



MOORE STEPHENS

E20 Stadium LLP - Roadmap

London Legacy Development Corporation (LLDC)

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1. Introduction

- 1.1 E20 Stadium LLP is a limited liability partnership whose members are LLDC and Newham Legacy Investments Limited (“NLI”), a wholly owned subsidiary of Newham LBC. The purpose of the LLP is to operate the Stadium with the intention of delivering the expected Legacy Benefits while delivering a programme of sport, community, cultural and commercial events, allowing year round community access; directly or through contracts with one or more specialist companies, to maximise the commercial elements of use of the Stadium; and to undertake such other business as may be decided upon by the members.
- 1.2 The operation and management of E20 is placed in the hands of a board currently, comprising 5 voting members (3 from LLDC and 2 from NLI) and the non-voting chief executives of LLDC and Newham LBC, most decisions require the prior approval of the members.

2. Background

- 2.1 This review has been undertaken at the request of LLDC management and Audit Committee. The overall objective of this review was to establish a ‘roadmap’ in relation to E20 LLP setting out actions to be addressed as part of the development of the LLP.

3. Scope and Approach

- 3.1 The scope of the review was to provide advice on the development of;
 - Governance arrangements for E20 Stadium LLP, which included reviewing the organisational structures in place for managing E20 Stadium LLP as separate entity;
 - Financial arrangements and systems to ensure accurate, complete and transparent recording of transactions pertaining to E20 Stadium LLP;
 - Policies and procedures for the activities of E20 Stadium LLP, including the delegation of authority to execute the transactions on behalf of E20 Stadium LLP and decision making process;
 - The proposed approach around recharging LLDC’s partner in E20 Stadium LLP, Newham Legacy Investments Ltd, and provision of member contributions.
 - Contractual arrangements of E20 Stadium LLP with third parties.
- 3.2 The review was undertaken mainly through discussions with key staff identified and documentation review. We did not carry out any testing for this review.
- 3.3 A list of the LLDC and Newham LBC staff consulted during the completion of this review is included at Appendix A.

4. Headline comments

- 4.1 It is clear from this review and the actions set out in the attached table, that some significant issues need to be addressed in the short term to ensure E20LLP is recognised as a stand-alone entity. The more significant include:

- The basis for cross charging resource costs needs to be established and implemented as soon as possible. A monthly routine then needs to be established;
- A financial management framework needs to be established to ensure financial information is available to the Board to enable the Board to establish its responsibilities; The framework should include separate budgets and management accounts which clearly set out the LLP's financial position
- A separate accounting system needs to be set up. This is currently scheduled for September 2014.
- The requirements of the Members Agreement in terms of the production of audited accounts do not align with the actual audit timeline agreed for E20. This needs to be communicated to the Board.
- The resource requirements of E20 LLP, particularly the decision not to recruit dedicated staff needs to be kept under review. A small dedicated team to support the Board and provide management resource for 'outsourced' services in an option which should be reviewed periodically.

5. Recommendations and management action plan

Best Practice/Legal Agreements	Existing Arrangement	Action Plan	Action Plan Coordinator & Target Completion Date
Governance And Organisational Arrangement			
<ul style="list-style-type: none"> Members Agreement between the JV Partners to document terms and conditions on which NLI and LLDC have agreed to participate in E20 Stadium LLP. A Board should be established with their roles and responsibilities approved by the members. The extent of fiduciary duties of board members should also be established. The board shall consist of no more than five board members, two ex officio board members and (if appointed) the independent chairperson at any time. LLDC shall be entitled to nominate up to three board members in each case in accordance with clause (6.4). The registered office of the LLP shall be at Level 10, 1 Stratford Place, Montfichet Road, London E20 1EJ. (2.7.2) Until such time as the LLP has sufficiently qualified staff or has appointed a third party, to undertake its obligations set out in clause 3 of the Members Agreement, LLDC will procure that the LLP complies with such obligations. (3.9) The board members shall meet at least quarterly. Audit committee should be in place 	<ul style="list-style-type: none"> A members agreement dated 22 March 2013 is in place (a further variation to this agreement is in the process of being executed). As per the Members Agreement, overall supervision and management of the business is the responsibility of the board and they have authority to act on behalf of the LLP and the members in all matters in connection with the business and with the intention of achieving the objectives set out in the business plan for the benefit of the members and so as to preserve and enhance the legacy benefits. They cannot however take any action which is within the scope of a reserved matter without the prior written approval of both of the members. Decisions are taken by a majority of the board members entitled to vote or by a written resolution signed by all of them. Although the operation and management of E20 is placed in the hands of a board currently, comprising 5 voting members (3 from LLDC and 2 from NLI) and the non-voting chief executives of LLDC and Newham LBC, most decisions require the prior approval of the members. Decisions are taken by a majority of the board members entitled to vote or by a written resolution signed by all of them. Notwithstanding any fiduciary duties, nominee board members act in accordance with the instructions of LLDC or NLI as the case may be but shall otherwise carry out the board's duties with the intention of achieving the business plan objectives and so as to preserve and enhance the Legacy Benefits. The members agreement contains all the guidelines for all the areas of governance; <ol style="list-style-type: none"> Composition of the board Appointment and removal of the board members. 	<ul style="list-style-type: none"> Formal Service Level Agreements between E20 and LLDC (and contracts with other providers) must be established for all services to be provided. These must clearly describe the scope and the costs attributed to each as requirements regarding transfer pricing may be onerous. A protocol for managing potential conflicts of interest for the LLDC staff needs to be established. Any procurement issues in relation to this need to be considered. We understand that the Board of E20 Stadium LLP intends to set up an Audit Committee and agree to do so on timely basis. Business continuity plan and disaster recovery for management processes for E20 Stadium LLP shall be developed and updated on a regular basis. The list of services prepared by LLDC need to be approved by LLDC's Board. 	

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	<ul style="list-style-type: none"> 3. Board Meetings 4. Quorum for Board Meetings 5. Notices and Agenda 6. Resolutions of the board 7. Disqualification and removal of board members. 8. Matters requiring approval of the members <ul style="list-style-type: none"> • E20 Stadium LLP was registered as company on 6 July 2012 and its registered office is at Level 10, 1 Stratford Place, Montfichet Road, London E20 IEJ. • LLDC has prepared list of services (Brain Storming List) which includes services to be provided to E20 Stadium LLP by LLDC. The list of services was presented LLP Board and was approved on 14th February 2014. • The E20 board has allocated responsibility for servicing meetings of the board, the keeping of minutes and filing documents with the Registrar of Companies, such as the annual return, to Newham LBC • Stadium Executive Group meets weekly to discuss mainly the progress on all stadium active work streams and is not a decision making body. • A project team within Infrastructure Directorate is responsible for managing the E20 Stadium. The project team is responsible for liaising with the stakeholders; i.e. West Ham United, UK Athletics, procuring the operator for the stadium and also dealing with the JV partner i.e. Newham Legacy Investments Limited (and its parent, the London Borough of New Ham). The team consists of Project Sponsor – Stadium, Project Manager and Team Administrator and the Project Sponsor reports to Executive Director Infrastructure. 		

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Delegation of Authority and Policies and Procedures			
<ul style="list-style-type: none"> • Delegation of Authority to approve the transactions on behalf of E20 Stadium LLP. • Policies and procedures to manage the operations of the company to be in place. 	<ul style="list-style-type: none"> • A scheme of delegations was adopted by the LLP board on 19 November 2013. It provides the E20 LLP Board (“the Board”) with a Deed of Variation which gives the LLP a power to sub-delegate and increase its power to spend. This Scheme of Delegations sets out how the LLP subsequently delegates that power to officers of LLDC and NLI. Moreover, LLDC’s delegation of authority is used for pre concession works as agreed in the Members’ Agreement. • The board has adopted a number of draft policies such as procurement code, health and safety, freedom of information, anti-bribery and conflict of interest in February 2014. • Assumption is that E20 will not have any employees for the foreseeable future. LLDC HR policies and procedures will be used in the interim and for any employees until and if the LLP implements its own policies. 	<ul style="list-style-type: none"> • The finance team should develop the accounting policies for the E20 Stadium LLP. • KPMG as accounting and financial adviser to LLDC shall produce statutory financial statements of E20 Stadium LLP on a timely basis and shall determine the basis for consolidating the accounts of E20 Stadium LLP. • Management will be reviewing the existing arrangements on a regular basis. 	
Decision Making Process			
<ul style="list-style-type: none"> • Business Plan for the LLP should be prepared in accordance with clauses 2.1.10 and 2.1.11. • Decision making process should be formulated in order to ensure transparency and avoiding conflict of interest. 	<ul style="list-style-type: none"> • Reserved matters are extensive and are set out in Annex 1 grouped under activity headings to make for easier reference to them. Besides legal, accounting, financial, borrowing and lending matters E20 Stadium LLP requires member approval for changes to its business plan and a significant number of day to day transactions. The Deed of Variation that is currently being executed will amend some of the reserved matters • Reserved Matters (as defined in the Members Agreement) require the approval of both members. The most efficient way of making a decision that is a Reserved Matter is likely to be for the project lead officer preparing a report for the approval of the board containing the proposed resolution and ensure that this report is first considered and the resolution approved by 	<ul style="list-style-type: none"> • Board shall approve the budget for E20 Stadium LLP and the budget shall be monitored on a monthly basis as part of the management accounts. First set of separate management accounts shall be prepared in April 2014 • Infrastructure Directorate need to finalise the business plan and obtain approval from the E20 board. 	

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	<p>the appropriate decision maker for the two members: in the case of LLDC, the investment committee and in the case of NLI, its board. Written consent is required for all the decisions made.</p> <ul style="list-style-type: none"> • Currently budgets for the construction costs of E20 Stadium are included in the management accounts of LLDC and are monitored by the LLDC EMT and Board. There is no separate set of budgets prepared for E20 Stadium LLP. • The business plan developed by PWC has been revised and will be presented to E20 Board on 13th March 2014. Some of the assumptions revised in the business plan are as follows: <ol style="list-style-type: none"> 1. Cash flow 2. Option of retractable seating 3. Procurement of an operator and its cost implications 4. Final specification of stadium 5. 2015 event series 6. Operating costs of E20 Stadium LLP 		
Financial Arrangements			
<ul style="list-style-type: none"> • LLDC must maintain the accounts and records of the LLP until the board decides to appoint its own suitably qualified staff or a third party (3.9). Services provided for accounting and financial management include: <ol style="list-style-type: none"> 1. Systems 2. Services 3. Treasury management 4. Management accounts 5. Statutory accounts • Bank account with Barclays Bank PLC in the name of the LLP to be opened by 	<ul style="list-style-type: none"> • All the expenditure pertaining to E20 Stadium LLP is recorded in the books of account of LLDC without clear distinction. • Most of the contractors cost is captured against the capital budget of the Infrastructure Directorate. • KPMG has been appointed as advisors for the finance and accounting for E20 Stadium LLP, who will develop chart of accounts and provide advice on JV accounting. • Bank account already set-up (Sept 2012) • KPMG appointed in May 2013 as tax advisors to E20 and first meeting held 21st June 2013. VAT registration 	<ul style="list-style-type: none"> • Separate systems and processes for finance and budgeting need to be implemented by September 2014. KPMG now appointed as accounting and financial advisors to advise on all relevant matters to ensure the production of a compliant set of 2013/14 Accounts, including the financial policies, setting up the financial systems and the apportionment of costs from LLDC. Until a separate accounting system has been established for E20 Stadium LLP, all the costs pertaining to E20 Stadium LLP shall be recharged appropriately on a timely basis. • Consider the need for appointing internal auditors for E20 Stadium LLP. 	

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<p>LLDC in accordance with the provisions of (5).</p> <ul style="list-style-type: none"> Appointing external and internal auditors as per (7.2.18). The members shall use all reasonable endeavours to ensure that the accounts of the LLP are audited and approved within 3 months from the end of the period to which they relate. (3.2.2). LLDC shall keep or cause to be kept full and proper records and books of account of any negotiations and payments relating to the matters covered by clause 3.4 and the entries made therein shall be kept up to date at all times and include all such matters and things which are usually entered in books of account kept by persons or companies engaged in concerns for a similar nature. See 3.5.2 The members agree that the tax affairs of the LLP will be operated in a manner which seeks to achieve tax efficiency for both members and which does not provide an advantage to one member but a detriment to the other. (20.4) 	<p>and opt to tax proposal approved by E20 Board and submitted to HMRC.</p> <ul style="list-style-type: none"> Workshop facilitated by KPMG to establish what needs to be in place to evidence E20 Stadium LLP as a separate entity. Consideration underway to determine whether services provided are on the basis of chargeable services or members contribution. Thereafter Service Level agreement will be signed between E20 Stadium LLP and LLDC 	<ul style="list-style-type: none"> Time recording system needs to be implemented to ensure that LLDC charges accurate time spent by its staff on E20 Stadium LLP matters. The cost of services provided to E20 by LLDC must be charged to the accounts of E20 and contractual arrangements should be put in place for this. Costs incurred to date for E20, from 1st April 2013, should be recharged as soon as possible. Costs need to be calculated in accordance with Transfer Pricing requirements, likely to be on a full-cost recovery basis and with a strong evidence base so as to withstand audit scrutiny. Costs incurred on behalf of E20 that are currently in the accounts of LLDC need to be identified, agreed and transferred to the accounts of E20 before March 2014. Assumptions must be clearly documented and supported by a robust audit trail. Failure to demonstrate this may result in qualification of the accounts for both E20 and LLDC. Members should agree to defer the deadline for approving the audited accounts for E20 Stadium LLP to align with the agreed audit timetable. Appropriate records to be kept to allow the calculation of recharges. E20 records need to be kept separate from those of LLDC. The VAT issues arising from recharging need to be addressed in consultation with E20 Stadium LLP. 	

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Contracting Arrangements			
<ul style="list-style-type: none"> • LLDC will use its reasonable endeavours to procure that the Pre Concession Works are complete by, or as soon as reasonably possible after August 2016. (2.4.3) • The pre-concession works agreements which are entered into to redevelop the stadium in accordance with the specification included in schedule 4 of the members agreement. • LLDC will indemnify and keep indemnified NLI, the Council and the LLP against any liabilities which may be incurred as a result of any actual proceedings, disputes or challenges arising from or as a result of: <ol style="list-style-type: none"> 1. The tender competition, conducted by LLDC to appoint one or more concessionaires is being challenged as not being in compliance with applicable law. 2. The tender competition to appoint one or more parties to undertake the pre concession works • Comprehensive insurance cover has to be in place for all the activities of E20. 	<ul style="list-style-type: none"> • Moore Stephens as part of the audit plan for 2012/2013 and 2013/2014 reviewed Park Transformation and concluded that the Infrastructure Directorate is following processes set out in the LLDC Programme Execution Plan and LLDC key corporate processes. LLDC has also appointed MACE as technical managers for stadium transformation, to ensure that deadline for transformation of the stadium is met. • At a meeting of the E20 board on 29 January 2013 the board approved the proposed arrangements for governance relating to the procurement activity as set out in Section 5 of a report entitled "Stadium Operator and Fit-out Options and Procurement Programme". These arrangements emphasised the collaborative approach ensuring Newham LBC is fully integrated into the wider Stadium activity. In all Stadium procurement cases other than the concession agreement procurement process leading to the West Ham agreements there is a joint and consultative approach with all documents agreed and signed off by both partners. This work is undertaken under the auspices of a joint LLDC/Newham LBC officer group which reports to the E20 board. The actual authority of LLDC in carrying out this lead role was confirmed by the E20 board when it adopted a scheme of delegations at its board meeting of 19 November 2013. • Immediate insurance needs are covered as E20 has been added to the Project Policy which is valid until Summer 2016 provides material damage and public liability cover re the transformation works. E20 will need their own operational insurance cover, including Employer's Liability cover, in place ready for handover of the premises and also for any interim uses during the construction phase • All the contracts are signed by both LLDC and NLI (in their capacity of members of the LLP) on behalf of E20 Stadium LLP. 	<ul style="list-style-type: none"> • Clarity is required for contractors as to whether they are providing services to LLDC, E20 or both. Where relevant and provided that procurement law allows this, contracts need to be novated after identifying the two parties involved. The LLP should ensure that it procures any contractors, suppliers and service providers in accordance with the applicable procurement regime. • Decisions about the governance arrangements for procurement were made by the E20 board on 29 January 2013. The board should confirm the extent of LLDC's lead role in the management of pre-concession works contracts. • Infrastructure Directorate along with the Legal and Procurement Department shall expedite the process of appointing the operator for the stadium. • LLDC should develop the systems for insurance process for E20. The insurance process would include; <ol style="list-style-type: none"> 1. Procurement of brokerage services and insurance 2. Advice re insurance programme 3. Liaison with broker/insurers 4. Claims handling 	

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	<ul style="list-style-type: none"> • There is a separate contract register for E20 Stadium LLP. • The construction risk of transforming the stadium is with LLDC. • The LLP has entered into an Access Agreement with UK athletics (50 years agreement on reimbursing operational costs) and a concession agreement West Ham United (Annual usage fees and splitting other income) for using the stadium. • In the process of appointing third party operator for the stadium. • The lease agreement dated 22 March 2013 and lease itself signed on 20 December 2013 between LLDC and E20 Stadium LLP, has been entered for 102 years i.e. 99 years from 2016 for main stadium and community running track. 		

A Staff consulted during review

Name	Job title
Greg Smith	Project Sponsor – Stadium
[REDACTED]	Principal Commercial Lawyer
Trevor Waggett	Director of Finance
[REDACTED]	Financial Controller
Colin Naish	Executive Director of Infrastructure
Jonathan Dutton	Executive Director of Finance and Corporate Services
David Edmonds	Board Member of LLDC and E20 Stadium LLP
[REDACTED]	Councillor Newham London Borough Council

We would like to thank these staff for their assistance provided during the completion of this review.