

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2131

Title: Recovery of Capital Grants and Recycled Capital Grant Fund General Determinations 2017

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. This Decision deals with revisions to the existing 2015 Determination that covers Registered Providers (including local authorities) and proposes a new Determination to recover grant from Unregistered Bodies.

Decision:

The Mayor:

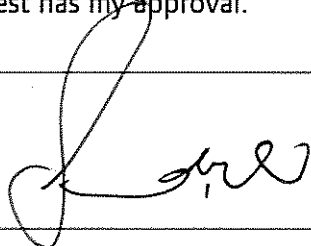
- Approves 'The Recovery of Capital Grants from Registered Providers and Recycled Capital Grant Fund (Greater London) General Determination 2017', the form of which is set out at Appendix 1 of this report;
- Approves 'The Recovery of Capital Grants from Unregistered Bodies (Greater London) General Determination 2017, the form of which is set out at Appendix 2 of this report; and
- In taking the decision to approve the Determinations, takes into account responses to the consultation summarised below in Appendix 4.

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:

5/8/12

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 it has paid for the provision of affordable housing under Sections 32-34 of the Housing and Regeneration Act 2008, as applied to the GLA under section 333ZE of the GLA Act 1999.
- 1.2 The events that trigger grant recovery and the circumstances under which a Registered Provider (including local authorities) (RP) can recycle grant are set out in The Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015, supported by the Affordable Housing Capital Funding Guide (CFG). This Determination, which applies only to registered providers including local authorities, now needs to be reissued to reflect changes introduced in the Housing and Planning Act 2016 (HPA 2016).
- 1.3 The existing provisions set out in the 2015 General Determination referred to above relate to recovery of grant from RPs of social housing only. However, under the Affordable Homes Programme 2016-21, grant may be given by the GLA to any organisation, not just registered providers, in pursuance of the delivery of affordable homes – so a separate new Determination is also required in order to govern recovery of grant from unregistered bodies.
- 1.4 For the purpose of clarity, it is proposed there will now be two Determinations concerning the recovery of grant, one for registered providers (including local authorities) and one for unregistered bodies. Both Determinations will apply to organisations taking grant in Greater London only. It is intended both Determinations will take effect at the same time and before any grant is given under the Affordable Homes Programme 2016-21. The HCA issued its own Determinations on 6 April 2017.

The Recovery of Capital Grants from Registered Providers and Recycled Capital Grant Fund (Greater London) General Determination 2017

- 1.5 The changes to the above are mainly led by the passing of deregulatory measures in the HPA 2016 and, in particular, the abolition of Disposal Proceeds Funds from 6 April 2017 (subject to transitional provisions). The main changes are set out below.
- 1.6 A consequence of the repeal of Section 172 of the Housing and Regeneration Act 2008 is that RPs, when disposing of social housing dwellings, will no longer be prompted by the Social Housing Regulator to review whether these dwellings were acquired, developed or repaired using grant from the GLA, nor how the arising proceeds should be dealt with where such grant has been used. The new Determination now provides that an RP must not only notify GLA on the occurrence of a Relevant Event but also in some specified circumstances on the anticipated occurrence of a Relevant Event. Failure to notify the GLA of the disposal in accordance with any specified timetable and/or terms set out in the CFG or any applicable grant agreement, will entitle the GLA to implement the recovery process (subject to certain excepted categories of disposal).
- 1.7 As a consequence of the legislative changes, grant given to develop homes which are disposed of under the Right to Acquire, Social Homebuy or Voluntary Purchase Arrangements will become recoverable by the GLA. The new Determination therefore makes reference to this in the Explanatory Note.
- 1.8 A further previous exemption from grant recovery was where for profit RPs were required to place the proceeds of sale into their Disposal Proceeds Fund. Given that there will be no requirement to

place proceeds of sale of any disposal after 6 April 2017 within such a fund, grant within such proceeds will also now be subject to recovery under the new Determination.

The Recovery of Capital Grants from Unregistered Bodies (Greater London) General Determination 2017

- 1.9 The introduction of a Determination to recover grant given to unregistered bodies is consistent with existing policy and contractual arrangements that require registered bodies to repay recovered capital grant. There is currently no corresponding provision for unregistered bodies to recycle grant or transfer liability to other social housing providers
- 1.10 This Determination includes a series of defined trigger or relevant events at paragraph 6 of the Determination which define the events and circumstances under which the GLA may recover grant.
- 1.11 The GLA may direct an Unregistered Body to add an uplift to the amount of recoverable grant. The method for calculating the uplift amount and circumstances in which it must be added will be published by the GLA from time to time. The uplift will be calculated by reference to any increase in market value of any housing or other land which has been acquired, constructed, converted, improved or repaired as a result of Capital Grant which is the current basis for the recovery of grant from profit making registered providers. In addition to the incorporation of uplift, the GLA will also give itself the ability to charge interest to an amount of Capital Grant repayable upon a Relevant Event where unregistered bodies have either failed to notify or delayed notification of the occurrence of a Relevant Event or in other circumstances which lead to a potential loss to the GLA. This is in line with existing policies and practices for for-profit registered providers.
- 1.12 This Determination will be prospective only, and will apply to new Social Housing Assistance given under the Shared Ownership and Affordable Homes Programme 2016 to 2021 (and any future social housing programmes).
- 1.13 For both Determinations, where it states the GLA will publish or specify detail, this will be done within the Affordable Housing Capital funding Guide (CFG) and within the terms of any grant agreement relating to the provision of Capital Grant. The GLA's requirements and operation arrangements for monitoring and reporting will be published from time to time in the CFG.

Consultation

- 1.14 Before the GLA can make a new determination it is required in law to consult on its proposals. It is required to consult with such bodies appearing to the GLA to represent the interests of registered providers of social housing ("RPs") and such other persons as it considers appropriate.
- 1.15 Copies of the proposed Determinations were published on the GLA's website and explanatory letters were sent to the Social Housing Regulator, Local Authorities and RPs working in London and the Council of Mortgage Lenders. The National Housing Federation and London Councils were also contacted. Letters were also sent to the National Almshouse Association as many Almshouse Associations are not registered providers and to the Home Builders Federation as the representative of volume house developers, many of whom are unregistered.
- 1.16 The form of the explanatory letter, setting out the GLA's proposals for consultation, is attached as Appendix 3. The consultation period was from 22 March 2017, 16.30 when the documents were sent to all consultees and posted on the GLA website to 23.59 on 11 April 2017. It was not formally advertised in advance of this although most RPs and LAs were advised of the GLA's intention to consult through their quarterly review meetings.
- 1.17 Responses were received from seven organisations; the Social Housing Regulator, the CML, four not-for profit RPs and a firm of solicitors which represent a number of lenders to the social housing sector. A document responding to the responses is attached as Appendix 4 and will be published at

the same time as the Determinations. Two of the responders indicated they had no comment on the proposed determinations, one requested a slight change for clarification purposes to the Determination for RPs while the others were operational queries which will be dealt with in detail through the CGF. There is no intention to amend the Determinations, based on these responses, other than to respond to the clarification request.

2. Objectives and expected outcomes

- 2.1 The Determinations once published will update and clarify the way in which the reuse and 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 will also ensure the GLA is operating the system for this in accordance with recent changes in legislation.

3. Equality comments

- 3.1 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, of which this paper relates, were covered by the Integrated Impact Assessment (IIA) for the Further Alterations to the London Plan.
- 3.2 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.
- 3.3 The delivery of new and additional homes facilitated by the use of the Determinations will help to implement Objectives 1, 2, 3 and 4 of the Mayor's Equalities Framework "Equal Life Chances for All" (June 2014) by contributing to the creation of new homes, housing products and well-designed housing schemes.

4. Other considerations

- 4.1 It may be considered the consultation was carried out within a relatively short period of time. Having sought Legal advice, there are no statutory requirements as to the length of time to consult; generally, determining the length of consultation is based on what is reasonable and proportionate in all the circumstances. Three weeks was considered to be a reasonable period of time for this particular consultation for the following reasons:
- The Determinations are technical in nature and do not represent a change to existing policy.
 - Appropriate persons were previously consulted on the existing General Determination in 2015 and there are relatively few changes proposed to this Determination for registered providers. The key issue with regard to the proposed new Determination for unregistered bodies is the nature of the grant recipient (i.e. that they are not a registered provider of social housing).
 - There were no major public holidays over the course of the proposed 3-week consultation period.

5. Financial comments

- 5.1. This decision requests approvals for the determination to recover Capital Grant Funds from Registered and Unregistered Providers as well as the determination to recover Recycled Capital Grant Fund (Greater London) from Registered Providers.
- 5.2. The consultation has been carried out within existing resources and there are no cost implications arising from this decision.

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 2015 (the 2015 Determination) and through the Affordable Housing Capital Funding Guide (the CFG). The 2015 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 CFG.
- 6.5. The 2015 Determination needs to be reissued to reflect changes introduced in the Housing and Planning Act 2016. In addition, a separate determination is required as the new AHP 2016-21 permits grant being given to unregistered organisations and the 2015 Determination does not cover such organisations.
- 6.6. 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. Details of the consultation process undertaken are set out above.
- 6.7. 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 but previous determinations would continue to apply in respect of grant given before this date.
- 6.8. As noted above, consequential amendments will be required to the CFG.

7. Planned delivery approach and next steps

Activity	Timeline
New determination published	8 September 2017
AHCFCG revisions	30 September 2017

Appendices

Appendix 1: The Recovery of Capital Grants from Registered Providers and Recycled Capital Grant Fund (Greater London) General Determination 2017.

Appendix 2: The Recovery of Capital Grants Determination from Unregistered Bodies (Greater London) General Determination 2017.

Appendix 3: Explanatory letter sent out as part of the consultation.

Appendix 4: Summary of responses to the consultation.

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? NO

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:

Simon Powell pp 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 04 September 2017.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

Date

M. S. A. 04-09-17
TOM MIDDLETON ON BEHALF OF MARTIN CLARKE

CHIEF OF STAFF:

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

Signature

Date

D. Bellamy

4/9/2017

