

REQUEST FOR MAYORAL DECISION – MD1346

Title: HCA programme delegation

Executive Summary:

By virtue of the Localism Act 2011 from 1 April 2012 the Homes and Communities Agency's ("HCA") powers to operate in Greater London will end and from that date the Greater London Authority ("GLA") will undertake the HCA's former role in the Capital.

There are activities that are undertaken by the HCA in relation to five capital investment programmes operating throughout England, including Greater London. The Mayor and the HCA have agreed that the HCA should continue to undertake these activities in Greater London after 1 April 2012. This means that the Mayor must delegate to the HCA the necessary legal powers to do this.

This Mayoral Decision asks the Mayor make the necessary delegations to the HCA not covered in MD1335.

Decision:

The recent MD1335 put in place a new delegation to the HCA in relation to all HCA GLA funded Equity Loan schemes in London.

The Mayor confirms that:

1. The revocation of MD978 made by MD1335 is in relation to the Equity Loans investments in London only (as MD1335 provides a new delegation for these).
2. The delegation made under MD978 in relations to the Private Finance Initiative schemes operated by London Boroughs and the "Get Britain Building" loan fund continues from 1 April 2014.
3. The Armed Forces Home Ownership Scheme and the Berkeley Homes investment rental fund have ended, and therefore for clarity, this MD revokes the delegation made under MD978 in relations to these.

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: 6 May 2014

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

Decision required – supporting report

1. Introduction and background

- 1.1 By virtue of the Localism Act 2011 from 1 April 2012 the HCA's powers to operate in Greater London ended from that date and the GLA undertake the HCA's former role in the Capital using its new powers in relation to land and social housing contained in Part 7A of the GLA Act, and its general and subsidiary powers under sections 30 and 34 of that Act, which are exercisable by the Mayor.
- 1.2 Relevant property, rights and liabilities of the HCA were transferred to the GLA on 1 April 2012 under a statutory transfer scheme made under the Localism Act 2011, including the majority of its capital investment programmes and budgets. There are, however, capital investment programmes that are not transferring to the GLA, which are:
 - Private Finance Initiative schemes operated by London boroughs;
 - The "Get Britain Building" loan fund.
- 1.3 There are activities that are undertaken by the HCA in relation to these capital investment programmes operating throughout England, including Greater London. These activities include monitoring and reporting on the performance of contracts; collecting repayments from home buyers of loans granted by the HCA; managing equity investments; and giving financial assistance to home buyers and home builders.
- 1.4 For reasons that are explained below, the Mayor and the HCA have agreed that the HCA should continue to undertake its activities in relation to these programmes in Greater London. This means that the Mayor must delegate to the HCA the necessary legal powers to undertake these activities.
- 1.5 These programmes are explained below, and the activities that the HCA will exercise under delegated authority from the Mayor are set out in the Instruments of Delegation, attached at Annex A.

Private Finance Initiative schemes operated by London boroughs

- 1.6 Under the Private Finance Initiative ("the Initiative") a number of London boroughs entered into long term contracts with private sector providers for those providers to improve and maintain a given number of council owned homes to the Decent Home standard for an agreed period of time.
- 1.7 Although the Initiative is now closed to new applicants, there are ten contracts still in place and in force between London boroughs and private sector providers, because the contracts typically run for twenty five years or more.
- 1.8 Under the contracts the relevant boroughs pay the private sector provider a fee based upon its performance in meeting the requirements of the contracts in improving and maintaining the homes.
- 1.9 The HCA monitors and records the performance of all the contracted schemes operating under the Initiative in England, including throughout the Greater London area, and reports its monitoring information to the Government. In addition, the HCA supports London boroughs operating projects under the Initiative to help maximise the delivery of agreed outputs, and also deals with ad hoc requests for information relating to the Initiative.
- 1.10 The HCA and GLA have agreed that on grounds of efficiency and business continuity the HCA should continue to perform the activities specified in the paragraph above.

- 1.11 The Mayor is therefore asked to authorise the HCA to continue to exercise such of the GLA's powers under sections 30 and 34 of the GLA Act accordingly, upon the basis and upon the terms and conditions set out in the Instrument of Delegation attached to this Mayoral Decision.

"Get Britain Building"

- 1.12 The "Get Britain Building" programme ("the Programme") is a HM Treasury authorised loan and equity finance programme for home builders experiencing difficulties in raising loan finance from banks and other commercial lenders to build out sites which are "shovel ready;" that is they are owned by the developer and have planning permission. This Programme has yet to be allocated.
- 1.13 HM Treasury asked DCLG to administer the allocation of the Programme on an England wide basis, and DCLG has given this task to the HCA.
- 1.14 Due to HM Treasury financial and accounting requirements it is not possible for the GLA to hold the indicative Greater London allocation of the Programme.
- 1.15 The HCA and GLA have agreed that, to ensure home builders in Greater London can access and benefit from the Programme, the HCA should deliver and operate the Programme in Greater London.
- 1.16 The Mayor is therefore asked to authorise the HCA to continue to exercise such of the GLA's powers under sections 30 and 34 of the GLA Act accordingly, upon the basis and upon the terms and conditions set out in the Instrument of Delegation attached to this Mayoral Decision.

Matters relating to the delegations

- 1.17 The HCA has the right to refuse to accept a delegation and to make a charge for undertaking the activities delegated to it. The GLA and the HCA have agreed that there will be no charge made to the GLA in respect of the delegations, except in relation to the delegation concerning previous HCA equity loan investments in London.
- 1.18 The GLA has agreed to pay a fee to the HCA to cover its administration costs of accounting for the equity receipts collected in London and passed over to the GLA.

2. Other considerations

- 2.1 One of the Mayor's key corporate priorities was to agree a further devolution of additional housing powers from central government and its agencies to the GLA to enable him to make joined up strategic decisions over the major infrastructure for which he is responsible – on housing, transport and economic development.
- 2.2 The GLA Act 2007 had made clear the Mayor's strategic responsibility for housing in the capital by giving him the power to draft London's Housing Strategy, which sets out his housing vision and policy priorities for the capital. Together with the December 2008 establishment of the HCA (the government's national delivery body for affordable housing and regeneration) these arrangements achieved a degree of political oversight of London capital housing investment programmes that was previously absent. Furthermore, the HCA was required to establish a London Investment Committee (HCA London Board), chaired by the Mayor, to oversee its investment decisions in the capital. While these arrangements meant that the Mayor was well placed to influence the HCA's investment activities in London to ensure that they both contribute to the delivery of his London Housing Strategy as well as national policy priorities, they were still far from ideal.
- 2.3 The further devolution of housing powers to the Mayor under the Localism Act 2011 will significantly improve the strategic leadership of housing policy and its implementation in London by ensuring that the London Housing Strategy is the key policy-making document to drive housing

investment decisions. In addition it allows the London Assembly to play an effective role in scrutinising the delivery of housing on behalf of Londoners. This objective is not breached by the proposed delegations to the HCA for the sole task of ensuring that outputs and outcomes are delivered.

2.4 This is not the case in respect of the “Get Britain Building” loan fund, but the proposed delegation includes a number of conditions to ensure that the GLA is able to influence the allocation of loans.

a) Impact assessments and Consultation

2.5 As the Mayor is inheriting existing capital investment programmes, DCLG has already undertaken all necessary impact assessments and public consultation. In addition, the GLA has consulted extensively with the HCA, DCLG and the London Boroughs, including via the GLA’s Housing Investment Group, on the proposals to delegate to the HCA as proposed in this Mayoral Decision.

b) Risk

2.6 The HCA will be carrying out the activities and functions specified in the Instruments of Delegation behalf of the GLA. This means that the GLA is, in law, legally responsible (and potentially liable) in respect of the discharge of these activities and functions. The risks pertaining to the delegations are, however, mitigated by the conditions contained in the delegations; agreed working arrangements and Memorandums of Understanding with the HCA, and the Mayor’s right to revoke the delegations if required.

3. Financial comments

3.1 There are no direct financial implications for the GLA as a result of the proposals set out in this Mayoral decision for the remaining delegations previously approved under MD978

4. Legal comments

4.1 Section 30 of the Greater London Authority Act 1999 (“the GLA Act”) allows the Mayor, acting on behalf of the GLA, and after appropriate consultation, to do anything which the Mayor considers will further the promotion of economic development and wealth creation, social development or the improvement of the environment within Greater London. This MD indicates that the relevant purposes in this case are the promotion of economic and social development in Greater London, which will be achieved by administering the Equity Loans referred to in paragraph 1(a) above. Previously the GLA was prohibited from using these general powers to incur expenditure in relation to housing. This prohibition was removed by section 186 of the Localism Act 2011, which came into force on 1 April 2012.

4.2 Section 32 of the GLA Act provides that the power under section 30 is exercisable only after consultation with such bodies or persons as the GLA considers appropriate in the particular case. Paragraph 2(b) above notes that consultation was previously undertaken in relation to the Mayor’s Housing Covenant. GLA has also consulted with HCA in relation to arrangements for the administration of the Equity Loans in Greater London.

4.3 Section 33 of the GLA Act requires the GLA, when exercising a section 30 power, to make appropriate arrangements with a view to securing that there is due regard to the principle that there should be equality of opportunity for all people. In addition, section 149 of the Equalities Act 2010 requires that GLA and the Mayor have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. The HCA is also subject to statutory duties under the Equalities Act 2010 and published an Equality and Diversity Strategy in

November 2012, including nine equalities objectives. The HCA will be carrying out the delegated functions in line with their published strategy and address their objectives where appropriate.

- 4.4 Section 34 of the GLA Act provides a further power for the Mayor to do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any of his functions (including his functions under section 30).

Delegation to HCA

- 4.5 The HCA's objects are specified in the Housing and Regeneration Act 2008 ("the HRA 2008") and include improving the supply and quality of housing in England and securing the regeneration or redevelopment of land or infrastructure in England. The HRA 2008 provides that HCA may do anything it considers appropriate for the purposes of its objects or for purposes incidental to those purposes.
- 4.6 The HCA's powers in the HRA 2008 used to cover the whole of England including Greater London. From 1 April 2012 the HCA's powers in Greater London were devolved to GLA under the Localism Act 2011. As a consequence, HCA no longer has the legal power to operate in Greater London and its property, rights and liabilities in Greater London were transferred to the GLA by statutory transfer scheme.
- 4.7 Sections 38(1) and (2) of the GLA Act allow the Mayor to authorise HCA to exercise his functions under the Act, including those contained in sections 30 and 34. It is therefore necessary that the Mayor delegates his powers under sections 30 and 34 to HCA to enable the HCA to carry on the activities specified in this MD in Greater London.
- 4.8 Section 38(3) of the GLA Act requires that HCA must consent to the delegation. HCA have informally consented to the delegation and will, in due course, be providing formal written consent to the Mayor.
- 4.9 Section 38(7) of the GLA Act gives HCA the power to exercise any functions delegated to it by the Mayor pursuant to section 38, whether or not HCA would otherwise have had that power and irrespective of the nature of that function.
- 4.10 Section 38(10) of the GLA Act requires the delegation to be in writing. The proposed Instrument of Delegation is attached as Annex A. The Mayor may impose conditions on any delegations under section 38(1) and a number of conditions have been included in addition to the delegation.
- 4.11 The powers contained in sections 30 and 34 of the GLA Act, which are to be delegated to HCA, are sufficient to enable HCA to do all things it considers necessary or expedient to undertake the activities specified in the Instrument of Delegation at Annex A.

5. Background/supporting papers

MD1335 Administration of equity loan post sales programme delegation

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

If YES, for what reason:

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

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:

John McManus 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:

Nick Taylor 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

CHIEF OF STAFF:

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

Signature

Date