

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION – MD3038

### Title: The introduction of Publicly Available Specification 9980 into the Building Safety Fund

#### Executive summary:

Mayoral Decision (MD) 2630, signed in May 2020, agreed that the GLA would support the remediation of non-aluminium composite material (ACM) cladding systems through the Building Safety Fund (BSF) ('the Fund'), and administer the Fund for London on behalf of the Department for Levelling Up, Housing and Communities (DLUHC).

In July 2022, DLUHC made changes to the BSF's eligibility process and the scope of works eligible for funding, by requiring some buildings to obtain a fire risk appraisal of external walls (FRAEW) based on the new Publicly Available Specification 9980 methodology (PAS 9980:2022). The outcome of the FRAEW will determine whether the building is eligible for the BSF, and which works are funded. Whereas previously the BSF only funded the replacement of unsafe non-ACM cladding, the BSF will now fund 'life critical fire safety works' which may include measures other than the removal of unsafe non-ACM cladding.

Given the change in what capital expenditure is being used for, and the risks associated with the PAS 9980:2022 approach, a decision is sought to continue the GLA's role in administering the London element of the BSF.

#### Decision:

That the Mayor approves the continued GLA administration of the London element of the BSF under an updated fund design that relies upon a PAS 9980:2022 fire risk appraisal.

#### 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:

8/12/22

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

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

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

- 1.1. The disaster at Grenfell Tower revealed the widespread use of unsafe cladding materials on high-rise residential blocks across the country.
- 1.2. In response, the government has launched three separate funds since 2018 to facilitate the replacement of unsafe cladding systems on residential buildings over 18 metres in height. These are the Social Sector ACM Cladding Remediation Fund (SSCRF); the Private Sector ACM Cladding Remediation Fund (PSCRF); and the Building Safety Fund (BSF).
- 1.3. To support the work to remediate buildings with unsafe cladding, the government issued a Consolidated Advice Note (CAN) in January 2020. This brought together and updated the prescriptive guidance on the measures that building owners should take to ensure their buildings are safe following the Grenfell Tower tragedy. Specifically, it outlined which materials were unsafe and set out a clear expectation that they be removed and replaced. The government is now of the position that this guidance led to an overly cautious approach to building safety which resulted in unnecessary or disproportionate works being carried out.
- 1.4. The government withdrew the CAN in January 2022. It has now been replaced by the Publicly Available Specification (PAS) 9980 (PAS 9980:2022), which introduces a new methodology for competent professionals to conduct a fire risk appraisal of external walls (FRAEW) on existing multi-storey, multi-occupied residential buildings. This aims to determine the need for any risk-proportionate actions that a building owner is required to take to protect residents.
- 1.5. A FRAEW will classify the risk of fire spread over or within external walls as low, medium or high. In making this assessment, competent professionals are expected to take a holistic approach that considers the fire performance of the materials within the building's external walls and façade configuration (such as the positioning of combustible materials), as well as the current fire strategy for the building.
- 1.6. The introduction of PAS 9980:2022 moves the government away from its original position under the CAN of prescribing which external wall materials are unsafe and should be removed and replaced. The government expects the introduction of PAS 9980:2022 to result in a more proportionate response to the assessment of external wall systems. In some instances, a FRAEW will result in combustible materials within a building's external wall being retained where they can be managed safely with additional mitigation measures – for example, the installation of sprinklers or fire alarm systems – or an update to the building's fire evacuation strategy. Buildings that are assessed as high-risk under the PAS 9980:2022 methodology will require immediate action – for example, the removal of unsafe cladding materials.
- 1.7. In July 2022, the Department for Levelling Up, Housing and Communities (DLUHC) reopened the registration process for new applications to the BSF. To register, building owners will need to have carried out a FRAEW to PAS 9980:2022 standards. The FRAEW will be used to assess the building's eligibility for funding and determine what works are necessary and fundable under the BSF. DLUHC is also permitting some buildings currently within the BSF, and so currently subject to the original CAN eligibility criteria, to undertake a FRAEW if they wish to, and to continue in the Fund based on the FRAEW recommendations. This means that at any one time the cohort of applications progressing through the BSF will be comprised of a mixture of those subject to the CAN funding eligibility criteria and those subject to PAS 9980:2022 funding eligibility criteria. All decisions regarding eligibility of buildings and the scope of works eligible for BSF funding will remain with DLUHC.
- 1.8. MD2630 specifically agreed that the GLA would support the 'removal and replacement of unsafe non-ACM cladding' through its role in administering the BSF. If the GLA is to continue its role in the

BSF following the introduction of PAS 9980:2022, this will involve providing funding for a purpose that differs from the original decision, described by the government as ‘addressing life-safety fire risks associated with cladding in high-rise residential buildings’<sup>1</sup>. Specifically, this may include providing funding for projects that seek to mitigate the presence of – rather than remediate – combustible materials. Accordingly, a revised decision is sought for the GLA to continue administering the BSF for buildings following the introduction of PAS 9980:2022.

- 1.9. It should be noted that this decision does not relate to whether PAS 9980:2022 should or should not be introduced into the BSF. As the body responsible for policy and programme design, only DLUHC can, and has, made that decision. MD3038 seeks to confirm the GLA’s role in delivering the BSF, given that the introduction of PAS 9980 has changed its parameters.

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

- 2.1. The GLA’s continued involvement as the delivery partner for BSF in London will ensure consistency, continuity, and pace on all BSF applications in the capital, ensuring the continued delivery of the objectives and outcomes as outlined in MD 2630. If the GLA was to withdraw as delivery partner, this would cause significant disruption to the delivery of the BSF and cause many remediation projects to stall.
- 2.2. Whilst the scope of this decision relates solely to whether the GLA does or does not continue as a delivery partner for the BSF, DLUHC’s objectives and desired outcomes of the introduction of PAS 9980:2022 into the programme should be noted for context:
- 2.2.1. The introduction of PAS 9980:2022 into the BSF may in some instances result in non-cladding fire-safety defects being included within the scope of funding. Given that many BSF projects have previously been delayed because there was no funding solution for works ineligible for funding under the CAN criteria, greater flexibility on the scope of funding will make buildings safe more quickly.
- 2.2.2. In some instances, mitigating measures could be implemented quicker than lengthy remedial programmes, thereby ensuring the fire threat to residents is reduced sooner and with less on-site disruption to residents.
- 2.2.3. Finally, the costs of mitigation measures are likely to be much lower than full removal and replacement of all combustible materials. This may enable BSF funding to support a larger number of buildings.

## **3. Equality comments**

- 3.1. Under Section 149 of the Equality Act 2010, the Mayor and the GLA are subject to the public sector equality duty and must have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation
  - advance equality of opportunity between people who share a relevant protected characteristic and those who do not
  - foster good relations between people who share a relevant protected characteristic and those who do not.
- 3.2. The “protected characteristics” are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage/ civil partnership status. The duty involves having appropriate regard to these matters as they apply in the circumstances, including

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<sup>1</sup> <https://www.gov.uk/guidance/building-safety-fund-guidance-for-new-applications-from-july-2022>

having regard to the need to: remove or minimise any disadvantage suffered by those who share or is connected to a protected characteristic; take steps to meet the different needs of such people; encourage them to participate in public life or in any other activity where their participation is disproportionately low. This can involve treating people with a protected characteristic more favourably than those without one.

- 3.3. The continued administration of the Fund in London by the GLA will be to the benefit of leaseholders in buildings eligible for BSF funding and ensure that programme delivery continues at pace. In addition, the introduction of PAS 9980:2022 into the BSF means that mitigating measures may be funded which are not directly part of the cladding system and these would not have been funded under the previous BSF eligibility criteria. The pace and scope of delivery is important for all residents of these buildings, but particularly for those who may find it more difficult to evacuate a building in an emergency (for example, Deaf and disabled residents). Ultimately, the requirement to evacuate residents during an emergency should be minimised once life-critical fire-safety works have been undertaken.
- 3.4. A withdrawal from the administration of the BSF by the GLA at this stage would be detrimental to the pace of delivery given that there is no immediate alternative in place for the administration of the fund in London. Any disruption caused by the GLA withdrawing from its role as delivery partner for the BSF in response to the introduction of PAS 9980:2022 would prolong the disproportionate risk faced by residents in these buildings, particularly Deaf or disabled residents whose ability to self-evacuate may be compromised. Therefore, the decision recommended in this MD is considered to have a positive impact on Deaf and disabled Londoners.
- 3.5. This decision does however note the wider implications that the introduction of PAS 9980:2022 could have on those who may find evacuation during an emergency more difficult, particularly Deaf and disabled residents. First, a building-wide approach to building safety via a FRAEW (which may result in, for example, the introduction of mitigating measures or amendments to the building's fire safety strategy), risks overlooking the individual needs of residents. This risk is heightened by the government's decision to reject the mandatory implementation of Personal Emergency Evacuation Plans in May 2022. The GLA recognises this concern and will closely monitor the outcome of the government's August 2022 consultation on a proposed alternative package of initiatives to support residents whose ability to self-evacuate may be compromised. Secondly, the limited pool of qualified fire risk assessors and the (as yet) relatively untested approach of PAS 9980:2022, presents the risk that poor quality PAS assessments may result in continuing fire-safety risks that do not resolve the fire-safety issues being experienced by leaseholders (particularly those who are Deaf and disabled) in these buildings. The GLA will work to influence DLUHC as far as it is able to ensure that these risks are actively managed through DLUHC's design and delivery of the programme.

#### 4. Other considerations

##### Risks and issues

- 4.1. The GLA's role in the BSF is administrative. DLUHC makes all substantive decisions and is responsible for programme design and scope. As such, the GLA had limited ability to influence the decision to introduce PAS 9980:2022 and has limited scope to mitigate the risks posed by its introduction. Nevertheless, the central risk associated with this decision is presented in the table below.

Risk Description	Mitigation	Current Probability (1-4)	Current impact (1-4)	RAG
<b>Reputational Risk to the Mayor / GLA-</b> In some cases leaseholders may be concerned that	<ul style="list-style-type: none"> <li>The GLA will ask the government to ensure that they support leaseholders to</li> </ul>	2	2	G

the GLA is providing funding to support remediation solutions for buildings that involve the retention of combustible materials.	<p>understand the impact of the introduction of PAS 9980 into the BSF and provide reassurance to leaseholders that where combustible materials are retained, it will be based on a competent professional advising that any risks posed can be managed safely.</p> <ul style="list-style-type: none"> <li>• The GLA will work to influence DLUHC as far as it is able to ensure that this risk is actively managed through DLUHC's design and delivery of the programme.</li> </ul>			
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4.2. This decision also notes some of the wider risks with the decision by DLUHC to introduce PAS 9980:2022 into the BSF which, whilst the GLA has limited ability to mitigate and are not directly related to the subject of this decision, are outlined for context:

- 4.2.1. Lenders may remain reluctant to approve mortgages and insurers may still charge higher premiums where combustible materials are retained within an external wall system on the recommendation of a FRAEW. However, in July 2022, six of the country's largest mortgage lenders agreed to lend on flats that are covered by government or developer remediation schemes. A wider adoption of this approach by lenders is expected and the GLA will continue to monitor the impact of PAS 9980:2022 on these issues.
- 4.2.2. There is a limited number of qualified fire risk assessors with sufficient professional indemnity insurance to meet the demand for PAS 9980:2022 assessments which may impact the BSF's pace of delivery. In addition, the limited pool of qualified fire risk assessors and the (as yet) relatively untested approach of PAS 9980:2022, presents the risk that poor quality PAS assessments may result in continuing fire-safety risks that do not resolve the fire-safety issues in these buildings. The GLA will raise these concerns with the government, and request information on what plans are in place to increase the number of competent professionals available to undertake these assessments.
- 4.2.3. The introduction of PAS 9980:2022 to the BSF risks inconsistencies with previous decisions for projects under the BSF and other cladding remediation programmes, as before the introduction of PAS 9980:2022 the only works funded would be the removal and replacement of unsafe cladding.
- 4.2.4. Alternative measures, such as the installation of sprinkler systems and fire alarms, are also not without their own additional risk and cost implications in the longer term. For example, the efficacy of sprinkler systems is dependent upon them working effectively through regular servicing (for which there are associated costs) and correct usage.

#### Links to Mayoral strategies and priorities

- 4.3. Chapter five of the 2018 London Housing Strategy highlights that many high-rise blocks across London are fitted with inappropriate materials and are therefore at an increased risk of fire. It calls on the government to provide funding to make blocks safe and protect leaseholders from costs. The Mayor is a supporter of the End our Cladding Scandal campaign.

- 4.4. The Mayor is committed to ensuring that residents are safe, and feel safe, in their homes. The impact of unsafe cladding and other fire safety risks is widely reported to have had an adverse impact on the mental wellbeing of leaseholders.

#### Conflicts of interest & consultation

- 4.5. There are no known conflicts of interest to declare for those involved in the drafting or clearance of this MD.
- 4.6. The Mayor has a duty to consider consultation when exercising his powers under section 30 of The Greater London Authority Act 1999 (the GLA Act). Following a review of the listed bodies under section 32 of the GLA Act, the GLA considers that it does not need to consult with any of these parties given that the government has already agreed to introduce PAS 9980 into the BSF.

### **5. Financial comments**

- 5.1. This decision requests approval for the continued GLA administration of the London element of the BSF, for which the eligibility assessment has changed following the introduction of Publicly Available Specification, PAS 9980:2022. DLUHC is responsible for programme design and scope, and the GLA has administrative responsibility for managing the programme. The GLA's risks mitigation strategy for potential risks within the new PAS 9980:2022 assessment method, is outlined in paragraph 4.1.
- 5.2. In April 2022, the GLA received an amendment to the Memorandum of Understanding (MoU) from DLUHC for the delivery of the BSF. DLUHC has now allocated a total of £4.5bn capital funding to the BSF, with London buildings estimated to make up 60 per cent of the total portfolio. This will be treated as capital grant funding from DLUHC to the GLA. DLUHC is committed to funding reasonable, evidenced capital and revenue expenditure that are directly attributable to the activities of the BSF incurred by the GLA as a delivery partner.
- 5.3. The GLA will continue to be reimbursed by DLUHC on a quarterly basis in arrears. Payments made to approved applicants would be recovered by the GLA from DLUHC, within the following quarter.

### **6. Legal comments**

- 6.1. The GLA is empowered to administer the BSF in London, providing grant funding for life-critical fire-safety works to those responsible for social and private sector residential tower blocks in London under sections 30(1) and 34 of the GLA Act, provided the Mayor considers that doing this will further one or more the GLA's principal purposes of: promoting economic and social development in Greater London, and improving the environment in Greater London. It is open to the Mayor to take the view that the provision of funding for such a purpose helps create safe places to live and reduces risk to life, which is arguably important for the wellbeing of the individuals living in those buildings (promoting social development) and/or improves the environment.
- 6.2. In determining whether or how to exercise the power conferred by section 30(1) of the GLA Act, the Mayor must:
- have regard to the effect that these decisions will have on the health of persons in Greater London, health inequalities between persons living in Greater London, the achievement of sustainable development in the United Kingdom and climate change and its consequences (sections 30(3-5) of the GLA Act)
  - pay due regard to the principle that there should be equality of opportunity for all people (section 33 of the GLA Act).
- 6.3. In this respect the Mayor should have regard to section 3 above.



- 6.4. In addition to the above, where the Mayor is proposing to use the power conferred in section 30(1) of the GLA Act, the Mayor must consider consulting in accordance with section 32 of the GLA Act (see section 4.6 above).
- 6.5. Officers have indicated that this project amounts to the provision of grant funding and not payment for services. Officers must ensure that:
- 6.5.1. the funding is distributed fairly, transparently in accordance with the GLA's equalities duties, and in a manner which affords value for money in accordance with the GLA's Contracts and Funding Code
- 6.5.2. appropriate funding agreements are put in place between and executed by the GLA and successful applicants before any commitment to fund.
- 6.6. In taking the decisions requested, the Mayor 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 (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) and persons who do not (section 149 of the Equality Act 2010). To this end, the Mayor should have regard to section 3 (above) of this report.

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

- 7.1. PAS 9980:2022 was first released in January 2022. The government reopened the BSF for new and existing registrations in July 2022, at which point PAS 9980:2022 became a formal part of the programme. It is not currently confirmed when the GLA will receive registrations based on a PAS 9980 assessment however an estimated timeline is included below.

<b>Activity</b>	<b>Timeline</b>
GLA's Building Safety Team to work with DLUHC to update operational procedures	September 2022 to January 2023
GLA receipt of new BSF registrations with PAS 9980:2022 assessments	January 2023 onwards

### **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**

**Part 2 – Sensitive information**

Only the facts or advice that would be exempt from disclosure under the 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:**

Jevais Marché has drafted this report in accordance with GLA procedures and confirms the following:

✓

**Sponsoring Director:**

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

✓

**Mayoral Adviser:**

Tom Copley 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 5 December 2022.

✓

**EXECUTIVE DIRECTOR, RESOURCES:**

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

**Signature**

*D. Gove*

**Date**

07/11/2022

**CHIEF OF STAFF:**

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

**Signature**

*D. Bellamy*

**Date**

03/12/2022