objectives were informed by the results of the market testing process and Founder Members confirmed that the optimum way to achieve these objectives would be for an asset disposal of the Stadium. The ODA's [REDACTED] budget for Stadium transformation work would remain a potential source of public funding for the project, though its use is subject to State Aid requirements and approval by the Games' Funders Group that currently oversees the ODA's transformation budget. The Government Olympic Executive has written to the Company to set out the mechanisms that must be followed before the [REDACTED] transformation budget can be applied to either of the Bidders' proposals.

5.16 The five project objectives are:

1. To achieve a viable long term solution for the Olympic Stadium that is deliverable and provides value for money.
2. To secure a partner with the capability to deliver and operate a legacy solution for a venue of the Stadium's size and complexity.
3. To re-open the Stadium for operational use as rapidly as possible following the 2012 Games.
4. To ensure that the Stadium remains a distinctive physical symbol supporting the economic, physical and social regeneration of the surrounding area.
5. To allow flexible usage of the Stadium, accommodating a vibrant programme of events allowing year round access for schools, the local community, the wider public and elite sport.

#### **Formal bid process - Pre-qualification**

- 5.17 Having agreed the project objectives and an asset disposal route for the Stadium, the Company launched the formal stage of the process to select a partner on 18 August 2010. Interested parties were asked to complete a pre-qualification questionnaire (PQQ) which the Company could then evaluate against the five project objectives.
- 5.18 The Company received three PQQ submissions on 30 September 2010 from:
- A consortium comprising International Stadia Group (Lead Bidder), HKS and CB Richard Ellis Ltd;
  - A consortium comprising Tottenham Hotspur Football Club (Lead Bidder), with AEG; and
  - A consortium comprising the London Borough of Newham and West Ham United Football Club (Joint Lead Bidders).
- 5.19 After evaluation and further clarification of the PQQ submissions, the consortium led by Tottenham Hotspur and the consortium of Newham and West Ham United were shortlisted to proceed to the next phase of the process and the preparation of Final Offers.
- 5.20 The proposal led by International Stadium Group was not taken to the short list as it did not meet the minimum score threshold set out in the PQQ. Their proposal was dependent on two professional football clubs becoming anchor tenants which the Company considered to be unrealistic in the timeframe and given that the most likely clubs were pursuing independent bids.

## **6 EVALUATION OF FINAL OFFERS**

### **Formal bid process - negotiations**

- 6.1 The Company has been engaged in detailed discussions with the two shortlisted Bidders since 26 November 2010. There has been a two-stage process:
1. Bidders submitted a Preliminary Final Offer on 23 December 2010, following which the Company provided feedback and offered clarification guidance.

2. Bidders submitted their Final Offer on 21 January 2011 following which the Company has sought additional clarifications.

6.2 Bidders were asked to include as a minimum in their Final Offers:

- A response to the Company's Heads of Terms for the Agreement for Lease;
- A response to the Company's Heads of Terms for the Lease;
- Details of their funding proposals;
- Details of the structure, governance and ownership of the proposed tenant;
- Business plan(s); and
- Delivery programme covering design, town planning procurement and Stadium transformation works.

6.3 Both Bidders have provided additional information and analysis to support their Stadium solutions. This has included their wider plans for the Stadium and island site, with a particular focus on community benefits for local people and businesses that would complement the Stadium and ensure a vibrant and multi-use site.

6.4 In parallel with the bidder negotiation process, the Company has undertaken detailed, independent financial, legal and technical due diligence to assess the robustness of the Bidders' proposals. The reports available to Board members are:

- Financial and commercial due diligence (PricewaterhouseCoopers);
- State aid (Eversheds);
- Commercial review (Gardiner & Theobald);
- Real estate financial assessment (Jones Lang LaSalle); and
- Heads of Terms summary comparison (Eversheds).

#### **Final Offers**

6.5 Each Bidder provided extensive information in their Preliminary Final Offer and Final Offer submissions. They have supplemented these submissions with their responses to the Company's clarification questions [REDACTED]

[REDACTED] The Company had already appraised the ODA's base case scheme against a multi purpose stadium and a purpose built football stadium as part of its 'Green Book' appraisal (see Section 9).

6.6 At the Board meeting to discuss Stadium legacy on 28 January 2011, the Chief Executive explained the key aspects of both Bidders' proposals. This information is set out in Appendix 1 where the Final Offers are categorised into:

- Scheme overview;
- Funding;
- Commercial offer;
- Business planning assumptions;
- Financial due diligence;
- Athletics legacy; and
- Community legacy.

#### **Evaluation against the project objectives**

6.7 The Company has evaluated both Bidders' Final Offers against the project objectives set by the Founder Members. The evaluation was carried out by a team of senior executives from the Company supported by its external legal advisors

Eversheds and real estate advisor Jones Lang LaSalle. The Company's evaluation team comprised:

- Andrew Altman (Chief Executive);
- Jonathan Dutton (Executive Director of Finance and Corporate Services); and
- Malcolm Ross (Executive Director of Operations and Venues).

6.8 In addition, Karen Webb (Executive Director of Marketing and Communications) has provided specialist input to the review of the Bidders' proposals on community access and engagement. Duncan Innes (Executive Director of Real Estate) and Niall McNevin (Director of Town Planning) have supported the process with input on development values for the site, estate service charging mechanisms and potential Section 106 impacts.

6.9 The evaluation team considered each Final Offer in turn, assessing it against the five project objectives and referring, where appropriate, to the specialist reports and advice prepared by the Company's financial, real estate, technical and legal advisors. The results of the evaluation process are set out in the Evaluation Report which is set out below in full.

6.10 Board Members should note that in the Evaluation Report reproduced below, the Tottenham Hotspur with AEG consortium is referred to as 'Bidder 5' whilst the Newham and AEG consortium is referred to as 'Bidder 6'.

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## **EVALUATION REPORT**

### **Tottenham Hotspur with AEG (Bidder 5)**

#### **Summary evaluation of Bidder 5's proposal**

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**Objective: to achieve a viable long term solution for the Olympic Stadium that is deliverable and provides value for money**

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**Objective: to have a legacy partner with the capability to deliver and operate a legacy solution for a venue of the Stadium's size and complexity.**

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**Objective: to re-open the Stadium for operational use as rapidly as possible following the 2012 Games.**

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**Objective: to ensure that the Stadium remains a distinctive physical symbol that supports the economic, physical and social regeneration of the surrounding area.**

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**Objective: to allow flexible usage of the stadium, for example, accommodating a vibrant programme of events such as allowing year round access for schools, the community, the wider public and elite sport.**

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**Newham and West Ham United (Bidder 6)**

**Summary evaluation of Bidder 6's proposal**

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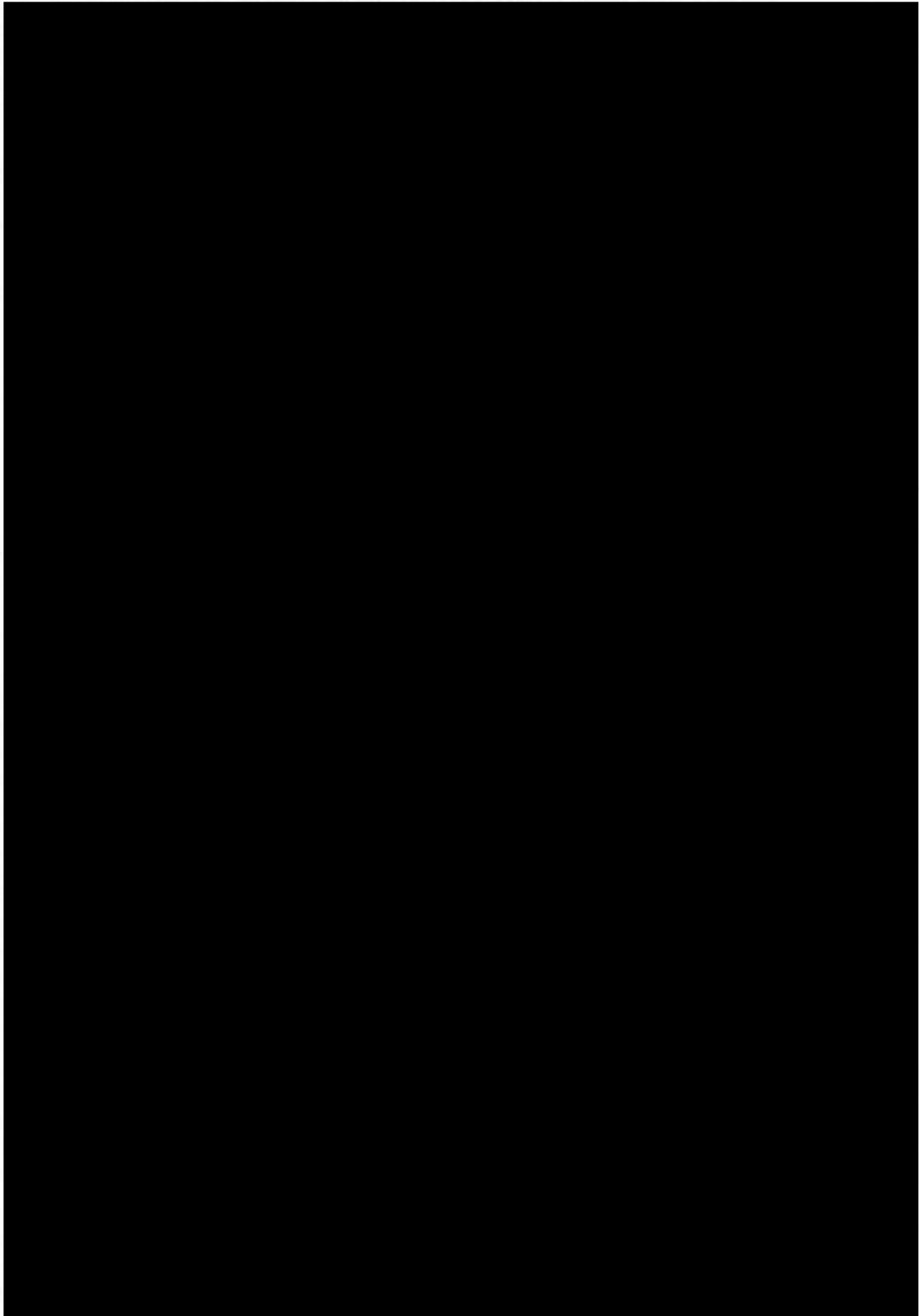
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**Objective: to achieve a viable long term solution for the Olympic Stadium that is deliverable and provides value for money.**

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**Objective: to allow flexible usage of the Stadium, for example, accommodating a vibrant programme of events such as allowing year round access for schools, the community, the wider public and elite sport.**

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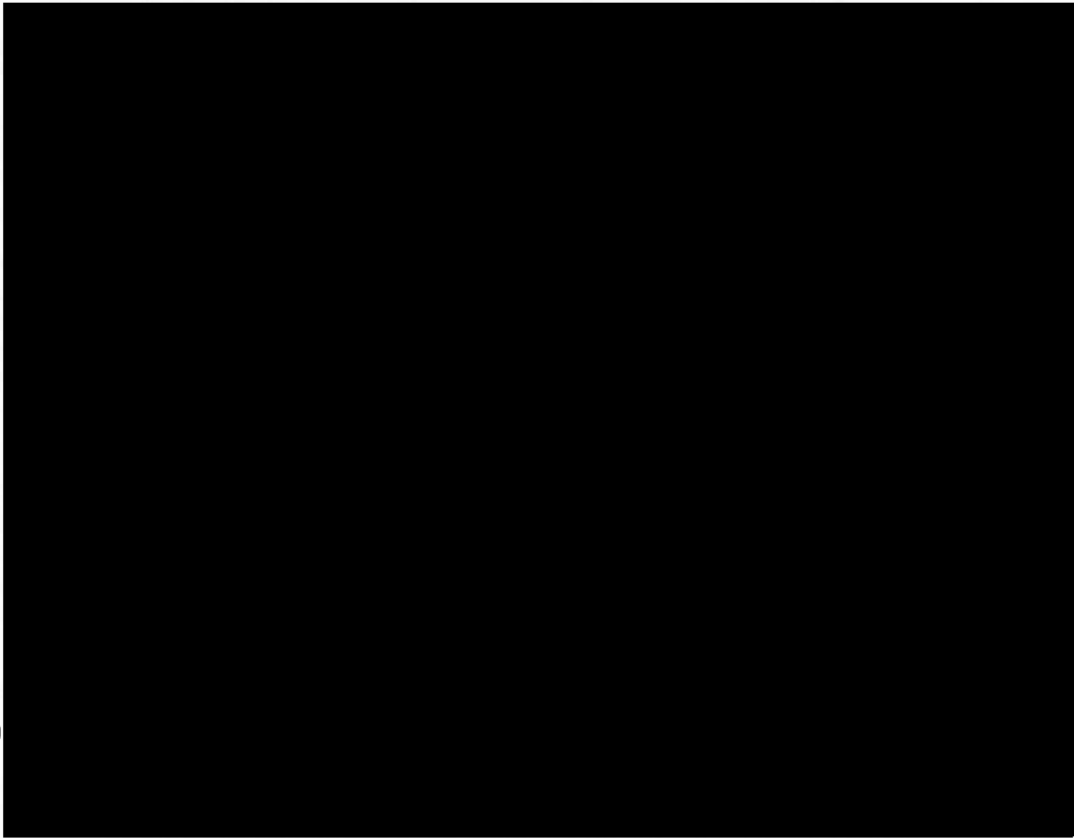
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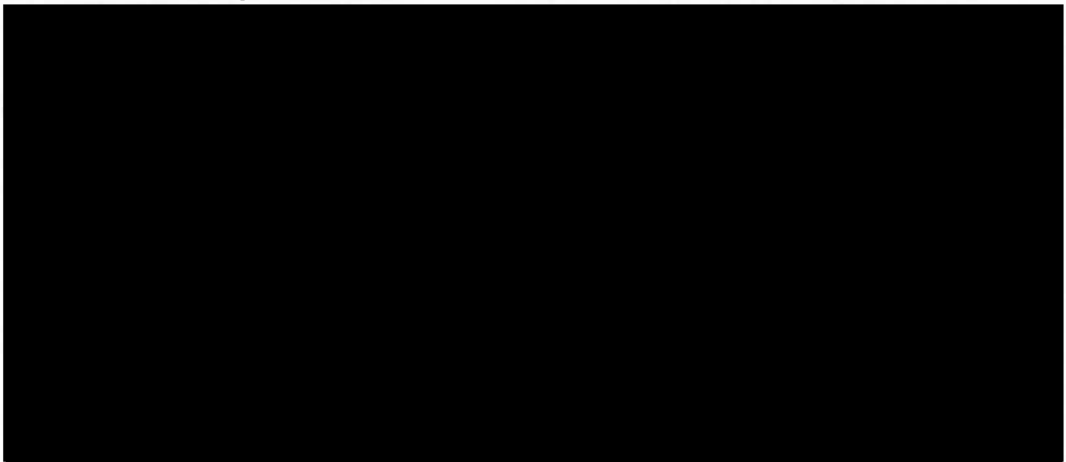


**7 STATE AID ASSESSMENT**

7.1 Eversheds has assessed the State Aid implication of each Bidder's Final Offer. This is set out in detail in the supplementary State Aid report. The summary conclusions are provided below.

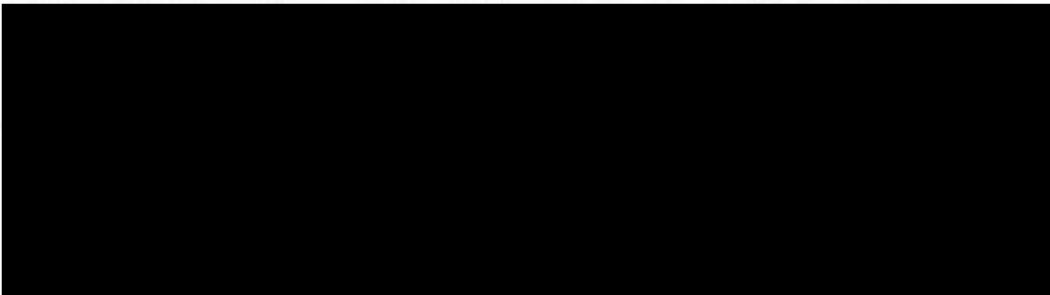
**Tottenham Hotspur with AEG**

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**Newham and West Ham United**

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## **8 FINANCIAL AND COMMERCIAL DUE DILIGENCE**

8.1 The Company commissioned financial and commercial due diligence on both Bidders as part of its assessment of the Final Offers. This has been undertaken by PricewaterhouseCoopers covering:

- Financial due diligence of Tottenham Hotspur FC;
- Financial due diligence of West Ham United FC;
- Due diligence of the Tottenham Hotspur stadium business plan;
- Due diligence of Newham/West Ham United's business plans comprising:
  - the West Ham United business plan for Premier League and Championship scenarios; and
  - the SPV business plan.

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**Newham and West Ham United**

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**Capital cost assessment**

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**Real estate financial assessment**

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**9 ADDITIONAL INFORMATION**

**'Green Book' appraisal**

- 9.1 Government requires all new programmes, whether operational or capital, to be subject to comprehensive but proportionate assessment to best promote the public interest. HM Treasury has published 'The Green Book – Appraisal and Evaluation in Central Government - 2003' as guidance for central departments and executive agencies on promoting consistency and transparency in the appraisal of projects. The Green Book sets out how the economic, financial, social and environmental assessments of a project should be combined.

- 9.2 The Founder Members required the Company to prepare a public sector business case for the Stadium legacy using Green Book guidance. The 'Final Business Case' (FBC) will set out the eventual Stadium legacy solution and the Company is in discussion with Founder Members to confirm the approval processes that may be required before the Agreement for Lease can be signed. A FBC has five elements:
- Strategic Fit;
  - Options Appraisal;
  - Commercial;
  - Affordability; and
  - Achievability.
- 9.3 In line with public procurement good practice guidance, the Company prepared an 'Outline Business Case' (OBC) in July 2010 before it commenced the formal bid competition for the Stadium legacy. An OBC covers the first two parts of a FBC (strategic fit and options appraisal) and provides analysis to demonstrate that all project options have been properly assessed before procurement commences.
- 9.4 The Company's OBC assessed a short list of potential Stadium legacy options that were informed by the market testing process. These included the ODA base case scheme, a large multi-sport stadium and a bespoke football stadium. The OBC concluded that a multi-sport stadium or purpose built football stadium offered the optimum value for money solution for Stadium legacy. The ODA base case scheme would require an ongoing public subsidy for operations and there was no private sector interest during the Company's market testing process to operate this facility.
- 9.5 Preparation of the OBC has included consultation with all Founder Members and HM Treasury. The Department for Communities and Local Government (DCLG) has co-ordinated Founder Members' input throughout the process. A copy of the OBC is available to Board members as one of the supplementary reports.

#### **Heads of Terms**

- 9.6 The Company issued Agreement for Lease and Lease Heads of Terms to the shortlisted Bidders as part of its guidance to Bidders documentation. The heads were drafted by the Company's legal advisors, Eversheds LLP, to comply with the Company's procurement approach of disposing of a land interest to an appropriate tenant. The draft heads contained relevant approaches and legal protections for the Company as the Landlord, both in terms of the development process to bring a Stadium forward to practical completion and in relation to a suitable form of lease between the Company as Landlord and the Tenant. These approaches and protections have been maintained throughout negotiations and are reflected in the heads contained in each Final Offer.
- 9.7 The summary tables in the supplementary paper 'Heads of Terms summary comparison' indicates, on a side by side basis, the current suggested approach of the Bidders to both sets of issued heads of terms. It is the view of Eversheds LLP that the approaches of the Bidders to the heads could broadly be further negotiated to provide an adequate and commercially and legally acceptable arrangement for the Company as Landlord and the selected Bidder as Tenant. The heads would be translated into an Agreement for Lease containing conditions and development obligations and an institutionally acceptable form of Lease.

#### **Wider economic impacts**

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**World Athletics Championships**

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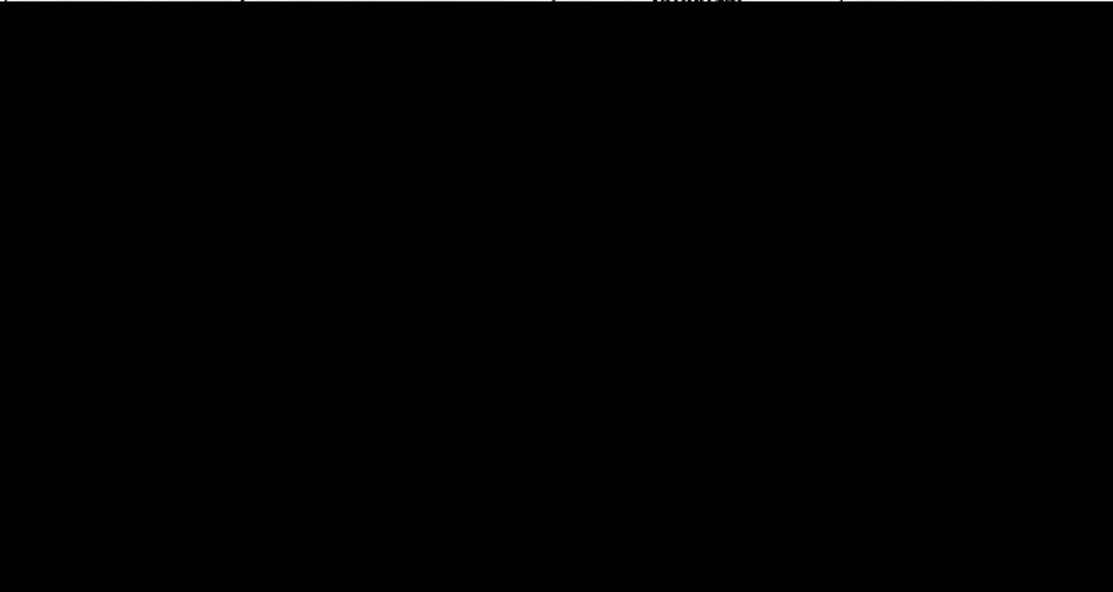
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	<b>THFC - AEG proposal for Crystal Palace</b>	<b>West Ham – Newham Olympic Stadium proposal</b>	<b>ODA Base Case</b>
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	THFC - AEG proposal for Crystal Palace	West Ham – Newham Olympic Stadium proposal	ODA Base Case
			

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## **10 OPLC POLICY THEMES**

- 10.1 The impact of the Stadium disposal on the Company's priority themes has been monitored during both the market testing and the competitive bid process. The themes of equality and inclusion, sustainability and design quality were all built into the PQQ as issues that bidders had to address in their responses. These themes have been important matters for Bidders in their Final Offer submissions.
- 10.2 The themes of community engagement and socio-economic issues are two key drivers for the project as a whole. Objectives 4 and 5 for the project specifically address these themes and both Bidders submitted thorough and wide-ranging Stadium legacy proposals as a driver for community engagement and the socio-economic improvement of the Olympic Park and surrounding areas.

## **11 TOWN PLANNING**

- 11.1 A 60,000-seat Stadium for either Bidder will require a new planning permission. There should not be any major issues of principle in securing consent for this, as the precedent for this use has been set by the use for the Games and the 2007 consent. National planning policy on stadia and major developments (Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation) simply states that stadia should be located in areas of good access to public transport, which the Stadium has. The key issues will be:
- Demonstrating that the regular use of a 60,000 capacity stadium (an increase of 35,000 on the outline planning permission) does not generate unacceptable environmental impacts on the surrounding communities (in terms of, inter alia, transport, noise, natural habitats); and

- Ensuring that any ancillary or enabling uses, such as retail and residential, associated with the Stadium project are compliant with existing planning permissions and legal obligations, with current and emerging planning policy, and consistent with the vision of the wider Legacy Masterplan.

11.2 The Local Planning Authority will need to be confident that the recommended scheme is acceptable in planning terms and will use conditions and a Section 106 agreement to secure the necessary commitments before granting approval. It will also be subject to consultation with statutory bodies, such as the GLA (including TfL), Local Highway Authorities, and the Environment Agency.

## **12 RISK ASSESSMENT**

12.1 The Company has proactively managed risks throughout the Stadium legacy process. It has already commenced work to identify key risks and mitigation measures relating to the next phase of the process. This covers all risks relating to concluding an Agreement for Lease with the preferred bidder on terms acceptable to the Company and its Founder Members.

12.2 Through the negotiation process with Bidders, the Company has developed a clear understanding of risks relating to the implementation phase of the project covering design, planning and construction activity for the Stadium. In securing an acceptable form of Agreement for Lease, the Company will build on the draft heads of terms to ensure that these risks are appropriately mitigated. The Company will also take account of development opportunities and operational risks once the Stadium is re-opened following the Games.

12.3 The Company will continue to update the Board and Founder Members on key risks relating to the project.

## **13 LEGAL NOTICE**

13.1 The evaluation process and recommendation of a preferred bidder for the Stadium set out in this report has been carried out in accordance with the provisions of the Varied and Restated Members' Agreement relating to the establishment and operation of the Company dated 13 May 2009 (Members' Agreement (as varied)), the Memorandum of Association of the Company and its Articles of Association (together "the Constitutional Documents") all of which govern the Company's business and activities.

13.2 In addition to the matters outlined in this Board Paper, due consideration has also been given to the Company's relevant adopted policies:

- The Company's Delivery Plan 2010/2011;
- The Company's Procurement Strategy;
- Grant Funding Agreement with the London Development Agency dated 30 September 2010; and
- The Company's revised interim financial regulations.

13.3 Many of the legal implications of the evaluation process and recommendation of a preferred bidder are considered throughout this board report.

13.4 Each member of the Board understands that they have duties as directors including a duty to act in the way they consider, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole.

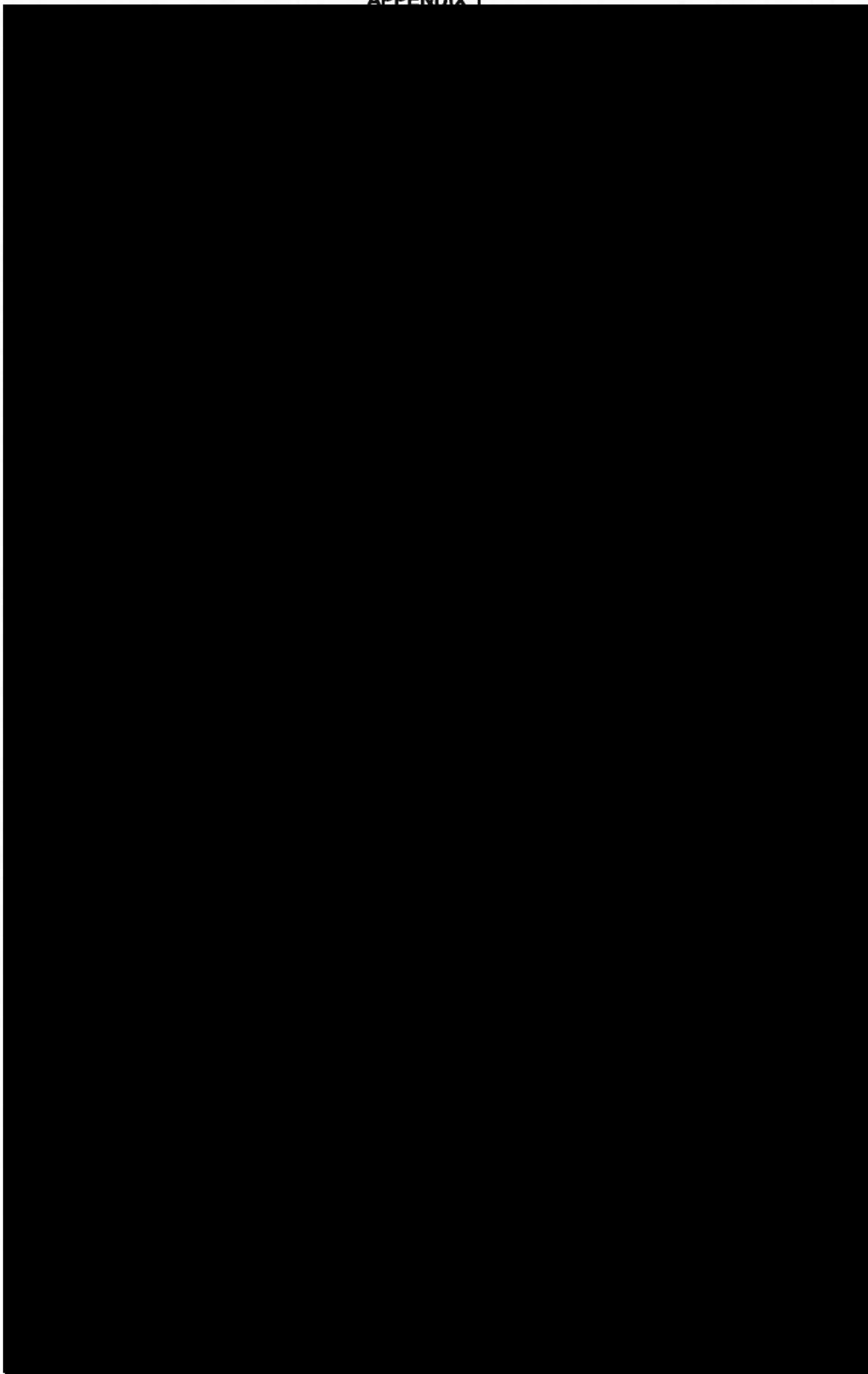
13.5 Certain steps to be taken in connection with and following the selection of a Preferred Bidder will constitute Founder Member Reserved Matter(s) as set out in paragraph 10.1 of the Members' Agreement (as varied) and, as such, require the

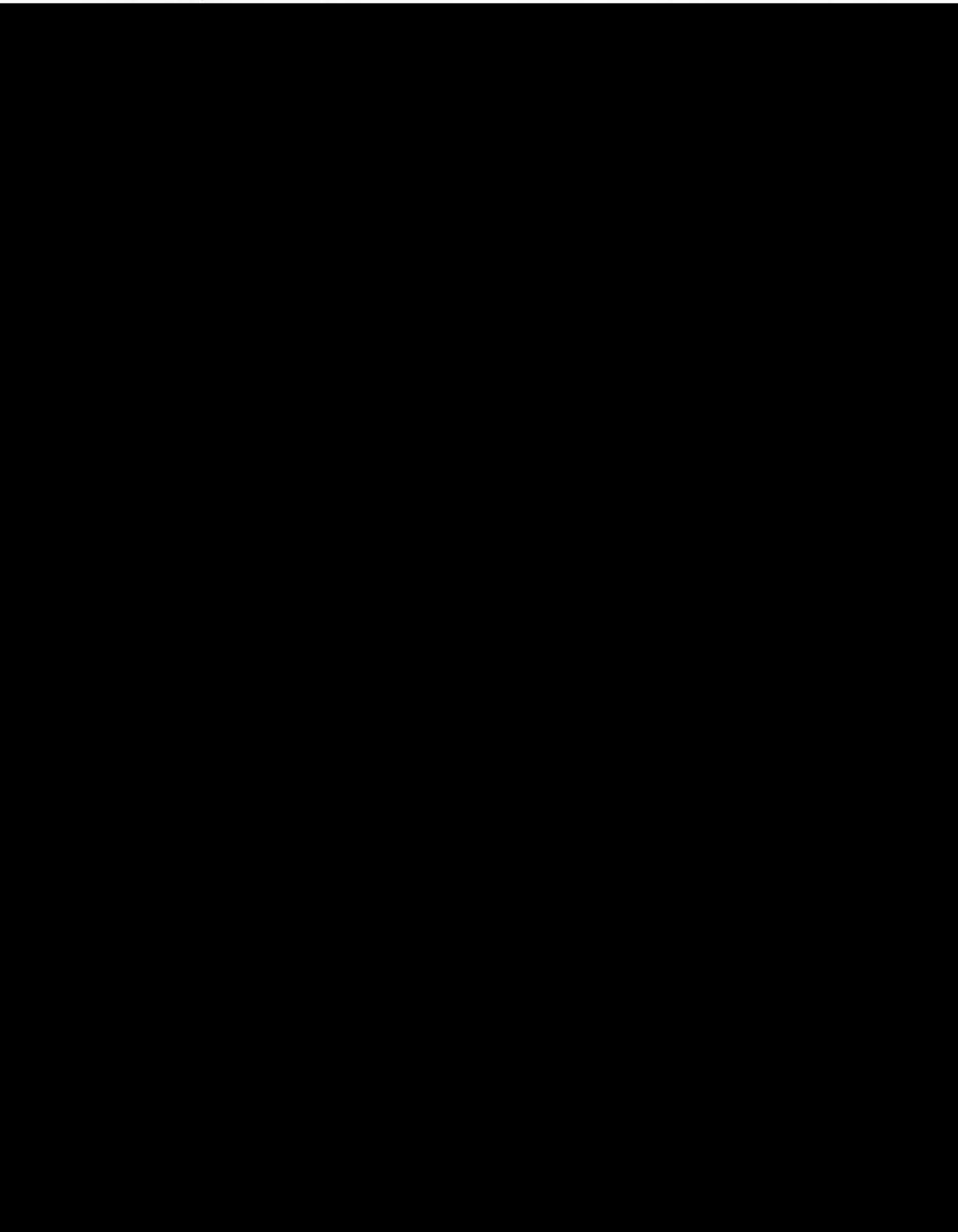
prior consent or approval of the Founder Members. The role of the Board is to evaluate the various options and, having regard to the matters referred to above and, in particular, to the powers and objects of the Company and its strategic aims as set out in the Constitutional Documents, make a recommendation for preferred bidder for the Founder Members to consider for consent or approval.

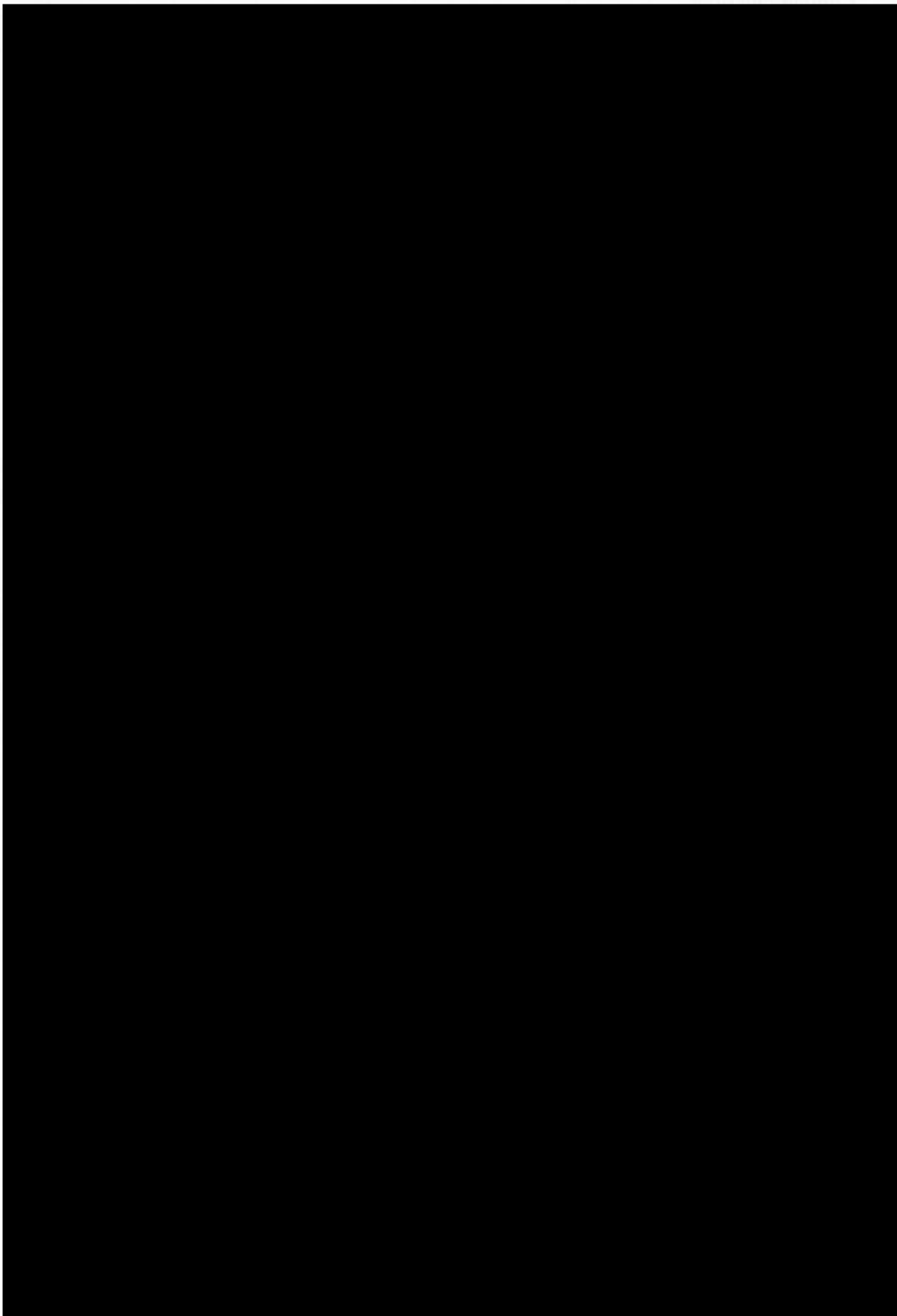
- 13.6 Board members should note that there remains a risk that the Company's decision for a preferred bidder could be subject to judicial review. However, the Company has received appropriate legal advice as to the potential bases for legal challenge and the decision making process has been proactively managed cognisant of this risk.

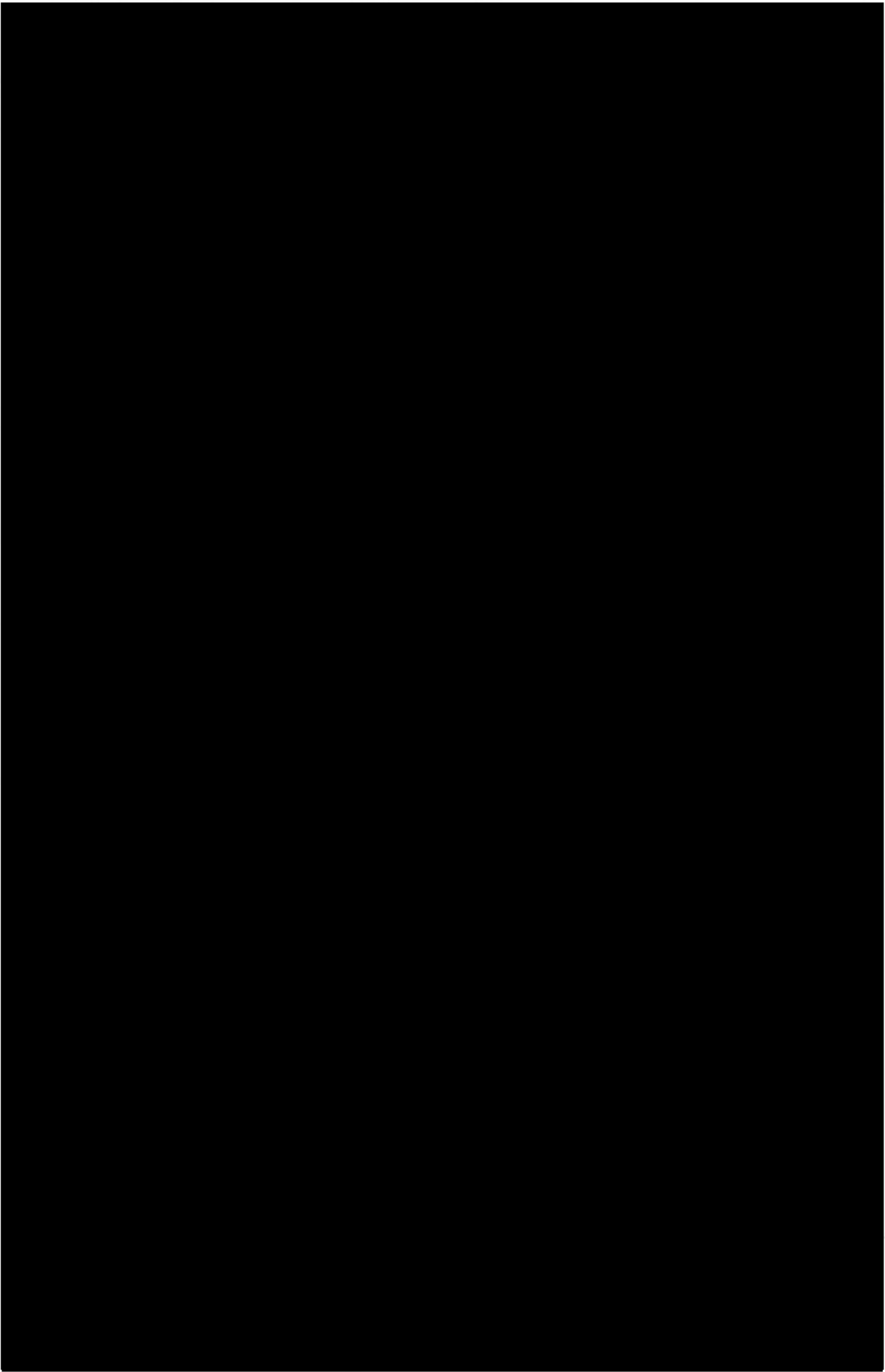


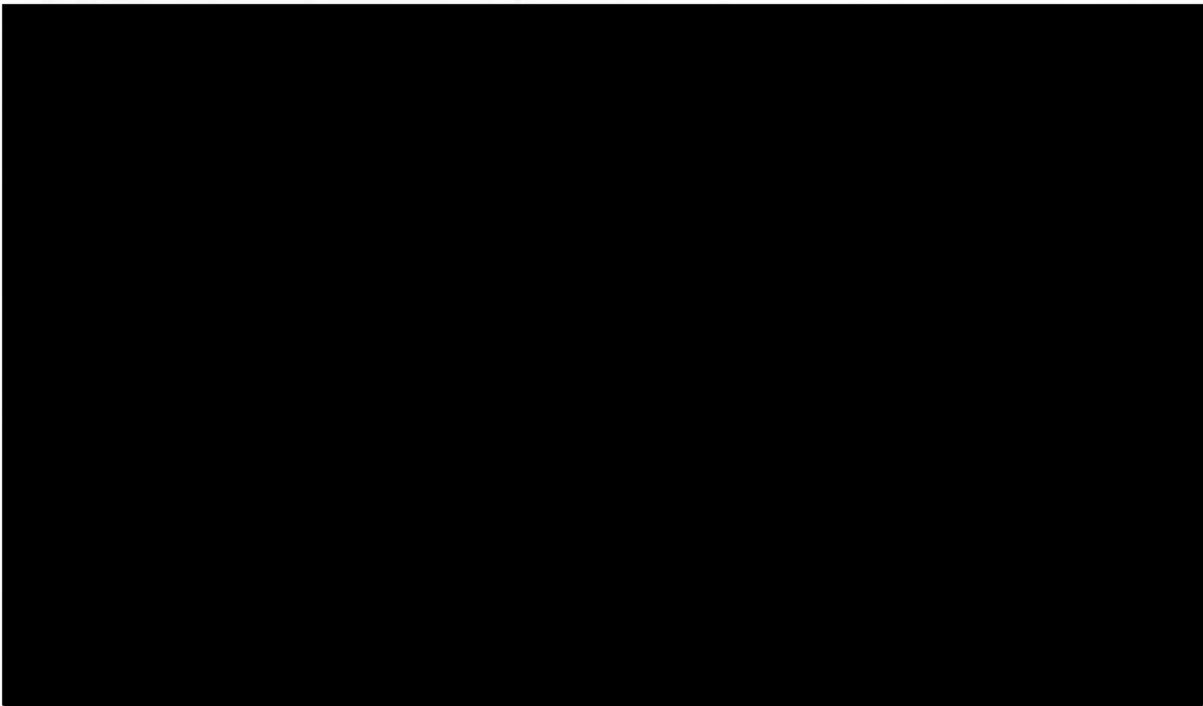
**APPENDIX 1**











Item	Description	Value	Notes
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