

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD1465

### Title: Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015

#### Executive Summary:

The Social Housing Assistance (grant) paid to Registered Providers through the Mayor's affordable housing programmes is subject to recovery in certain defined circumstances. The current 2012 Determination that governs this needs to be reissued to reflect the changes proposed to recovery through the Mayor's Housing Covenant programme 2015-18.

#### Decision:

The Mayor:

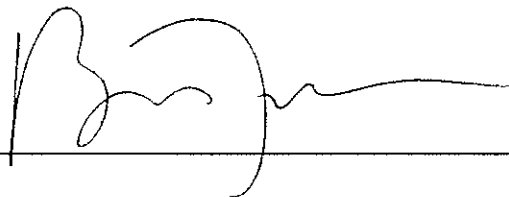
- Approves 'The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015', the form of which is set out at Appendix 1 of this report;
- In taking the decision to approve the Determination, takes into account responses to consultation summarised below in Appendix 3; and
- Agrees that the Determination is published on the 1 April 2015 and becomes effective from that date.

#### Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

30.3.2015

## **PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR**

### **Decision required – supporting report**

#### **1. Introduction and background**

- 1.1 The GLA is able to recover capital grant that it has paid for the provision of affordable housing under Sections 32 to 34 of the Housing and Regeneration Act 2008 (the HRA 2008) and antecedent legislation.
- 1.2 These Sections require the GLA to determine the events which would give rise to and the principles underpinning its powers in relation to the recovery of grant. The events that trigger grant recovery and the circumstances under which a grant recipient can set up and use a Recycled Capital Grant Fund (RCGF) rather than pay back the grant immediately are currently set out in The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2012 (the 2012 Determination), supported by the Affordable Housing Capital Funding Guide (AHCFCG). Both documents were issued by the Homes and Communities Agency (HCA) and make reference to both the GLA and HCA.
- 1.3 The GLA wishes to make changes to the way in which recovery of capital grant for social housing operates in London to ensure best use is made of what is a source of public funding. It seems appropriate now for the GLA and the HCA to issue separate Determinations and AHCFCGs. This Mayoral Decision asks the Mayor to approve a new Determination to take effect from 1 April 2015, which will apply to grant given by the GLA.

#### **2. Consultation**

- 2.1 Before the GLA can make a new determination it is required in law to consult on its proposals. It is required to consult with the Regulator of Social Housing, such bodies appearing to the GLA to represent the interests of registered providers of social housing (“RPs”) as it considers appropriate, and such other persons as it considers appropriate.
- 2.2 An explanatory letter and a copy of the proposed Determination were sent to the Social Housing Regulator, along with local authorities and private non-profit and for-profit RPs working in London. The National Housing Federation and London Councils were also contacted. The form of the explanatory letter, setting out the GLA’s proposals for consultation, is attached as Appendix 2. The consultation period was for four weeks from 30 January 2015 to 27 February 2015. The consultation documents were also posted on the GLA’s website with a list of frequently asked questions.
- 2.3 Responses were received from ten organisations; the Social Housing Regulator, the NHF, one local authority and seven not-for profit RPs. A document responding to the responses is attached as Appendix 3 and will be published at the same time as the Determination.
- 2.4 In response to a point raised in consultation as to the flexibility which the GLA will exercise in reclaiming grant held within an RP’s RCGF, it is proposed that paragraph 18 of the proposed Determination, which deals with the circumstances that could give rise to the withdrawal of the option of applying grant through a RCGF, is revised to indicate the circumstances where the GLA ‘may’ (the consultation text of the Determination said ‘will’) withdraw the option of an RP operating a RCGF (see paragraph 1 of Appendix 3). For the reasons set out in Appendix 3 no other changes have been made to the form of the Determination which has been consulted upon as a result of the consultation responses.

### **3. The proposed new Determination**

- 3.1 The key changes from the 2012 Determination are set out in para. 3.2 below, with the clarifications to be provided by it set out in paras. 3.3 to 3.6.
- 3.2 The HRA 2008 replaced the classification of registered social landlords (RSLs) with the concept of registered providers of social housing (RPs). It expanded the range of bodies eligible to be RPs to include former RSLs (mainly housing associations), stock-holding local authorities and newly registering organisations that may be either non-profit or profit making RPs. To reflect this change, the recovery events and principles under the proposed new Determination will apply to all RPs and all RPs will be allowed to operate a RCGF. Currently only those who were registered prior to April 2010 can do so, with any repayment or recycling being based on the amount of grant paid plus interest. This will obtain for all RPs except for-profit RPs. The GLA will require a for-profit RP to add an uplift amount to any amount of capital grant recoverable upon a relevant event, whether such amount is to be repaid to the GLA or placed in the RCGF. The GLA will publish, and may amend from time to time, the method for calculating the uplift amount concerned.
- 3.3 RPs who choose not to or are unable, following direction from the Social Housing Regulator or the GLA, to participate in the GLA's investment programmes may lose the automatic ability to operate a RCGF and may be required, unless the GLA agrees otherwise, to repay any recycled grant held immediately.
- 3.4 Eligible uses of a RCGF will be refined to focus on new supply rather than other permitted uses.
- 3.5 The GLA requires all RPs to consult with it and seek specific approval to the use of RCGF.
- 3.6 All RPs operating a RCGF are required to account back to the GLA annually through its annual return to the GLA. The GLA has the right to recover RCGF which has not been used within three years of generation.
- 3.7 The Grant Recovery chapter in the GLA's AHCFG will be revised to detail the changes and clarifications.
- 3.8 It should also be noted that in January 2015 the Regulator of Social Housing published a Decision Statement in relation to its May 2014 consultation on changes to the Regulatory Framework for Social Housing in England. In particular, the Regulator is proposing to use its power under Section 177 of the HRA 2008 to specify that when for-profit RPs acquire stock which was previously held by a private non-profit RP or local authority RP, and then dispose of it, they must place the net proceeds in a Disposal Proceeds Fund (a DPF) (paragraphs 33 to 39 of the Regulator's Decision Statement, January 2015). A new sub-paragraph 8(m)(xii) has therefore been added to the proposed Determination to clarify that, where required by the Regulator, for-profit RPs should place their net disposal proceeds into their DPF and in such circumstances the disposal will not be an event triggering recovery of grant under paragraph 8(m) of the proposed Determination.

### **4. Equality comments**

- 4.1 In January 2014 the GLA published an integrated impact assessment ("IIA"), including an equalities impact assessment, of the Mayor's Housing strategy. The policies related to increasing housing supply were covered by the Integrated Impact Assessment (IIA) for the Further Alterations to the London Plan.
- 4.2 The IIA concluded that updating housing projections and targets would support the delivery of sufficient housing and may help stabilise housing prices, supporting equal opportunities throughout communities. Furthermore, the provision of housing, including maximising the delivery of affordable housing would be in line with other policies of the Plan (e.g. Policy 3.5), ensuring that the needs of different groups are taken into account in the housing design.

4.3 The delivery of new and additional homes will help to implement Objectives 1, 2, 3 and 4 of the Mayors Equalities Framework “Equal Life Chances for All” (June 2014) through the creation of new homes, housing products and well-designed housing schemes.

## **5. Financial comments**

5.1 The new Determination for Recycled Capital Grant Fund reinforces the expectation that unused funding is recovered at the earliest opportunity.

5.2 The consultation has been carried out within existing resources and there are no cost implications arising.

## **6. Legal comments**

6.1 The Housing and Regeneration Act 2008 (HRA 2008) replaced the classification of registered social landlords (RSLs) with registered providers of social housing (RPs). In comparison to RSLs, a broader range of entities are eligible to be classified as RPs; these are non-profit RPs (whether ex-RSLs or newly registering organisations), stock-holding local authority RPs and for-profit RPs.

6.2 The GLA is able to recover capital grant which it has given by way of social housing assistance in accordance with its powers under Sections 32 and 33 of the HRA 2008, which apply to the GLA by virtue of Section 333ZE of the Greater London Authority Act 1999 (the GLA Act), and certain antecedent legislation (namely Sections 27, 53 and 54 of the Housing Act 1996, Section 52 and 53 of the Housing Act 1988, as amended by Section 28(3) of the Housing Act 1996 and by Sections 218 and 266, Schedule 11 paragraphs 2 and 4 and Schedule 16 of the Housing Act 2004).

6.3 Sections 32 to 34 of the HRA 2008 require that the GLA must determine the relevant events which would give rise to the exercise of its powers of recovery together with the principles which it will follow in exercising such powers. Any such events and principles must be determined by the GLA on or before the time the GLA gives the social housing assistance concerned unless they are determined subsequently with the agreement of the recipient of the assistance (section 32(12) of the HRA 2008).

6.4 These events and principles are currently set out in The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2012 (the 2012 Determination) and through the Affordable Housing Capital Funding Guide (the AHCFG). The 2012 Determination sets out the relevant events which will trigger recovery of grant in relation to ex-RSLs and it also permits ex-RSLs to operate a recycled capital grant fund (an RCGF) to recycle capital grant for certain purposes specified in the AHCFG.

6.5 The 2012 Determination however does not apply to other RPs who are not ex-RSLs. This paper therefore proposes the publication of a new determination and consequent revisions to the AHCFG which would apply to all classes of RP, both in relation to relevant events which would trigger the GLA’s right to recover capital grant and in allowing other classes of RPs to operate an RCGF.

6.6 However, the new determination would not apply to Welsh RSLs (the current 2012 Determination, paragraph 25, refers to Welsh RSLs but this provision is not included in the new determination which has been consulted upon).

6.7 Before the GLA can make a new determination under Sections 32 and 33 of the HRA 2008 it is required, by Section 34 of the HRA 2008, to consult with the Regulator of Social Housing, such bodies appearing to the GLA to represent the interests of RPs as it considers appropriate and such other persons as it considers appropriate. GLA officers have confirmed that the consultation documents were sent to the Regulator of Social Housing, the National Housing Federation, London

Councils and all private non-profit RPs, for-profit RPs and local authorities working in Greater London in satisfaction of this statutory obligation.

- 6.8 Any responses to this consultation received during the consultation period were required to be given due and proper consideration. It is understood that the responses were considered and reported to HIG on 3 March 2015.
- 6.9 It should be noted that the new determination would not amend or repeal any previous determinations. The new determination would apply where grant is given on or after the date upon which the new determination takes effect (1 April 2015) but previous determinations would continue to apply in respect of grant given before this date.
- 6.10 As noted above, consequential amendments will be required to the AHCFG. This will need to include amendments/additions to the circumstances under which the option of applying/appropriating grants through the RCGF will be withdrawn to ensure it reflects the circumstances anticipated under paragraph 18 of the proposed determination.
- 6.11 The AHCFG will also need to be amended to include the method for calculating any uplift amount on any capital grant recoverable from a for-profit RP and the circumstances under which the GLA will require this uplift amount to be paid. The method of calculation will need to be in accordance with Section 33(1)(b) of the HRA 2008. The definition of "Uplift Amount" in the proposed determination reflects this provision.
- 6.12 It should also be noted that Section 333ZH of the GLA Act requires the GLA to notify the Regulator of Social Housing at least 14 days before exercising, in relation to an RP, any of the powers conferred by Section 32(2) to (4) of the HRA 2008, i.e. before exercising its powers of recovery under the new determination.

## 7. Investment & Performance Board

- 7.1 HIG agreed the revised Determination at its meeting on 3 March 2015.

## 8. Planned delivery approach and next steps

Activity	Timeline
MD signed to allow new determination to be published.	By 31 3 15
New determination published	01 04 15
AHCFG revisions	30 4 15

## Appendices

Appendix 1: The Recovery of Capital Grants and Recycled Capital Grant Fund (Greater London) General Determination 2015

Appendix 2: Consultation letter

Appendix 3 : GLA response to the matters raised following its consultation on the Recovery of Capital Grants and Recycled Capital Grant Fund (Greater London) General Determination 2015 (February 2015)

**Public access to information**

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

**Part 1 Deferral:**

**Is the publication of Part 1 of this approval to be deferred? YES**

If YES, for what reason: To manage publication of the Determination

Until what date: (a date is required if deferring) 1 April 2015

**Part 2 Confidentiality:** Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

**Is there a part 2 form – NO**

**ORIGINATING OFFICER DECLARATION:**

Drafting officer to confirm the following (✓)

**Drafting officer:**

Janet Trench has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

**Assistant Director/Head of Service:**

Jamie Ratcliff has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

**Sponsoring Director**

David Lunts has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

**Mayoral Adviser:**

Richard Blakeway has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**EXECUTIVE DIRECTOR, RESOURCES:**

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

Date

26.3.15

**CHIEF OF STAFF:**

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

Date

27.03.2015

## **Appendix 1**

### **THE RECOVERY OF CAPITAL GRANTS AND RECYCLED CAPITAL GRANT FUND (GREATER LONDON) GENERAL DETERMINATION 2015**

1. The Greater London Authority (GLA) in exercise of the powers conferred on it by sections 32 and 33 of the Housing and Regeneration Act 2008 as applied to the GLA pursuant to section 333ZE of the Greater London Authority Act 1999, and all other powers enabling it in that behalf, after consultation with the Regulator of Social Housing, such bodies appearing to the GLA to represent the interests of registered providers of social housing as it considered appropriate and such other persons as it considered appropriate, hereby makes the following General Determination of the principles upon which the GLA shall specify:
  - (a) the events upon which the GLA shall Recover Capital Grants paid;
  - (b) the manner in which, and time or times at which, Capital Grant is to be Recovered;
  - (c) the circumstances and manner in which a Registered Provider may apply or appropriate Recoverable Capital Grant to specified purposes, and those purposes;
  - (d) the method for calculating the amount of Capital Grant to be Recovered;
  - (e) the circumstances and manner in which the GLA may direct interest to be added to Recovery of Capital Grant at specified rates;
  - (f) the proportion of Capital Grant which, upon a transfer of land or Property to another Registered Provider, shall be deemed to be vested in that other Registered Provider.
2. This General Determination is made without prejudice to the GLA's power to make specific Determinations under the provisions of the Housing and Regeneration Act 2008 as applied in relation to the GLA pursuant to section 333ZE of the Greater London Authority Act 1999.

### **CITATION AND COMMENCEMENT**

3. This Determination may be cited as the Recovery of Capital Grants and Recycled Capital Grant Fund (Greater London) General Determination 2015.
4. This Determination has effect from 1 April 2015.
5. The Recovery of Capital Grants General Determination 2012 shall not apply to Capital Grant given on or after the date of this Determination.<sup>1</sup>
6. To the extent that Recovery events and principles for the purposes of Sections 32 and 33 of the Housing and Regeneration Act 2008, Sections 27, 53 and 54 of the Housing Act 1996, Sections 52 and 53 of the Housing Act 1988, as amended by Section 28(3) of the Housing Act 1996 and Sections 218 and 266, Schedule 11 paragraphs 2 and 4 and Schedule 16 of the Housing Act 2004 are contained in contractual agreements for the provision of Capital Grant, those events and principles shall continue to take effect after the date of this Determination.

### **INTERPRETATION**

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<sup>1</sup> For the avoidance of doubt, except as specified in paragraph 5, this General Determination does not amend or repeal any previous determinations made pursuant to sections 27, 53 and 54 of the Housing Act 1996, sections 52 and 53 of the Housing Act 1988, as amended by section 28(3) of the Housing Act 1996 and by sections 218 and 266, Schedule 11 paragraphs 2 and 4 and Schedule 16 of the Housing Act 2004, and sections 32 and 33 of the Housing and Regeneration Act 2008

7. Words and expressions used in this Determination shall, unless the context requires otherwise, have the following meanings:

**"Capital Grant"** means Social Housing Assistance paid by the GLA as a grant to defray all or part of the capital expenditure incurred or to be incurred, including new build development, any Major Repairs, Miscellaneous Works, and re-improvements. It includes any Simple Interest which accompanied payment of the principal Capital Grant

**"Dwelling"** has the meaning given by section 275 of the Housing and Regeneration Act 2008.

**"Equity Percentage Loan"** means a loan of the type of arrangement described in section 70(5) of the Housing and Regeneration Act 2008.

**"For-Profit Registered Provider"** means a body entered on the Register as a profit-making organisation, as such term is defined in section 115 of the Housing and Regeneration Act 2008.

**"GLA"** means the Greater London Authority (but also includes (i) the Homes and Communities Agency insofar as it exercises functions of the Greater London Authority under delegated authority of the Mayor under section 38 (1) of the Greater London Authority Act 1999, and (ii) GLA Land and Property Ltd insofar as it is implementing a decision of the Greater London Authority).

**"Investment Partner"** means a Registered Provider which has been confirmed by the GLA as having "Investment Partner Status" under the GLA's Investment Partner qualification procedure.

**"Hostel"** has the meaning given by section 63 of the Housing Act 1996.

**"Letting"** includes a sub-lease, sub-tenancy or licence and an agreement for a lease, tenancy, licence, sub-lease or sub-tenancy

**"Major Repairs"** means those works to a Property owned by a Registered Provider which are necessary to ensure the continued habitability of the Property, excluding re-improvements, and which fall into the following categories:

(a) major works which have become necessary since the original development or rehabilitation work was completed, including those works required by subsequent legislation

(b) replacement of, or major work on, those components of a Property which have come to the end of their useful lives

**"Milestone"** means a predefined event during development for which the GLA has requested the Capital Grant holder to forecast a completion date

**"Miscellaneous Works"** means remedial work to heating systems in existing Properties, energy conservation works, works for the removal of lead in drinking water, for reducing the risk of exposure to asbestos, to upgrade or install fire precautionary measures recommended by a fire authority (within the meaning of section 6 of the Fire and Rescue Services Act 2004), remedial works to Properties contaminated by radon or structural adaptations for people with physical disabilities

**"Property"** means a Dwelling, Hostel or Supported Housing funded by Capital Grant

**"Recovery"** comprises reduction of any Capital Grant payable, or yet to be paid, by the GLA suspension or cancellation of any instalment of Capital Grant, the application or appropriation of Capital Grant for such purposes as the GLA may specify or payment to the GLA of such amounts as the GLA may specify and **"Recover"**, **"Recoverable"** and **"Recovered"** shall be construed accordingly.



**"Recycled Capital Grant Fund"** or **"RCGF"** has the meaning given in paragraph 12 of this Determination and is an internal fund within the accounts of an RP used to recycle grant receipts in all their forms, such as Social Housing Assistance, in accordance with GLA policies.

**"Register"** means the register maintained by The Regulator of Social Housing pursuant to section 111 of the Housing and Regeneration Act 2008.

**"Registered Provider"** or **"RP"** means (as appropriate) a local authority entered on the register pursuant to section 114 of the Housing and Regeneration Act 2008 or a body entered on the Register as a non-profit organisation or a profit-making organisation (as such terms are defined in section 115 of the Housing and Regeneration Act 2008).

**"Relevant Event"** means an event, as referred to in section 32(1) of the Housing and Regeneration Act 2008 and as identified in paragraph 8 of this Determination, which may give rise to Recovery of Capital Grant.

**"Sale and Leaseback"** means a transaction in which a Registered Provider disposes of a freehold or superior leasehold interest in land or Property and acquires simultaneously a long leasehold interest in that land or Property.

**"Shared Ownership Lease"** means a lease of the type described in section 70(4) of the Housing and Regeneration Act 2008.

**"Simple Interest"** means further amounts of Capital Grant added to a payment of Capital Grant in compensation to a Registered Provider for delays in payment of the principal Capital Grant. The further amounts of Capital Grant are calculated in the manner of interest accruing according to the length of delay in payment.

**"Social Housing"** has the meaning given by Section 68 of the Housing and Regeneration Act 2008.

**"Social Housing Assistance"** has the meaning given in section 32(13) of the Housing and Regeneration Act 2008 as interpreted in relation to the GLA in accordance with section 333ZE(2)(b) of the Greater London Authority Act 1999.

**"Supported Housing"** means accommodation owned by a Registered Provider and allocated to people who need intensive and supportive housing management. It excludes accommodation the primary purpose of which is to provide care rather than housing, accommodation which aims to fulfil a statutory duty other than under housing legislation, and accommodation which is not provided with the aim of providing residents with a permanent home or the life skills and confidence to move into permanent accommodation.

**"The Regulator of Social Housing"** means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions.

**"Uplift Amount"** means an amount calculated by reference to any increase in the market value of any housing or other land acquired, constructed, converted, improved or repaired as a result of Capital Grant.

## **RELEVANT EVENTS GIVING RISE TO RECOVERY OF GRANT**

8. The GLA may exercise its powers of Recovery when the following Relevant Events occur within Greater London:

(a) when, during the progress of a project approved for Capital Grant, an instalment of Capital Grant was claimed or paid in anticipation of a Milestone, and that Milestone either does not take place or takes place

later than anticipated;

(b) when, after an instalment of Capital Grant has been advanced upon a project approved for Capital Grant, the GLA cancels the approval, or approves the project on revised terms which involve a reduced entitlement to Capital Grant;

(c) discovery, upon an intermediate or final review of the costs of a project approved for Capital Grant, that an instalment or payment on account of Capital Grant had been greater than eventually required;

(d) failure to use Capital Grant for the purpose for which it was paid;

(e) failure to comply with any condition attached to the making of Capital Grant, including failure to complete a project;

(f) discovery that the Secretary of State or the GLA has received incorrect information or made an error in connection with the calculation of Capital Grant payable or Recoverable;

(g) disposal of Capital Grant funded land acquired for the development of Social Housing, or designated for a further phase or phases of Social Housing, when the development or further phase or phases was, or were, not completed at the time of disposal;

(h) redemption of the outstanding indebtedness on a Property owned by a co-ownership (equity sharing) housing society and funded by Capital Grant.

(i) de-registration of a Registered Provider by The Regulator of Social Housing, under section 118 or 119 of the Housing and Regeneration Act 2008 .

(j) a change of use of land or Property to one which would not qualify in principle for Social Housing Assistance, or change to a use which might receive a significantly lower grant (for example a change from supported to general needs housing;)

(k) cessation of use of Property or land funded by Capital Grant;

(l) demolition of Property or other buildings funded by Capital Grant;

(m) disposal of Property or land funded by Capital Grant, except:

(i) to another Registered Provider (taking the Property or land subject to liability for the Capital Grant within it pursuant to Section 33 of the Housing and Regeneration Act 2008) with the prior approval of the GLA;

(ii) the sale of the first share of a Dwelling under a Shared Ownership Lease where the Dwelling is specifically provided for sale on shared ownership terms;

(iii) the sale of a Dwelling acquired for the purpose of outright sale after repair, improvement or conversion;

(iv) Sale and Leaseback provided that the GLA has given prior approval to the terms and objectives of the transaction;

(v) Lease and sub lease arrangements under which a Registered Provider disposes of a superior interest in a property and there is the simultaneous grant of a sub lease to another Registered Provider where the purpose of the lease and sublease arrangement is to raise private finance, the property remains controlled and let by a Registered Provider as Social Housing and the GLA approves in advance the terms of the transaction.

(vi) when the legal ownership of Property or land is transferred to a developer for the period during which a development, redevelopment or re-improvement is carried out, and either the freehold or a leasehold interest is returned to the Registered Provider on terms acceptable to the GLA;

(vii) the disposal of an adaptation provided to assist a resident with a physical disability;

(viii) when the consideration is broadly equivalent replacement Property or Properties or land, or the money to provide broadly equivalent replacement Property or Properties or land;

(ix) disposal of a Property to a tenant of the Registered Provider with the assistance of grant under section 35 of the Housing and Regeneration Act 2008;

(x) disposal of small plots of surplus land, where that plot is not suitable to provide any further Social Housing;

(xi) upon disposal of certain freehold reversions, as defined in published guidance and updated from time to time;

(xii) the disposal by a For-Profit Registered Provider of Dwellings where the proceeds of sale (including proceeds resulting from staircasing sales under Shared Ownership Leases) are placed into the For-Profit Registered Provider's disposal proceeds fund in accordance with any applicable requirement from time to time of The Regulator of Social Housing.

(n) a disposal of Property or land funded by Capital Grant that would give rise to a repayment of discount under section 155 of the Housing Act 1985;

(o) a disposal of Property or land funded by Capital Grant that would give rise to a repayment of discount under sections 11 and 12 of the Housing Act 1996 as modified by section 179 of the Housing and Regeneration Act 2008;

(p) a disposal of Property or land funded by Capital Grant that would give rise to the repayment of a payment made to a tenant as an incentive to vacate a Dwelling owned by a Registered Provider under the terms of the mortgage deed requiring repayment of the original payment;

(q) the redemption, or a disposal of Property or land funded by Capital Grant giving rise to the redemption, of an Equity Percentage Loan;

9. When a Relevant Event occurs, a Registered Provider must notify the GLA according to a timetable specified by the GLA or must apply or appropriate the Capital Grant Recoverable in ways determined or directed by the GLA.

## **PRINCIPLES FOR THE RECOVERY OF CAPITAL GRANT**

10. Upon notification or discovery of a Relevant Event within Greater London, the GLA may Recover Capital Grant.

11. Where a Relevant Event occurs within Greater London on only part of the property or land on which Capital Grant was paid, the GLA may Recover a proportionate amount of Capital Grant. The GLA may specify methods of apportionment in accordance with published guidance.

## **CIRCUMSTANCES IN WHICH REGISTERED PROVIDERS MAY APPLY OR APPROPRIATE CAPITAL GRANT RECOVERABLE TO THE GLA TO SPECIFIED PURPOSES IN GREATER LONDON**

12. Subject to paragraphs 17, 18 and 19 below, Registered Providers may choose between repaying the Capital Grant Recoverable to the GLA or placing it in a fund, known as the Recycled Capital Grant Fund.

13. Permissible uses of the Recycled Capital Grant Fund, based on policy priorities for Social Housing, will be published by the GLA, and may be amended from time to time. These permissible uses will include those for which the GLA would make Social Housing Assistance available, unless a specific restriction is stated, and other specified purposes. The GLA may further publish specific permissible uses for receipts generated from land or Property receiving grant through a specific funding programme. These permissible uses are referred to hereafter as "Permissible Purposes". For the avoidance of doubt, receipts generated from land or Property in Greater London which are placed in the RCGF may be used for Permissible Purposes for reinvestment in Greater London only. GLA approval in advance is required for any application of RCGF.

14. The GLA may direct that notional interest accruing on Capital Grant in the Recycled Capital Grant Fund (and also, for the avoidance of doubt, any Uplift Amount and interest which has been calculated in accordance with paragraphs 26 and/or 27 and placed in the Recycled Capital Grant Fund) may also be applied or appropriated to Permissible Purposes. The notional interest shall be calculated according to the principles in paragraph 24 below.

15. In circumstances specified by the GLA, a Registered Provider may transfer all or part of its Recycled Capital Grant Fund to another Registered Provider so that the other Registered Provider may apply or appropriate it to the published Permissible Purposes (subject to GLA approval in advance of such application or appropriation). For amounts generated within Greater London, Registered Providers may transfer balances to other Registered Providers for Permissible Purposes for reinvestment within Greater London only.

16. The GLA may set time limits within which it expects a Registered Provider to apply or appropriate Capital Grant to these Permissible Purposes. For the purposes of these time limits, a transfer of Recycled Capital Grant Fund to another Registered Provider will not re-start the timetable.

#### **CIRCUMSTANCES IN WHICH REGISTERED PROVIDERS WOULD NORMALLY REPAY CAPITAL GRANT TO THE GLA**

17. In respect of Registered Providers, the GLA will normally demand repayment of Capital Grant Recoverable, without the option of placing it in a Recycled Capital Grant Fund, when Recovery arises from any of the Relevant Events (a) to (i) in paragraph 8 above. In relation to (i) of paragraph 8, such Recovery may be deferred until the occurrence of any other Relevant Event.

#### **CIRCUMSTANCES IN WHICH THE GLA MAY WITHDRAW THE OPTION OF APPLYING OR APPROPRIATING CAPITAL GRANTS THROUGH THE RECYCLED CAPITAL GRANT FUND**

18. The GLA will publish, and may amend from time to time, a description of those circumstances in which the option of applying or appropriating Capital Grants through the Recycled Capital Grant Fund, established in paragraph 12 above, may be withdrawn, and repayment made in total or in part. These will relate to: risks to the contents or future contents of a Recycled Capital Grant Fund revealed by the GLA's exercise of its regulatory and financial supervisory responsibilities; discovery that the administration or operation of a Recycled Capital Grant Fund, or application of its contents, has been or is in breach of the principles determined here or the requirements specified in related guidance; the breach, or expectation of a breach, of time limits for applying Recycled Capital Grant specified by the GLA; deregistration or other specified changes of status by a Registered Provider; removal or expiry of Investment Partner status with the GLA; and any other circumstances considered appropriate by the GLA.

#### **THE ADMINISTRATION OF RECYCLED CAPITAL GRANT FUNDS**

19. Registered Providers shall administer Recycled Capital Grant Funds according to the requirements which the GLA may from time to time publish with a view to ensuring, inter alia, that the Recycled Capital Grants Fund is used to support GLA housing policy objectives, helps to build and maintain sustainable communities and supports regional, sub-regional and local programme priorities. Such requirements will furthermore seek to ensure that the RCGF is easy to operate, transparent, accountable and promotes efficiency.

## **THE METHOD OF CALCULATING THE AMOUNT OF GRANT RECOVERABLE ON RELEVANT EVENTS**

20. The GLA will publish, and may amend from time to time, methods for calculating the amount of Capital Grant recoverable should the Relevant Events at paragraph 8 occur. These methods will take into account, according to the interpretation of the GLA:

(a) for Grant paid in error or in excess of requirements, an intention to recover Grant or excess Grant in full

(b) for disposals or other Relevant Events, an intention to recover Grant in full, but with allowance (i) for costs, fees and expenses incurred by the Registered Provider in direct relation to the Relevant Event (ii) for the deferral or reduction of Grant recovered where disposal proceeds are less than the amount recoverable and (iii) for any other circumstances which the GLA may specify in its published procedures and amend from time to time.

(c) if the Registered Provider is a For-Profit Registered Provider.

21. The GLA may agree a temporary change of use, without Recovery, to one not qualifying in principle for Social Housing Assistance.

22. Where Recovery of Capital Grant calculated in accordance with the provisions of this Determination would place a Registered Provider in financial difficulty, the GLA may:

(a) defer the Recovery to a future date, or

(b) accept Recovery by agreed instalments, or

(c) reduce part or all of the Recovery.

## **INTEREST ON RECOVERY OF CAPITAL GRANT AND ON RECYCLED CAPITAL GRANT FUNDS**

23. The GLA may direct a Registered Provider to add interest to an amount of Capital Grant repayable upon a Relevant Event, if there is a failure or delay by the Registered Provider in notification of the Relevant Event to the GLA or in grant repayment, or in other circumstances leading to a potential loss to the GLA. The GLA will publish, and may amend from time to time, details of these circumstances, the rates of interest to be charged, and the mechanism for its application.

24., The GLA requires Registered Providers to add notional interest to the Recycled Capital Grant Fund at rates specified by the GLA which shall not exceed the rates which a Registered Provider might reasonably expect to earn on the deposit of the cash comprising its Recycled Capital Grant Fund.

25. When the GLA directs repayment of Recoverable Capital Grant placed in a Recycled Capital Grant Fund, it may direct the Registered Provider to calculate and add interest attributable to the amount repaid. The interest shall be calculated according to paragraph 24 above.

## **UPLIFT ON RECOVERY OR RECYCLING OF CAPITAL GRANT**

26. The GLA requires, in such circumstances as the GLA will publish and may amend from time to time, a For-Profit Registered Provider to add an Uplift Amount to any amount of Capital Grant Recoverable upon a Relevant Event, whether such amount is to be repaid to the GLA or placed in the RCGF. The GLA will publish, and may amend from time to time, the method for calculating the Uplift Amount concerned.

27. Further, the GLA may direct a For-Profit Registered Provider to add interest to this Uplift Amount, as described in paragraph 26, if there is a failure or delay by the Registered Provider in notification of the Relevant Event to the GLA or in grant repayment, or in other circumstances leading to a potential loss to the GLA. The GLA will publish, and may amend from time to time, details of these circumstances, the rates of interest to be charged, and the mechanism for its application.

## **THE APPROPRIATE PROPORTION OF CAPITAL GRANT DEEMED TO BE TRANSFERRED BETWEEN REGISTERED PROVIDERS, FOR PURPOSES OF RECOVERY**

28. When land or Property on which Capital Grant has been given becomes vested in, or is leased for a term of years to, or reverts to, another Registered Provider, and a Relevant Event subsequently occurs, this Determination shall apply to the entire Capital Grant paid on the land or Property as if the Capital Grant had been made to that other Registered Provider.

### **EXPLANATORY NOTES**

Legislation provides for the GLA to set out, in a statutory determination, the occasions when it will recover capital grants from persons who have received social housing assistance and the principles which it will apply to the recovery process.

Where this Determination states that the GLA will publish or specify detail this will be done within the Capital Funding Guide.

This Determination covers all property funded with Social Housing Assistance, through the GLA, from the date of this Determination onwards.

***This Determination is approved by way of Mayoral Decision to take effect from 1 April 2015.***

### **GLA revisions to the Grant Recovery Determination and RCGF policy.**

Grant recovery for all Registered Providers (ex- RSLs) is currently governed by the requirements of The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2012. This document was issued by the HCA in April 2012 at the point of the transfer of its investment functions to the GLA and is supported by the Affordable Housing Capital Funding Guide (AHCFCG). The GLA has now agreed with the HCA it will issue its own Determination to set out how the GLA will exercise its powers over grant recovery and the recycling of grants to ensure best use is made of public funding. It is anticipated the new Determination will be issued in April 2015.

The Determination will introduce the changes set out below to the existing process with several points of clarification regarding the operation of grant recovery being set out in the revised AHCFCG.

1. All RPs who are Investment Partners in London will be allowed to operate a RCGF. . Further, the recovery events set out in the Determination will apply to all RPs in respect of grant given on or after the date of the Determination. The current Determination refers to ex-RSLs only. (Para. 12)
2. Upon a recovery event arising, there will be a requirement, in circumstances which the GLA will publish in the revised AHCFCG, for profit making providers to either repay or recycle grant at an uplifted level unlike non-profit making providers who repay or recycle at a flat rate. (This uplift will be calculated by reference to any increase in market value of the relevant grant-funded housing or land. The method for calculating the amount of the uplift will be set out in the AHCFCG). (para. 26)
3. RPs who choose not to or are unable to participate in the GLA's investment programmes will lose the automatic ability to operate a RCGF and will be required, unless the GLA agrees otherwise, to repay any recycled grant held immediately. (Para. 18)
4. RPs must seek the approval from the GLA prior to using RCGF. (Para. 13)

In addition to this, providers are reminded that disposals will still require the relevant consent from the Social Housing Regulator or Secretary of State as applicable.

It is the proposed policy of the GLA going forward, which will be set out in the revised Capital Funding Guide, that:

1. The permissible use of RCGF in London is to be focused on the provision of new affordable homes.
2. From April 2015, the GLA will seek to recover any uncommitted RCGF that is shown in a RCGF return as having exceeded three years since generation.

There is a statutory requirement for the GLA to consult relevant bodies on any changes to the Determination. If, having considered the draft Determination attached to this letter, you wish to make any comments on it or on the points of clarification, please respond to [RCGFConsultation@london.gov.uk](mailto:RCGFConsultation@london.gov.uk) by 27 February 2015. Queries should also be sent to the same mailbox.

Please note: the HCA is carrying out its own consultation outside London regarding changes to its determination. Details can be found on the HCA's website.

Yours sincerely

Jamie Ratcliff

## **GLA response to the matters raised following its consultation on the Recovery of Capital Grants and Recycled Capital Grant Fund (Greater London) General Determination 2015**

Before the GLA can make a new determination it is required in law to consult on its proposals. It is required to consult with the Regulator of Social Housing, such bodies appearing to the GLA to represent the interests of registered providers of social housing ("RPs") as it considers appropriate, and such other persons as it considers appropriate.

An explanatory letter and a copy of the proposed Determination were sent to the Social Housing Regulator, along with local authorities and private non-profit and for-profit RPs working in London. The National Housing Federation and London Councils were also contacted. The consultation period was for four weeks from 30 January 2015 to 27 February 2015. The consultation documents were also posted on the GLA's website with a list of frequently asked questions.

Ten responses were received, three of which had no objection to the proposed changes and clarifications. A summary of the matters raised and the GLA's response is set out below; operational clarification will be set out in the Affordable Housing Capital Funding Guide.

Point raised in consultation by responders to the consultation

### **1 At what point will grant held within a Registered Provider's recycled capital grant fund (RCGF) be reclaimed by the GLA and what flexibility will be shown.**

GLA response

- The relevant events giving rise to recovery of grant as set out in para 8 of the Determination have not been substantively changed except to reflect the changes introduced by the Housing and Regeneration Act 2008 to expand the range of bodies who may become registered providers, to update references to legislation and to remove references to former housing programmes. Para 18 of the Determination which deals with the circumstances that could give rise to the withdrawal of the option of applying grant through a RCGF has been revised to indicate the circumstances where the GLA may (consultation text said 'will') withdraw the option of a partner to operate a RCGF. The GLA is continuing with the existing practise as set out in the AHCFG to reclaim, in certain circumstances, uncommitted RCGF that has been in a RCGF fund for three or more years.

Point raised in consultation by responders to the consultation

### **2 Alternative suggestion to uplifting of recoverable grant in line with property-values for 'for-profit' Registered Providers to limit the amount of profit they are permitted to distribute.**

GLA response

- The proposal is complex and the GLA has received legal advice that it would not have the powers to implement this type of proposal. The GLA has no current plans to apply an uplift to recoverable grant held by other Registered Providers.



Point raised in consultation by responders to the consultation

**3 The GLA should not insist on giving a specific approval to the use of RCGF but use the information provided with the annual RCGF return.**

GLA response

- The GLA agrees the annual returns will be a useful indication of intent but still requires providers to seek specific approval on a case by case basis regarding its use to ensure the best use is being made of public money.

Point raised in consultation by responders to the consultation

**4 Funds from the sale of supported housing should be ringfenced for the development of new supported housing.**

GLA response

- The delivery of supported housing remains a priority and RCGF can be used for this purpose but a ring-fence could lead to complexity and sub-optimal outcomes.

