

# GREATER LONDON AUTHORITY

## REQUEST FOR DIRECTOR DECISION – DD2546

### Title: Legal advice on contract documents for Green Homes Grant Local Authority Delivery Phase 2

#### Executive Summary:

The GLA has been allocated £18.7m by the Greater South East Energy Hub to deliver a home energy efficiency programme across 21 London boroughs. This Director Decision seeks approval of up to £51,000 spend to allow legal review of the grant funding agreement, call-off contract with the Managing Agent appointed by the Energy Hub, and all other relevant documents. Following review of the proposed arrangements an MD will be submitted seeking approval of the £18.7 million to support tackling fuel poverty and reducing carbon emissions through the Mayor of London's Warmer Homes scheme.

#### Decision:

That the Executive Director of Good Growth approves:

Expenditure of up to £51,000 to allow legal review of the contract documents for Green Homes Grant Local Authority Delivery Phase 2.

#### AUTHORISING DIRECTOR

I have reviewed the request and am satisfied it is correct and consistent with the Mayor's plans and priorities.

It has my approval.

**Name:** Philip Graham

**Position:** Executive Director, Good Growth

**Signature:**



**Date:**

17 August 2021

## PART I - NON-CONFIDENTIAL FACTS AND ADVICE

### Decision required – supporting report

#### 1. Introduction and background

- 1.1. The Mayor wants to make London a zero-carbon city by 2030, whilst at the same time protecting the most disadvantaged Londoners by tackling fuel poverty. This is a stretching ambition given the scale of fuel poverty and the low take-up of energy efficiency measures. In light of the COVID-19 pandemic the Mayor's London Recovery Programme has also set out two relevant missions: A Green New Deal and A Robust Safety Net.
- 1.2. The Government's Clean Growth Strategy sets out an aspiration for all fuel poor homes to be upgraded to Energy Performance Certificate (EPC) Band C by 2030 and for as many homes as possible to be EPC Band C by 2035 where practical, cost-effective and affordable. The statutory fuel poverty target for England was set out in 2014 and it "is to ensure that as many fuel poor homes as is reasonably practicable achieve a minimum energy efficiency rating of Band C, by 2030". *Sustainable Warmth: protecting vulnerable households in England* was published in February 2021 and is the government's fuel poverty strategy, outlining steps towards this. The Mayor's Fuel Poverty Action Plan lays out actions to help achieve this target in London.
- 1.3. In 2019 there were 531,000 households living in fuel poverty in London, which equates to over 15 per cent of all households. The Mayor has set out his programme of actions to address fuel poverty in London with the powers he has in his Fuel Poverty Action Plan. These include support for energy efficiency programmes such as the current Warmer Homes scheme and fuel poverty advice.
- 1.4. The focus of the Mayor's own Warmer Homes scheme has been to target energy efficiency support to fuel poor households, including extending the scheme to the private rented sector in November 2018. The current, second phase of Warmer Homes was approved by MD2412.
- 1.5. In the Summer Statement of July 2020, the Government announced that a £2 billion Green Homes Grant scheme would be established to upgrade homes of all tenures across England. Under this, £500 million funding is to be delivered through local authorities, to improve the energy efficiency of low-income households. The Local Authority Delivery (LAD) scheme aims to raise the energy efficiency of low energy performance homes (those rated at EPC B and D, E, F or G) containing low income households. The initial two phases (1a and 1b) were competitive and the GLA secured a total of £9,445,450 from BEIS (receipt of funds approved by MD2712 and MD2775).
- 1.6. The new phase (GHG-LAD2) is being managed by the Greater South East Energy Hub (operated by Cambridgeshire & Peterborough Combined Authority) for our area of England. Non-competitive allocations have been made based on a formula incorporating both population and fuel poverty levels. The Energy Hub has appointed the GLA as the Lead Authority and Happy Energy Solutions Ltd (coincidentally our existing Warmer Homes contractor) as a framework contractor for 21 London boroughs, with a consortium led by the London Borough of Ealing supporting the other 12 boroughs. An allocation of £18,694,827 has been made to the GLA, of which £190,764 will cover the GLA's own costs of supporting the programme. Each borough has been allocated an indicative initial allocation, ranging from £26,154 for the City of London to £1,333,140 for Croydon. The receipt of these funds will be subject to an MD.
- 1.7. The GLA is required to sign a grant funding agreement to receive this money, and to enter into Inter Authority Agreements with local authorities who wish to use the funding on their own stock. The GLA is also required to enter into a call-off contract to use the Managing Agent appointed by the Energy Hub. This Director Decision seeks approval of up to £51,000 spend to allow legal review of the grant funding agreement, call-off contract with the Managing Agent appointed by the Energy Hub, and all other relevant documents, through an existing procurement framework of legal services.

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

- 2.1. The legal support will allow the contracts with the Energy Hub to be reviewed and will also facilitate delivery of the scheme to longer project timescales. At present the delivery timescale for GHG-LAD2 is by December 2021 however since the Energy Hub has incurred significant delays in providing us with the legal documents, we expect this to be extended until at least March 2022. A further MD will be prepared in order to receive the funding once we are content with the documents.
- 2.2. Compared to previous versions of the grant funding agreement the GLA will no longer have a role in letting or entering into the works contracts and will not contract with installers directly. This will be the role of the Managing Agent, whom we will in turn manage. The extent of the GLA's liability therefore ought to be limited. The risks for the GLA are likely to centre around:
  - clawback risk if the GHG conditions are not met
  - possible reputational risk if installers do not carry out work appropriately, or do not comply with provisions which are equivalent to GLA policies.
- 2.3. The legal assessment will focus on summarising the overall structure and identifying any residual risks for the GLA which is not passed to the installers, Managing Agent and/or the boroughs.

## **3. Equality comments**

- 3.1. Under Section 149 of the Equality Act 2010 (the "Equality Act") as public authorities, the Mayor and the GLA must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. Protected characteristics under the Equality Act comprise age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage or civil partnership status.
- 3.2. This work furthers actions and policies set out in the London Environment Strategy (e.g. reducing carbon emissions from homes in London) which has been consulted on publicly and sought input from all groups and communities. All responses to those consultations were analysed to help ensure the Strategy reflects diverse views and needs.
- 3.3. The programme will target residents who are in or at risk of fuel poverty and homes with poor levels of energy efficiency, and it will aim to promote holistic, whole-house energy efficiency retrofits. The programme is designed to advance equality of opportunity and supports those who are particularly vulnerable, whether as a result of their protected characteristics or other factors, such as their health or personal circumstances. The scheme will have a positive impact on lower income and fuel poor households directly through the home refurbishments. Indirect benefits are also anticipated by catalysing greater awareness of energy use and the opportunities for people to reduce their energy consumption and bills, whilst still protecting their health.

## **4. Other considerations**

### *Links to Mayoral strategies*

- 4.1. The London Environment Strategy, Fuel Poverty Action Plan, Equality, Diversity & Inclusion Strategy and Health Inequalities Strategy all contain objectives to tackle fuel poverty and to help households access support. The Fuel Poverty Action Plan in particular seeks to secure much greater fuel poverty funding for London.

- 4.2. Relevant recovery missions are the Robust Safety Net and the Green New Deal. The retrofit of London's homes is central to the Green New Deal mission to tackle the climate and ecological emergencies and improve air quality by doubling the size of London's green economy by 2030 to accelerate job creation for all. The Mayor has also set the ambition for London to be a zero carbon city by 2030.

#### *Key risks*

<b>Risk/issue</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Rating</b>	<b>Mitigating actions</b>
1. Legal costs rise	2	2	2	A contingency of £20K for Stage 2 of legal support is built into the £51k estimate, however the scope for Stage 2 is expected to become clearer on completion of Stage 1, at which point the GLA will ask legal advisers to provide an estimate for Stage 2.
2. Delayed conclusion of legal review	3	2	3	Two weeks have been allowed for consideration therefore there is not expected to be a significant delay.

#### *Conflicts of interest*

- 4.3. There are no conflicts of interest to note for any of the officers involved in the drafting or clearance of this decision form.

## **5. Financial comments**

- 5.1. Approval is sought for the procurement of legal provision to review the grant funding allocation agreement of £18,694,827 between GLA and Cambridgeshire and Peterborough Combined Authority (CPCA) to the GLA, to enter inter Authority agreements between GLA and some of the 21 London boroughs who wish to use the funding on their own stock and to enter into a call-off contract with the Managing Agent 'Happy Energy Solutions' appointed by the Energy Hub.
- 5.2. The total revenue expenditure of up to £51,000 for the proposal will be funded initially from the Warmer Homes revenue budget for 2021-22. It should be noted, however, should the total grant funding from CPCA be approved and secured following on from the legal advice currently being sought, an allocation of £190,764 is included within the overall £18.7m to cover GLA costs including staffing and legal costs (which will include the £51,000 for this proposal).

## **6. Legal comments**

- 6.1. The foregoing sections of this report indicate that:
- the decisions requested of the Director (in accordance with the GLA's Contracts and Funding Code) concern the exercise of the GLA's general powers, falling within the GLA's statutory

powers to do such things considered to further or which are facilitative of, conducive or incidental to the promotion of economic development and wealth creation, social development or the promotion of the improvement of the environment in Greater London and;

ii. in formulating the proposals in respect of which a decision is sought, officers confirm that they have complied with the GLA's related statutory duties to:

- pay due regard to the principle that there should be equality of opportunity for all people
- consider how the proposals will promote the improvement of health of persons, health inequalities between persons and to contribute towards the achievement of sustainable development in the United Kingdom
- consider consulting with appropriate bodies.

6.2. In taking the decisions requested, the Director must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic (race, disability, sex, age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment) and persons who do not share it (section 149 of the Equality Act 2010). To this end, the Director should have particular regard to section 3 (above) of this report.

6.3. Officers must ensure that the framework under which it is proposed the legal services required are to be called off was procured in accordance with the GLA's Contracts and Funding Code and the services required will be procured in accordance with the requirements of that framework. Officers have indicated in section 1.7 that the legal services will be appointed in discussion with TfL Legal.

## 7. Planned delivery approach and next steps

Activity	Timeline
Delivery Start Date	August 2021
Delivery End Date	August 2021

### Appendices and supporting papers:

None.

### Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) 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 it has been approved or on the defer date.

### Part 1 - Deferral

**Is the publication of Part 1 of this approval to be deferred? NO**

Until what date: (a date is required if deferring)

### Part 2 – Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included 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:

John Kolm-Murray has drafted this report in accordance with GLA procedures and confirms the following:

✓

#### Assistant Director/Head of Service:

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

✓

#### Financial and Legal advice:

The Finance and Legal teams have commented on this proposal, and this decision reflects their comments.

✓

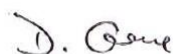
#### Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 16 August 2021.

### EXECUTIVE DIRECTOR, RESOURCES:

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

**Signature**



**Date**

16 August 2021