

# GREATER **LONDON** AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD2030

**Title: Yallops Yard: Release of overage held by the GLA to Action for Bow.**

### **Executive Summary:**

Following the devolution of the HCA's housing and regeneration functions in London to the Mayor in 2012, GLA Land and Property Limited (GLAP) inherited overage on a housing scheme developed at Yallops Yard, a site originally owned by the Tower Hamlets Housing Action Trust (the HAT).

This Mayoral Decision approves the release of the overage funds to Action for Bow (AfB), a charitable trust set up by the HAT, as an endowment for the local people resulting from the legacy of the HAT's activities.

### **Decision:**

That the Mayor:

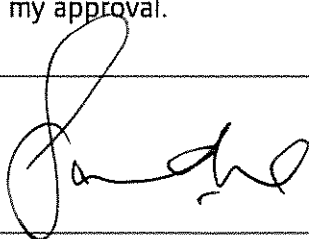
- Approves the release of the overage fund of £1,676,328 in total to the Trustees of Action for Bow.
- Agrees the use of an endowment agreement between GLA Land and Property Limited and the Trustees of Action for Bow to enable this.

### **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:**

15/2/17

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

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

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

- 1.1 Housing Action Trusts were non-departmental public bodies, set up to redevelop some of the poorest council housing estates in England's inner-city suburbs. The Tower Hamlets HAT was designated in June 1993 for three housing estates, focussed on Montieth, Tredegar and Lefevre Walk in Bow. The estates were transferred to the HAT in 1994.
- 1.2 The final phase of the masterplan for the Tower Hamlets HAT was a site known as Yallops Yard. Outline planning consent was granted in April 1995 for the redevelopment of the site for residential use. It was sold to Lovell Partnerships Ltd in 2004 by the HAT (following an Agreement for Sale dated 13 December 2002) with the obligation to develop a residential scheme, including affordable homes on the site. The Agreement for Sale and subsequent Transfer Deed included the right of the HAT to receive overage linked to the sale of the private homes developed as part of the scheme.
- 1.3 Planning permission was granted in September 2003 for the provision of 262 dwellings subject to, among other things, the provision of affordable housing and highway improvement works to widen the access road to the estate (Tredegar Road). The S106 deed, which completed in March 2004, included Lovell as the developer of the scheme, the Guinness Trust as the intended owner of the 50 affordable homes and the London Borough of Tower Hamlets (LBTH) who would be paid by the developer to carry out the highway works and adopt the road. During the development process, the number of homes built was increased to 279 and the scheme was completed in 2006.
- 1.4 The Tower Hamlets Housing Action Trust (Dissolution) Order 2004 dissolved the HAT and transferred its property, rights and liabilities, (including the right to receive overage payments under the Agreement for Sale and Transfer Deed), to the Commission for the New Towns. These rights and obligations then passed to the Homes and Communities Agency (HCA) until the HCA Transfer Scheme was made on 30 March 2012, and transferred certain property, rights and liabilities to the GLA and certain property, rights and liabilities to GLAP (including the right to receive overage payments under the Transfer Deed).
- 1.5 Before it was dissolved, the HAT set up AfB as a charitable trust to promote social and economic regeneration in the Tower Hamlets wards of Bow East and Bow West, using money generating from the legacy of the HAT's activities. AfB's constitution requires that it uses its funding in the furtherance of its charitable objects, and so the HCA considered (when it held the overage) that AfB was a suitable organisation to receive the Yallops Yard overage money; the annual report and accounts of AfB for 2014 -15 can be seen at Appendix 1 and includes the projects funded by AfB over that year.
- 1.6 At the point of transfer of the overage from the HCA to GLAP in 2012, the HCA advised that the overage linked to Yallop's Yard had been held by them pending the completion of the highway works being carried out by LBTH. It was held to cover any shortfall in the cost of the highway works, with the intention that the balance be paid to AfB. LBTH was not able to confirm that the highway works were complete and had been delivered within budget until October 2015.
- 1.7 Limited documentation has been available to establish that there is a contractual right for AfB to receive the overage funds and officers have been unable to locate a formal record to support this. However, it is clear from the documents available that the intention was that AfB should be the beneficiary of these funds. For example:
  - the Agreement for Sale and Transfer Deed required Lovell to pay the overage to the HAT or its statutory successor (which would be either Commission for the New Towns, HCA or GLAP) or someone nominated by the HAT or its statutory successor. Officers have seen a letter from the

Commission for the New Towns' lawyers to Lovell dated 25 June 2004 notifying Lovell that the overage should be paid to AfB although, contrary to this letter, Lovell subsequently paid the money to the Commission for the New Towns or the HCA instead of AfB.

- The briefing note at the point of transfer from the HCA shows that the HCA intended to pay the overage to AfB. This is supported by the entry on the GLA's register of liabilities which records in connection with Yallop's Yard and one other HAT: "once all the residual liability work has been concluded, any remaining funds will be distributed to partners of the HATs".
- AfB is the HAT's legacy organisation and, as such, received certain other funds relating to the HAT's activities; namely deferred consideration in relation to the sale of the Yallop's Yard site (documented in a Deed of Trust).

## **2. Objectives and expected outcomes**

- 2.1 As the Tredegar road works are now complete and the cost has not exceeded the budget, the condition to release the overage/dowry to AfB has been satisfied.
- 2.2 A draft endowment agreement enabling the transfer of the funds has been drawn up by TfL Legal and agreed by AfB. This release should help enable AfB to continue with its charitable objectives for a number of years to come. The agreement requires AfB to confirm annually what the transferred funds have been used for and allows, in case AfB ceases to operate while funds are still in place, for GLAP to determine a suitable alternative recipient.

## **3. Equality comments**

- 3.1 No adverse impacts on those with protected characteristics have been identified. The endowment will facilitate AfB's operations in funding a number of projects aimed at benefiting the local community. These operations support education, training & employment opportunities, sports & recreation and environmental & regeneration issues in Bow East and West wards. Activities are inclusive across the community and participants range from young children to more mature residents. Examples of projects to date include Tour Guide Training for unemployed people and Children's Make a Play in the Park where a theatre group worked with children on a performance of Fantastic Mr Fox.

## **4. Other considerations**

- 4.1 The handover note from the HCA included a reference to some outstanding work to be completed on the Yallop's Yard development. It refers to £184,500 paid to LBTH to fund the road works, £89,688 paid to Lovell with a retention of £8,278 for drainage works, plus the overage of £1,676,328 (the intention being that this overage would fund any shortfall before payment was made to AfB).
- 4.2 As mentioned previously, LBTH has confirmed the road works are complete within the original budget with no call on the overage. However, an invoice for £8,391 dated April 2015 addressed to Jackie Odunoye (the former chief executive of the HAT) was forwarded to the GLA by Lovell after it had been advised by the HCA that it was not liable for this. It may be that this invoice relates to the remaining portion of the retention moneys for drainage works as it ties in (with a slight discrepancy of £113) with the HCA handover note, but GLA officers have been unable to find any contractual requirement to pay this amount to Lovell and similarly, Lovell have not provided evidence of such an obligation. This could be considered a potential risk/liability to the GLA albeit a small one.
- 4.3 The recommendation is to release the whole of the overage fund to AfB on the grounds that:
  - The GLA has asked Lovell for proof of the GLA's liability for the retention, but this request has met with no response.
  - The GLA has no record of receiving the retention money, and only took receipt of the overage.

- The invoice from Lovell was dated 6 April 2015 and the GLA's request for proof of liability was on 22 July 2015 so the matter has been dormant for over a year.
  - The documentation which GLA officers have been able to obtain does not indicate that there is any liability on the part of the GLA for the retention moneys. However, over time, something may come to light which causes the risk to be realised.
  - The amount being claimed is £8,391, so if the risk is realised, the financial impact is relatively small.
- 4.4 AfB was set up as the legacy organisation of the HAT with initial endowment funding bequeathed to it in 2004; the intent was to use this within 5 to 10 years with these funds being further supplemented by the overage that was due once the scheme was fully complete. This outstanding element of the original endowment is to allow the charity to continue its grant making work for a further period of time. The Trustees refer to the Charity Commission's general guidance on public benefit when considering how planned activities will contribute to the aims and objectives that have been set. As well as this, there is an expectation that any project agreed should be match funded and have a focus on sustainability.

## **5. Financial comments**

- 5.1 This decision seeks the approval to release the overage fund of £1,676,328 to the Trustees of AfB.
- 5.2 When the HCA Transfer Scheme took place in 2012, it was assumed that the disposal proceeds from the portfolio of GLAP assets would fund any liabilities that were inherited.
- 5.3 Within the transfer, GLAP inherited the right to receive the overage. The release of the overage fund was dependent on LBTH confirming the completion of the Tredegar road bridge infill works, for which LBTH have now confirmed.
- 5.4 The handover note from the HCA highlights a risk of a potential liability of £8,391 which if falls due will be contained within the existing Housing and Land budget.
- 5.5 The endowment agreement between GLAP and AfB sets out that the accrued overage payment is to be paid as an endowment in order to assist the trust to fulfil its charitable objects. At the end of each financial year, AfB is required to provide GLAP (monitored by Housing and Land) with a statement which has been audited by an independent auditor. In the event that AfB ceases to operate, GLAP will need to determine a suitable alternative recipient.

## **6. Legal comments**

- 6.1 Under section 30 of the Greater London Authority Act 1999 (as amended) ("GLA Act"), after appropriate consultation, is entitled to do anything that will further one or more of its principal purposes of promoting economic development and wealth creation, social development, and the improvement of the environment in Greater London.
- 6.2 Furthermore, under section 34 of the GLA Act, the GLA has the power to do anything which is calculated to facilitate, or be conducive or incidental to, the exercise of its functions. In this case, the GLA wishes to provide funding to AfB in order to support the continuation of the economic and social regeneration activities of that organisation. Accordingly, the endowment to AfB may be viewed as being calculated to facilitate, and be conducive and incidental to, the promotion of social and economic development in Greater London.
- 6.3 The proposed endowment of the overage funding may be viewed as a conditional gift, rather than a contract for services and supplies. Paragraph 6.4 of the GLA's Contracts and Funding Code requires that funding be distributed fairly, transparently and in accordance with the GLA's obligations regarding equality of opportunities. To this end, officers have set out in paragraph 4 above how they have met these requirements. Furthermore, officers must ensure that an appropriate

endowment agreement (as appended to this Mayoral Decision) is put in place between GLAP and AfB before any commitment to the funding be made.

- 6.4 The GLA has engaged with AfB in relation to the proposed endowment agreement which is the subject of this Mayoral Decision. It is not considered necessary or appropriate for the GLA to consult with any other persons or bodies, including those specified in section 32(2) of the GLA Act for the purposes of this Mayoral Decision.

## **7. Planned delivery approach and next steps**

<b>Activity</b>	<b>Timeline</b>
Finalise endowment agreement with AfB	31 January 2017
Release of payment to AfB	28 February 2017

### **Appendices and supporting papers:**

- Appendix 1 - AfB's annual report, 2014-15.
- Appendix 2 - Proposed Endowment agreement to enable transfer of funds from the GLAP to AfB.

**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:

It is of a sensitive nature involving a transaction between GLAP and AfB that should not be disclosed until the transaction has been completed.

Until what date: 28 02 17 or date of transfer of funds, whichever is the earliest.

**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:

✓

**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:**

James Murray has been consulted about the proposal and agrees the recommendations.

✓

**Advice:**

The Finance and Legal teams have commented on this proposal.

✓

**Corporate Investment Board**

This decision was agreed by the Corporate Investment Board on 13 February 2017

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature



Date

13.2.17

**CHIEF OF STAFF:**

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

Signature



Date

14/2/2017