

DATED 9 April 2020

(1) LONDON LEGACY DEVELOPMENT CORPORATION

(2) PEABODY DEVELOPMENTS LIMITED

(3) PEABODY TRUST

**SECTION 106A AGREEMENT
DEED OF VARIATION**
pursuant to section 106 and section 106A of
the Town and Country Planning Act 1990
and other powers
relating to Neptune Wharf, Fish Island



Pinsent Masons

THIS DEED is made on

9 April

2020

BY:-

- (1) **LONDON LEGACY DEVELOPMENT CORPORATION** of Level 10, 1 Stratford Place, Montfichet Road, London, E20 1EJ (the "**LPA**"); and
- (2) **PEABODY DEVELOPMENTS LIMITED** (registered society number 26804R) of 45 Westminster Bridge Road, London SE1 7JB (the "**Developer**"); and
- (3) **PEABODY TRUST** (registered society number 7741) of 45 Westminster Bridge Road, London SE1 7JB (the "**Mortgagee**").

WHEREAS:-

- (A) The LPA exercises the functions of the local planning authority for the Site pursuant to The London Legacy Development (Planning Functions) Order 2012 and is the local planning authority by whom the obligations contained in this Agreement are enforceable.
- (B) The Developer is the owner of a freehold interest in part of the Site registered at the Land Registry with Title Number AGL312066.
- (C) The Mortgagee is the registered proprietor of the charge dated 6 April 2017 referred to in entry number 18 of the charges register of Title Number AGL312066 and has agreed to enter into this Deed to give its consent to the amended terms of the Agreement.
- (D) On 27 March 2014 the LPA granted Planning Permission for the Development. The Planning Permission was amended the S73 Planning Permission on 25 November 2016.
- (E) This Deed is supplemental to an agreement dated 27 March 2014 made pursuant to section 106 of the 1990 Act and other relevant powers between (1) the LPA (2) the London Borough of Tower Hamlets (the "**Council**") and (3) the Neptune Wharf Ltd as varied by a deed of variation dated 25 November 2016 made pursuant to section 106A of the 1990 Act between (1) the LPA and (2) Peabody Enterprises Ltd (the "**Original Agreement**").
- (F) The Developer submitted an application for reserved matters approval relating to phase 3 of the Development on 24 January 2019 pursuant to the Planning Permission as amended by the S73 Planning Permission.
- (G) This Deed varies and is supplemental to the Original Agreement.
- (H) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in it pursuant to the provisions of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the 2011 Act and all other enabling powers.
- (I) The parties agree that the obligations contained in this Deed meet the three tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
- (J) The LPA acknowledges that the Footbridge Contribution payable pursuant to paragraph 2.2.1 of Schedule 5 of the Original Agreement has been received.

INTERPRETATION

In this Deed:-

- 1.1 **"the Original Agreement"** means the s106 agreement dated 27 March 2014 between the LPA, the Council and Neptune Wharf Ltd as amended by deed of variation dated 25 November 2016 between the LPA and Peabody Enterprises Ltd; and
- "the Reserved Matters Approval"** means approval granted by the LPA pursuant to the application for reserved matters submitted to the LPA and validated on 25 January 2019 and given reference 19/00030/REM.
- 1.2 terms and expressions defined in the Original Agreement shall have the same meaning in this Deed unless otherwise provided;
- 1.3 any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply;
- 1.4 headings in this Deed are for convenience only and shall not be taken into account in its construction and interpretation;
- 1.5 references to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Deed save where the context provides otherwise;
- 1.6 where the context so requires:-
- 1.6.1 the singular includes the plural and vice versa;
- 1.6.2 the masculine includes the feminine and vice-versa; and
- 1.6.3 persons includes bodies corporate associations and partnerships and vice versa;
- 1.7 where a party comprises more than one person the obligations and liabilities of that party shall be joint and several obligations and liabilities of those persons;
- 1.8 where more than one party enters into any obligation or liability those parties are jointly and severally liable;
- 1.9 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction;
- 1.10 references to any party shall include their respective successors in title and assigns.

2. LEGAL EFFECT

This Deed is made pursuant to the provisions of Section 106 and Section 106A of the 1990 Act, Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000, Section 1 of the 2011 Act and all other enabling powers.

3. PLANNING OBLIGATION INCORPORATING THE ORIGINAL AGREEMENT

- 3.1 This Deed shall take effect on the date hereof.
- 3.2 The parties agree to observe and perform all of the covenants agreements restrictions and obligations contained in the Original Agreement subject to this Deed.
- 3.3 The parties agree that the covenants and obligations contained in the Original Agreement are to continue in full force and effect except as expressly varied by this Deed.

4. **MODIFICATIONS**

- 4.1 The parties agree that the Original Agreement shall be varied in accordance with Part 1 of Schedule 1 of this Deed from the date of this Deed.
- 4.2 The parties agree that the Original Agreement shall be varied in accordance with Part 2 of Schedule 1 of this Deed from the date the Reserved Matters Approval is granted.
- 4.3 Except as expressly varied by this Deed the Original Agreement shall remain in full force and effect.

5. **LEGAL FEES**

The Developer agrees that they will on completion of this Deed pay the LPA's legal costs reasonably and properly incurred in the negotiation and completion of this Deed (inclusive of any such reasonable costs properly incurred by external lawyers appointed by the LPA in relation to the negotiation and completion of this Deed).

6. **MORTGAGEE'S CONSENT**

- 6.1 The Mortgagee acknowledges and declares that:
- 6.1.1 this Deed has been entered into by the Developer with its consent;
 - 6.1.2 the Site shall be bound by the obligations contained in this Deed and the Original Agreement;
 - 6.1.3 the security of the Mortgagee over the Site shall take effect subject to this Deed and the Original Agreement.
- 6.2 The Mortgagee and any subsequent mortgagee shall be liable only for any breach of the provisions of this Deed during such period as he is mortgagee in possession of the Site.

7. **THIRD PARTY RIGHTS**

This Deed gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act and it may be enforced by the successors in title of the parties and by any successor to the LPA's statutory functions.

8. **NO WAIVER**

No alteration in the terms of this Deed nor any forbearance or forgiveness on the part of the LPA in or in the extent or nature of any matter or thing concerning this Deed shall in any way release the Developer from any liability under this Deed.

9. **NO FETTER**

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the LPA in the exercise of its functions in any capacity.

10. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England.

11. **DELIVERY**

The provisions of this Deed shall be of no effect until this Deed has been dated.

SCHEDULE 1

PART 1

1. VARIATIONS TO SCHEDULE 5 OF THE ORIGINAL AGREEMENT

1.1 Paragraph 2.2 of Schedule 5 of the Original Agreement shall be deleted and replaced by the following:

- | | |
|-------|--|
| 2.2 | No more than 352 Residential Units shall be Occupied until the Developer has: |
| 2.2.1 | paid the Footbridge Contribution to the LPA; and |
| 2.2.2 | granted to the LPA or its nominee such property rights and easements as shall be necessary to carry out and retain the Footbridge Enhancement Works on the Developer's land. |

PART 2

2. VARIATIONS TO SCHEDULE 10 OF THE ORIGINAL AGREEMENT

2.1 The following definition shall be inserted at Schedule 10 of the Original Agreement:

"Block O Studios"	means the 109 square metres (GIA) of floorspace within use class B1 to be provided within Block O;
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2.2 The following shall be inserted after paragraph 2.3 of Schedule 10 of the Original Agreement:

- | | |
|-----|---|
| 2.4 | A minimum total floorspace of 40 square metres (GIA) within the Block O Studios shall be provided as Affordable Workspace for a period of 10 years from the date of the first letting within the Block O Studios. |
| 2.5 | From the date of first Occupation of the Block O Studios the Developer shall submit annual reports to the LPA evidencing its compliance with its obligations in 2.4 above including details of the financial terms of any lease arrangements entered into and how the relevant rental levels were determined, such reports to be submitted until the expiry of the 10 year period referred to in paragraph 2.4 above. |

3. VARIATIONS TO SCHEDULE 11 OF THE ORIGINAL AGREEMENT

3.1 The following definition shall be inserted at Schedule 11 of the Original Agreement:

"Carbon Off-Setting Contribution"	means the sum of £115,020 to be used by the LPA for the purposes of the 'Legacy Corporation Carbon Off-Setting Fund' towards identified offset solutions;
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3.2 The following shall be inserted after paragraph 3 of Schedule 11 of the Original Agreement:

- | | |
|-----------|---|
| 3. | CARBON OFF-SETTING CONTRIBUTION |
| 3.1 | Prior to Commencement of Block O, Block P or Block Q, whichever is the earlier, the Developer shall pay to the LPA the Carbon Off-Setting Contribution. |
| 3.2 | Block O, Block P and Block Q shall not be Commenced unless and until the Developer has complied with its obligation in paragraph 3.1 above. |

4. REPLACEMENT OF PLANS ANNEXED TO THE ORIGINAL AGREEMENT

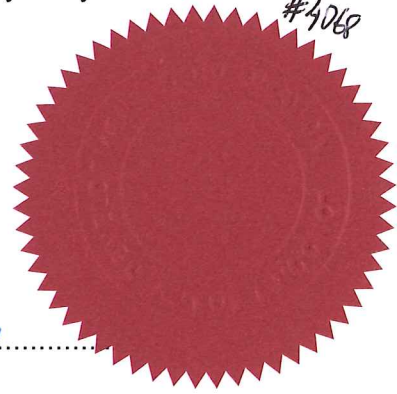
4.1 Plan 5 annexed to the Original Agreement shall be replaced by the plan attached hereto at Appendix 1.

IN WITNESS whereof the parties hereto have executed this Deed as a deed the day and year first before written.

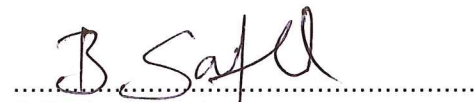
#4068

EXECUTED as a Deed (but not delivered)
until dated) by affixing the common seal of)
LONDON LEGACY DEVELOPMENT)
CORPORATION)
in the presence of:-


.....
Authorised signatory



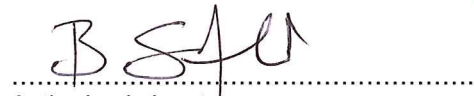
EXECUTED as a Deed)
(but not delivered until dated) by affixing the)
common seal of)
PEABODY DEVELOPMENTS LIMITED)
In the presence:-)



.....
Authorised signatory


.....
Authorised signatory



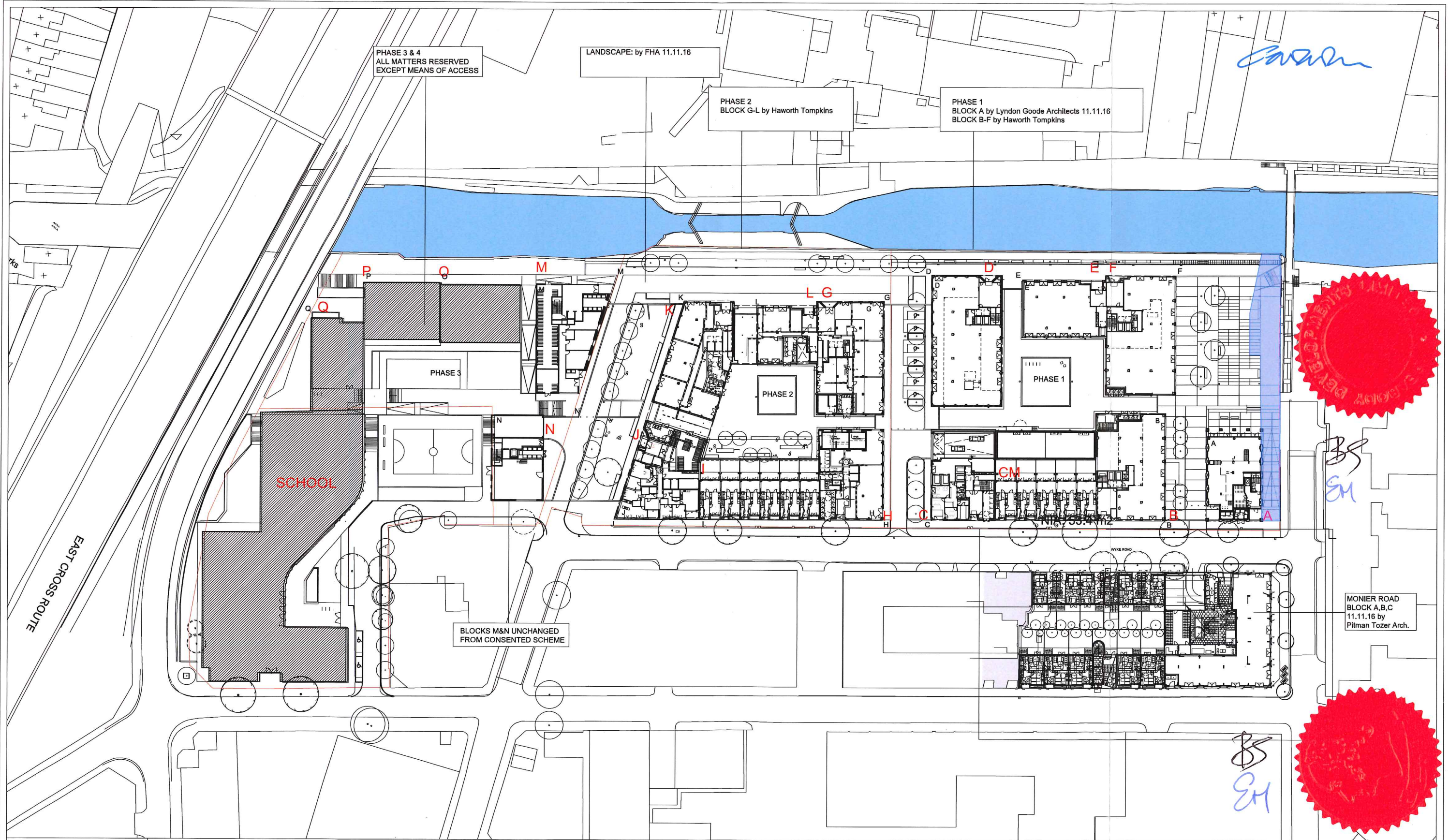
EXECUTED as a Deed (but not delivered)
until dated) by affixing the common seal of)
PEABODY TRUST)
in the presence of:-)


.....
Authorised signatory


.....
Authorised signatory



APPENDIX 1
REPLACEMENT PLAN 5 – SAFEGUARDED AREA



PHASE 3 & 4
ALL MATTERS RESERVED
EXCEPT MEANS OF ACCESS

LANDSCAPE: by FHA 11.11.16

PHASE 2
BLOCK G-L by Haworth Tompkins

PHASE 1
BLOCK A by Lyndon Goode Architects 11.11.16
BLOCK B-F by Haworth Tompkins

Carver

SCHOOL

BLOCKS M&N UNCHANGED
FROM CONSENTED SCHEME

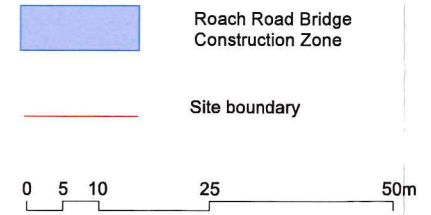
MONIER ROAD
BLOCK A,B,C
11.11.16 by
Pitman Tozer Arch.

DO NOT SCALE FOR CONSTRUCTION

NOTES

THE CONTRACTOR IS TO CHECK AND VERIFY ALL BUILDING AND SITE DIMENSIONS, LEVELS AND SEWER INVERT LEVELS AT CONNECTION POINTS BEFORE WORK STARTS.
THIS DRAWING IS TO BE READ AND CHECKED IN CONJUNCTION WITH ENGINEERS AND OTHER SPECIALIST DRAWINGS.
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NOTES
TO BE READ IN CONJUNCTION WITH GA PLANS, SECTIONS AND ELEVATIONS.



REV	DATE	DESCRIPTION
P1	21.12.18	PRELIMINARY
REV	DATE	DESCRIPTION

33 Greenwood Place
London NW5 1LB
T +44 (0)20 7250 3235
W www.haworthtompkins.com

Haworth Tompkins

JOB 1470: FISH ISLAND
DRG SITE WIDE GROUND FLOOR

DRG No FH-HT-X-00-P-002 REV -

SCALE 1:500@A1 DATE DEC16

DRAWN BY CAD INSPECTED BY IA

DRAWING STATUS **PRELIMINARY**