

London Legacy Development Corporation (LLDC) - London Olympic Stadium (Stadium) Update to the European Commission (EC) on LLDC's Stadium Concession(s) award process

A. Introduction

1. The purpose of this supplementary paper is to update the European Commission on developments regarding the above following the submission of a Non-Paper on 16 October 2012.
2. Following the submission of the Non-Paper, the London Legacy Development Corporation (**LLDC**) proceeded with the detailed evaluation of the four bids received. LLDC announced the ranking of the Bidders in early December¹ and commenced negotiations with the first ranked Bidder (West Ham United Football Club (**WHU**), in accordance with the rules of the ITT.
3. LLDC has made good progress in its negotiations with WHU and has extracted additional commercial value from WHU as the anchor Stadium concessionaire. Following the conclusion of the negotiations with WHU, LLDC and WHU worked to finalise legal documents and on 22 March 2013 announced a formal agreement with WHU (see press release attached as **Annex 1**).
4. In parallel LLDC has agreed with UK Athletics (**UKA**) the availability of the Stadium each summer between the 3rd Friday in June and the 31st of July for athletics activities each year for []years (extendable by []years) including access to the community track.
5. The Stadium and its transformation will be managed by the Legacy Corporation and Newham Council using a dedicated joint venture, E20 Stadium LLP (**E20 Stadium**), which will help secure extensive community benefits including jobs, sport and training as well as education activities, with community access to both the Stadium and the new 400m community track.
6. The deals with WHU and UKA confirm LLDC's commitment to maximising the use of the Stadium. This is further confirmed by LLDC's success in delivering one-off athletics and music events at the Stadium for the summer of 2013 and in 2017 (including the World Athletics Championships and International Paralympics Championship in 2017), with further discussions in the pipeline (see **Annex 2** for details).
7. E20 Stadium is preparing, with the assistance of LLDC, the launch of an EU/EEA/GPA – wide competitive procurement process to select a Stadium operator to manage the venue, the various Stadium concession agreements, coordinate community and sporting use and bring to the Stadium various concerts and events.
8. This paper updates the EC on these developments and articulates the view of the UK Authorities that the proposed arrangements for the use of the Stadium do not involve any State aid to any relevant parties; the arrangements in fact offer the best possible commercial arrangement for LLDC (and the UK public) in light of the decision to maintain the Stadium as an iconic multifunctional facility in the Queen Elizabeth Olympic Park.

B. Bids submitted

9. LLDC carried out the evaluation of the four bids received on the basis of the award criteria and the process set out in the ITT with the continuous support of their expert legal and

¹ LLDC's Board meeting of 5th December 2013.

financial advisers. The award criteria were: Financial, Deliverability, Usage and Legal mark-up (i.e. the Bidders' proposed changes required to LLDC's contractual documentation). The Financial criteria accounted for 50% of the total marks available and included three main categories of risk: the financial standing of the Bidder, the robustness of its business plans and the risk of mispricing of the usage fee and rent (for more information see paragraphs 22-30 below).

Bid 1 – The University College of Football and Business (UCFB)

10. The bid from The University College of Football and Business (UCFB) involved establishing a new private academic facility offering football/sport and business combined degrees. Its requirements for space at the Stadium related to office, media and hospitality facilities, rather than use of the pitch.
11. The bid produced an annual incremental operating surplus before lifecycle costs (i.e. total income less operating costs) of £[]million in year []and £[]m from year [] onwards.
12. UCFB has now withdrawn its bid for a concession at the Stadium as the construction and operational timing does not fit with its aspirations for a London campus.

Bid 2 – West Ham United Football Club (WHU)

13. West Ham United Football Club (WHU) is an English Premier League football club. Its bid requires the use of the entire Stadium site, incorporating the pitch as well as year round use of certain other space to provide accommodation for the following: offices, retail outlets, warehouse facilities, ticketing office space, a board room, changing rooms, press facilities, medical facilities, a reception area and a players' lounge. WHU has bid for a 99 year concession with all of its home fixtures to be played at the Stadium.
14. WHU's initially proposed usage fee was £[]m per annum when in the Premier League, but reducing to £[]m per annum when in any lower division. This original bid was analysed as producing an annual operating surplus. Subsequent negotiations with WHU have improved the commercial terms significantly, in particular with an increase in their annual usage fee to £[] million in the Premier League and £[] million when in any lower division. In addition, WHU has now agreed to pay an additional one-off usage fee payment which is to be applied to the provision of retractable/relocatable seating. LLDC has also achieved a far better arrangement regarding the Stadium's Naming rights and agreed a "public sector claw back" right in case WHU was sold within the next []years. Please see **Annex 3** for a list of the further significant commercial benefits LLDC has extracted from WHU.
15. Within its bid, WHU specified the maximum distance that it requires from the pitch to the first row of the spectator seating area, implying the need for approximately 18,000 seats² around the perimeter of the pitch (covering the area of the athletics track), to enable spectators to be closer to the field of play, and has also requested a roof covering the entire seating area.³
16. LLDC considered two options to meet this additional seating and roofing requirement (for both football Bidders), which would enable the Stadium to host football and other winter Sports:
 - (a) Temporary demountable⁴ seating: this would need to be installed prior to the start of the football season in August each year and removed at the end of the season the following May or June. Demountable seating is the most economic solution in terms

² These seats to be provided will require the removal of seats from the existing lower bowl of the Stadium.

³ This is also a requirement of the relevant licensing authorities.

⁴ Please note that these were referred to as "retractable seats" in paragraph 11 of the Non-Paper.

of upfront capital costs; but it requires significant labour and time (costs⁵) to install and remove; most importantly however, the whole process of installation would take 4-6 weeks, and another 4-6 weeks to remove, meaning that there will be a period of 8-12 weeks when the Stadium could not be used to stage other activities, sports or events. This therefore would not meet the aspirations of the ITT or LLDC and the Mayor of London for a multifunctional Stadium.

(b) (Fully) Retractable seating: This seating solution involves the move-in and out of the seating (as compartments and not individual seats) and improves the turnaround time required. This solution enhances significantly the flexibility of the Stadium saving time to be potentially used to host additional activities and events, especially during the busy summer period; its annual operating (turnaround) costs are approximately £50,000, significantly below the £560,000 annually required to install/remove the demountable seats. However, the capital cost of fully retractable seating is significantly higher than for temporary demountable seating and will bring the total cost of the Stadium transformation to circa £190 million.

17. WHU has offered a one-off usage fee payment of £[]m to assist LLDC with the capital expenditure requirements for the seating solution.
18. As none of the Bidders asked for fully retractable seats to be installed the extra cost of the fully retractable seating was not taken into account in the financial evaluation of the various bids. It is LLDC's own choice to use retractable seating to enhance the multifunctional nature of the Stadium and maximise its use potential (as it will be available for at least a month extra per year by use of such seating).

Bid 3 – Intelligent Transport Services Limited (ITS)

19. Bidder 3 was a consortium of two parties, but led by Intelligent Transport Services Limited. ITS's proposal involves developing a temporary Formula 1 track around the Olympic Park and includes a temporary track overlay within the Stadium itself to allow the race circuit to pass through the Stadium. ITS bid for a []year Concession with a usage fee of £[] million in year 1, rising to £[] million in year []. A three-week period would be required to allow for the set up and removal of all race equipment, although it has indicated that this period could be reduced to eight (8) days.

Bid 4 - Leyton Orient Football Club Limited (LOFC)

20. Bidder 4 was Leyton Orient Football Club Limited (LOFC), a privately owned club that currently plays in Football League One, the third tier of English professional football. Its proposal was to use the Stadium as its home ground for all fixtures. In addition to the pitch and facilities required for match days, LOFC required around 600sqm of permanent office and retail space.
21. LOFC bid for a 99 year Concession and lease, offering an implied⁶ usage fee and rent of £[] million in year 1 (in 2012 prices) and £[] million in year []. As with WHU, it requested that LLDC fund the capital expenditure to provide additional seats around the perimeter of the pitch and a roof covering⁷ the entire seating area.

C. Evaluation and Ranking of Bids - LLDC's decision on ranking (05.12.2012)

⁵ The annual operating costs associated with this are estimated at £560,000.

⁶ This is because the usage fee consists of a fixed sum, linked to inflation, plus a variable amount linked to []% of its net profit before interest and tax.

⁷ The roof covering the seating is a licensing requirement for football stadia.

22. The evaluation criteria that LLDC used for the assessment of bids were set out in the ITT and were as follows:

Table 1: Award criteria

Award Criteria	Weighting	Description/Purpose
Financial	50%	The Stadium being commercially viable on a sustainable basis, that protects the long term asset value, assessed by reference to the payments committed by each bidder
Deliverability	15%	The solution allows the Stadium to re-open from 2014 in a manner consistent with the re-opening of the Olympic Park and integrated with the long term vision and development strategy for the Olympic Park. This includes not only integration with the operational arrangements for wider Park activities but also with the over-arching socio-economic regeneration objective
Usage	25%	Usage of the Stadium for a vibrant programme of commercial, sporting and cultural events, allowing year round community access. The breadth and quality of events is important in contributing to the wider appeal of the Olympic Park
Legal mark-up	10%	The nature and extent of changes proposed by a bidder to the contractual documentation in the ITT

23. The award criteria (especially Usage and Deliverability) and their weightings reflect LLDC's commitment to:
- (a) the Stadium being a multifunctional facility catering for more than one single use. This is still the position of LLDC and Annex 2 provides a list of activities that LLDC has, or is about to, put in place for the Stadium, which unequivocally confirms that commitment; and
 - (b) extract a commercially viable deal for the Stadium, in the same way that any private market operator would have done in these circumstances (Annex 3 confirms that).
24. The financial aspects of all the bids were evaluated with the support of LLDC's financial advisers, PwC, taking account of the level of risk associated with each bid.
25. PwC's analysis included an assessment of three main categories of risk: the financial standing of the Bidder, the robustness of its business plans and the risk of mispricing of the usage fee and rent. In other words, it was precisely the kind of analysis which any private market facility owner/operator could be expected to undertake, looking not just at the amount of money on offer from each bidder, but scrutinising the business plans of each bidder to assess the robustness of the bids and the ability of each Bidder to perform their contractual obligations over an extended period.
26. The following table shows the criteria, their weightings and the scoring results of each Bidder and its overall ranking:

Table 2: Evaluation results – Ranking of Bidders

Award Criteria	Weighting (%)	UCFB (%)	WHU (%)	ITS (%)	LOFC (%)
Financial	50	[]	[]	[]	[]
Deliverability	15	[]	[]	[]	[]
Usage	25	[]	[]	[]	[]
Legal mark-up	10	[]	[]	[]	[]
Total score		[]	[]	[]	[]
Ranking		2	1	3	4

27. The LLDC Board approved the rankings of the four Bidders as above on 5 December 2012 and instructed the Stadium team to commence negotiations with WHU (as the first ranked Bidder) in accordance with the ITT rules. The LLDC Board's instruction required the Stadium team to ensure suitable commercial provisions were in place in order to protect the interests of the taxpayer⁸ in the event of any sale of WHU by the current shareholders, as well as ensuring suitable commercial terms were reached to achieve value for money.
28. All Bidders received written confirmation of the evaluation results and received debriefings on their scores and their position in the course of meetings with LLDC and its legal advisers Allen & Overy. Bidders did not raise issues with their scores during the debriefing meetings or afterwards.
29. The LLDC Board also stated (on 5 December) that if full agreement could be reached with WHU and plans were finalised, it would then explore the possibility of teaming WHU with UCFB, the second ranked bidder, so that UCFB could be accommodated in the Stadium alongside WHU. As noted above, UCFB has subsequently withdrawn its Tender submission.
30. In the course of the evaluation stage and during the negotiations with WHU, LLDC instructed PwC to produce various separate financial analysis to assist the evaluation and commercial decision making processes. One of those pieces of analysis was an assessment, in line with HMT's Green Book requirements, of the financial implications of a multifunctional facility or "Do the Minimum" option. This can be viewed as the counterfactual to awarding a concession. It would entail leaving the Stadium as an 80,000 capacity multifunctional venue as it was during the 2012 Games. There would be no extension to the roof, no turnstiles, and no internal concessionaire accommodation (as no concessionaire would be appointed). This would mean the Stadium would not meet the requirements of football club Bidders and furthermore would likely be in breach of the LLDC obligations to IAAF and IPC for hosting the 2017 World Athletics Championships (which were awarded to London in 2011. Furthermore, the hospitality areas of the Stadium would need to be upgraded to enable the provision of premium facilities for events such as

⁸ LLDC Chairman Boris Johnson, Mayor of London said on the day: "My position on the future of the [S]tadium remains what it has always been: that we can secure a terrific future for this much loved and iconic venue with or without a football team playing there. I hope the detailed negotiations with West Ham can succeed, but I am determined that any deal should protect the interests of taxpayers who have paid for the [S]tadium and would have to pay more for adaptations to make it suitable for football."

concerts and conference and banqueting facilities on days when no events are being staged. On the basis that the hospitality areas are upgraded, PwC's analysis indicates that this option would produce an annual net operating deficit of around £[]m and a net present cost over []years of £[]m (including the cost of a temporary roof in order to satisfy the technical requirements of IAAF and IPC in relation to the 2017 World Athletics Championships). In terms of the non-monetary assessment, it scores only 520 points out of 1,000.

D. Conclusions

31. The information provided in this paper further confirms that the LLDC has followed an open, transparent, fair, non-discriminatory and competitive bidding process for the award of the Stadium main concession. In doing so and in selecting the highest ranked Bidder, the LLDC has been further acting in accordance with the EC's specific guidelines and principles relating to the disposal (sale, privatisation, etc) of public assets.
32. LLDC has also negotiated hard with WHU to obtain an improved commercial offer from them compared to the offer in their tender. In doing so, LLDC has been further acting⁹ in the same way that a private market operator would have acted¹⁰ in these circumstances considering its medium to long term commercial interests.
33. The funding of fully retractable seating and the full spectator roof coverage is provided because it is the best way of preserving the character of the Stadium as an open and flexible multifunctional facility used all year round for events and activities, that is not exclusive to any specific category of sports but is open and available for other activities and uses on market terms, for example concerts, conferences and one-off sporting events. In addition it allows E20 Stadium and its partners securing additional revenues from the use of the Stadium.
34. E20 Stadium with the assistance of LLDC is about to launch an EU/EEA/GPA – wide competitive procurement process to select a Stadium operator to manage the venue, coordinate community and sporting use, and bring in the Stadium various concerts and events. Any Operator so appointed will be required to ensure that the Stadium is run as a multifunctional venue, available for different activities and users in the future. We could update the EC on that process in due course to provide assurances that the operator is not receiving state aid.
35. In light of the above, the UK Authorities continue to be of the view that the proposed LLDC arrangements for the Stadium involve no State aid.

⁹ It is sufficient if the actions of the public authority are consistent with "*the conduct of a private holding company or a private group of undertakings pursuing a structural policy — whether general or sectoral — and guided by prospects of profitability in the longer term*": Case C-305/89 *Italy v. Commission (Alfa Romeo No. 1)* [1991] ECR I-1433, para 20.

¹⁰ As noted in paragraph 28 above, there are cost implications in not awarding a Concession: applying Her Majesty's Treasury's Green Book appraisal criteria, the multifunctional or "Do the Minimum" counterfactual would result in an annual operating deficit; it also scores lower in terms of the non-monetary assessment than either of the options involving demountable or fully retractable seats.

ANNEX 1

Press release of 22 March 2013



News release

For immediate release: Friday 22 March 2013

Olympic Stadium's future secured in historic deal between Mayor's Legacy Corporation, Newham Council and West Ham United Football Club

- Deal with Premier League West Ham United FC secures year round use of iconic venue
- West Ham United FC to play first matches at 54,000 capacity venue in 2016-17 season
- Legacy Corporation and Newham Council Stadium investment secures local community benefits
- New images of transformed Stadium released

The Mayor of London, Boris Johnson, and Newham Mayor, Sir Robin Wales, today announced that the long-term future of the iconic stadium on Queen Elizabeth Olympic Park is secure, with a deal with West Ham United Football Club that confirms the Premier League club as the Stadium's long-term anchor tenant.

West Ham United's 99 year concession commences in 2016 and secures a year round programme of sports and events in the venue. The Stadium hosted the Opening and Closing Ceremonies and some of the finest moments of the 2012 Olympic and Paralympic Games, and will now play host to the world's most watched football games.

West Ham United Football Club will move into the Stadium in summer 2016, after it is transformed into a UEFA Category 4 venue with 54,000 seats. Transformation works will include a new roof, corporate areas, toilets, concessions and retractable seating. In addition to the funds to be provided by the Legacy Corporation for the adaptation works, West Ham will contribute £15 million, Newham Council will invest £40 million and the Government has agreed to provide additional support of up to £25 million should it be required once the tenders are returned.

The deal will generate hundreds of new jobs, encourage many thousands of visitors to the local area and act as a catalyst for further economic investment and growth in the area. The proposed sale of Upton Park also provides further regeneration opportunities.

Boris Johnson, Mayor of London and Chair of the London Legacy Development Corporation, said:

“This is a truly momentous milestone for London’s spectacular Olympic Stadium ensuring its credible and sustainable future. Through this deal with West Ham United FC, we are defying the gloomsters who predicted this landmark would become a dusty relic.

“With a series of world class entertainment and sporting fixtures already in the bag for Queen Elizabeth Olympic Park, this iconic site is set to be the glittering centrepiece of ambitious regeneration plans for east London, which will capitalise on the Olympic investment into this area for the long term benefit of this city.”

Karren Brady, Vice Chairman of West Ham United Football Club, said:

“I’m delighted that we have been confirmed today as the anchor concessionaire for the Olympic Stadium. I commend my two Chairmen for their passion and commitment. I am delighted this has been rewarded now that their ambition to see the Club they love enjoy a bright future at the iconic Olympic Stadium has been realised.

“It was important to me that we struck a deal that would stand the test of time that represented the right deal for West Ham United and our loyal and patient supporters.

“The consultation we have promised them will now begin and we can’t wait to work with them to create a stunning new home that befits the pride, passion and tradition that the world associates with West Ham United.”

Sir Robin Wales, Mayor of Newham, said:

“Newham has been committed from the start to ensuring a lasting legacy for the Olympic Stadium that will benefit Newham residents, London and the nation as a whole.

“Our investment of £40 million secures that legacy by transforming the Olympic Stadium into a world class attraction and the beating heart of Queen Elizabeth Olympic Park. This will provide us with a share of the profits generated over the long-term and a range of community benefits for Newham residents.

“It will enable us to support residents into jobs in such an inspirational place, provide tickets to the Stadium as a reward for those who put something back into our community, and fire the ambition of Newham children as they cross the same finishing line as their sporting heroes.

“We’re delighted that West Ham United has been chosen by the London Legacy Development Corporation to become the main occupant of the Stadium. It is a community club which shares our vision for Newham and the local area.

“We will now work with our partners to transform and develop the stadium and island site into one of London’s premier destination venues and a home for sport and entertainment for generations to come.”

Dennis Hone, Chief Executive of the London Legacy Development Corporation, said:

“West Ham has a long and proud history in the East End so it’s fitting that its new home will be at the heart of Queen Elizabeth Olympic Park. The club also has great experience working with local communities and we are delighted that they will now be partnering with us and Newham Council to bring further sporting, health and education benefits to local people.”

“The Stadium is one of the final pieces in the legacy jigsaw on the Park and with its future now secured, we can be confident of a bright future for generations to come. We are on track to deliver a fantastic new destination and a great legacy for east London.”

To mark one year on from the Games and celebrate the success of London 2012, in July this year the Stadium will host several major events. These will include the London Anniversary Games – a weekend of athletics including the IAAF Diamond League and a showcase of 2012 Paralympic champions, as well as a major music concert.

Following the full opening of the venue in 2016, the Stadium will also become the new national centre for athletics. UK Athletics has been given priority use of the venue from the third weekend in June to the end of July every year, under a 50 year agreement, while the Stadium will host the IAAF World Athletics Championships and IPC Athletics World Championships.

Ed Warner, Chairman of UK Athletics, said:

"We're pleased that the Stadium process has reached this next important milestone and remain excited that athletics will be a central part of a vibrant year-round solution to this iconic venue. In the meantime Londoners and the wider British public can look forward in July to three days of world class international athletics in the Olympic Stadium at the London Anniversary Games."

Lord Sebastian Coe said:

My congratulations to West Ham and the teams at the Mayor’s office and the Legacy Corporation for finalising this deal. Having a well thought out future for the centre piece venue in Queen Elizabeth Park is an exceptional result and I hope the great athletic performances that took place in the Stadium over the summer of 2012 will echo and inspire future teams, future sports and future spectators.

-Ends-

Notes for editors

Stadium

West Ham United and UK Athletics will both have a long term presence for the Olympic Stadium.

The Stadium and its transformation will be managed by the Legacy Corporation and Newham Council using a dedicated joint venture E20 Stadium LLP. The partnership, announced in July 2012, will help secure extensive community benefits including jobs and

sport and education activity, with community access to both the stadium and the new 400m community track.

The E20 Stadium Partnership will now procure a stadium operator to manage the venue, coordinate community and sporting use, and to bring in various concerts and events.

West Ham United was named as first ranked bidder on 5 December, 2012 following a robust bidding process in which four bids were submitted: West Ham United Football Club, University College of Football and Business, Leyton Orient Football Club and Intelligent Transport Solutions who brought forward a proposition to hold a Formula One race around Queen Elizabeth Olympic Park.

Community benefits

The stadium deal and Newham's investment secures one hundred years of community benefits for Newham residents including:

- A minimum 35% equity share in the Olympic Stadium and island site
- Year round access to the 400m community track
- Ten exclusive mass participation events in the Stadium per year for Newham residents
- Millions of tickets to West Ham United matches held in the stadium from 2016
- Additional tickets to sports and other entertainment events held in the Stadium
- A training and education centre in the Stadium
- A majority of new jobs created on the site will be filled by Newham residents

Rugby World Cup

The Legacy Corporation is looking to accommodate matches from the 2015 Rugby World Cup (RWC) during the transformation work. This will depend on whether the stadium is selected as a RWC venue.

Queen Elizabeth Olympic Park

Queen Elizabeth Olympic Park will begin to open to the public from 27 July, it will open in phases – starting with the north park – and will be fully open by spring 2014. Further information is available at: www.noordinarypark.co.uk where people can also sign up to receive regular updates about the Park.

For further information contact the Press Office at the London Legacy Development Corporation on +44 (0) 20 3288 1777, +44 (0) 7817 386 499 or email: pressoffice@londonlegacy.co.uk

ANNEX 2

Sport and Events Activities already booked/planned for the Stadium

Summer 2013 to mark one year from the Games:

- Two (2) Athletics Diamond League meetings
- One (1) Disability Athletics meeting
- One to three concerts
- The LLDC is currently procuring a three – lot Framework agreement for the provision of cultural and other Events in the Park and the Stadium which will be in place by the end of 2013.

2014

- Major construction (transformation) works will be taking place at the Stadium

2015

- Potentially three or four (3-)4 matches from the 2015 Rugby World Cup

2016

Assuming a May 2016 opening, then typically on an annual basis:

- 20-25 Games of football.
- Five (5) weeks of athletics (including junior and schools events, national championships, and an annual Diamond League meeting).
- One or two (1 -2) mass participation races.
- Three (3) concerts
- One or two (1 -2) major events (e.g. a big rugby game or Championship boxing match)
- 10 Community Days

2017

- The 2017 IAAF World Athletics Championship
- The IPC World Athletics Championships.

The community running track will, following transformation, also host numerous local athletics events.

ANNEX 3**Additional Commercial Advantages extracted from WHU post 5 December 2012****(Strictly commercially sensitive information not to be disclosed)**

Commercial item	Original position July 2012	Revised position
Usage Fee	[]	[]
Capital contribution (one off usage fee)	[]	[]
Stadium premium amount arrangement (value claw back for public sector)	[]	[]
Additional payments	[]	[]
Revenue sharing	[]	[]
Stadium Naming Rights	[]	[]
Catering revenue	[]	[]
Number of Matches	[]	[]