

GREATER LONDON AUTHORITY

REQUEST FOR DIRECTOR DECISION – DD2081

Title: Novation of London Green Fund Funding Agreement and associated responsibilities and documents from European Investment Bank to GLA

Executive Summary:

This DD summarises the purpose and achievements of the London Green Fund. It explains the rationale for novating certain management and monitoring responsibilities for the London Green Fund from the European Investment Bank to the GLA, and the efficiency gains and risks arising from the proposal.

Decision:

That the Executive Director of Resources approves the novation of the London Green Fund Funding Agreement and associated responsibilities and documents from the European Investment Bank to GLA.

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: Martin Clarke

Position: Executive Director, Resources

Signature:



Date:

24.1.17

PART I - NON-CONFIDENTIAL FACTS AND ADVICE

Introduction and background

1. The London Green Fund (LGF) was set up in 2009 to provide loan and equity finance for waste infrastructure, energy efficiency and decentralised energy schemes (as set out in MD128). It is managed by the European Investment Bank (EIB), the EU bank, who procured three sub-fund managers and have since managed the money and relationships with the sub-fund managers on our behalf. The three sub-funds are the London Energy Efficiency Fund (LEEF, managed by Amber), Foresight Environmental fund (FEF, managed by Foresight) and Greener Social Housing (GSH managed by the Housing Finance Corporation, THFC).
2. The idea behind 'Financial Instruments' such as the LGF is to use EU funds more effectively across member states by making repayable loan and/or equity investments, rather than grants that are spent once.
3. The original funding for the LGF came from the London 2007-13 European Regional Development Fund (ERDF) programme (£60m), London Development Agency (LDA) (£32m) and London Waste and Recycling Board (LWARB - £18m); and responsibility for the LDA's investment in the LGF was transferred to GLA in 2011 (as set out in MD851). The three sub-funds have fully invested the original capital (some returns can be reinvested) and have supported 18 projects with a total value of just over £520m. They are summarised in Annex A.
4. Once all construction works are completed the projects should :
 - Save nearly 300,000 tonnes of CO2 per annum;
 - Divert 440,000 tonnes of waste from landfill per annum;
 - Save 19,500,000 kWh of energy per annum; and
 - Create nearly 2000 jobs.
5. Holding Fund management fees to manage the money and relationships with sub-fund managers and associated costs (such as travel) have averaged just over £580k a year with subfund managers' fees totalling approximately £7m¹. The size of these fees is limited by EU rules.
6. With original funding committed, it is deemed no longer necessary to pay an EIB team based in Luxembourg for remaining routine administrative tasks that can be carried out by the GLA itself, at no extra cost to the GLA. Following discussion between the GLA, LWARB and EIB officials, the previous administration's Investment and Performance Board therefore agreed in principle last year to transfer residual management and monitoring responsibility for the LGF from the EIB to the GLA. The documents to be novated from the EIB to the GLA are summarised at Annex B.
7. The cash balance held by EIB as of December 2016 is £6.35m. The three sub-funds have different repayment schedules and timescales as set out below in the forecast cashflow table below:

Fund	2017	2018	2019	2020	2021	2022	2023-25	2026-43
LEEF (£m)	6.8	3.5	3.5	4.6	17.7	2.8	11	-
FEF (£m)	1.9	29.2	19.9	3	-	-	-	-
GSH (£m)	0.2	0.2	0.2	0.2	0.2	0.2	2.1	12.2

¹ Managers will continue to be paid until the close of the funds in 2021-22.

8. LEEF and FEF close in 2021, GSH is not scheduled to close until 2043. The ongoing cost of managing and monitoring the LGF will be absorbed by existing GLA European and Finance teams.
9. Osborne Clarke have been instructed as external legal advisers for the novation work, on behalf of the EIB and the GLA. Tfl Legal are also advising. The total cost to GLA for the external legal work – payable from the proceeds of the LGF itself – is expected to be up to £30,000 split between the GLA paying 84% and LWARB 16% as agreed in the original Funding Agreement with the EIB.

Objectives and expected outcomes

10. The objective of the novation of the LGF management and monitoring responsibilities from the EIB to the GLA is to manage remaining cashflows relating to the LGF economically and effectively, now that its initial capital is invested.
11. LEEF funds returned to the GLA can potentially be re-invested through the forthcoming ERDF and EIB backed Mayor's Energy Efficiency Fund (for which a similar remit to LEEF is envisaged). A procurement exercise to select the fund manager for this new fund is currently in progress.
12. Work has also been undertaken by PriceWaterhouseCoopers on behalf of LWARB and EIB to determine the scope of a further ERDF and EIB backed waste fund, which could be supported by any equity returns from FEF.
13. Such a fund is likely to be based around support for 'circular economy' SMEs, rather than equity investment in waste infrastructure sites. A separate Mayoral Decision is being drafted on this.

Equality comments

14. GLA's management of the LGF will take into account all of the requirements set out in the Equality Act 2010 including the public sector equality duty in section 149(1) of the Equality Act 2010.
15. This provides that, in the exercise of their functions, public authorities must have due regard to the need to:
 - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The obligation in section 149(1) is placed upon the Mayor, as decision maker. Due regard must be had at the time a particular decision is being considered. The duty is non-delegable and must be exercised with an open mind.

Other considerations

Key risks and issues

16. The GLA is responsible in the first instance for any 'irregularity' (as defined in the EU regulations) in the LGF as identified through EU-related expenditure checks, although the legal agreements provide

for repayment of such irregularities by those with whom the EIB (and after the novation the GLA) has contracted where appropriate. For example, in the case of a procurement error by a sub-fund manager. In the novation agreements it is proposed that the EIB will be responsible for any acts or omissions which happened prior to the novation taking place.

17. The LGF has been repeatedly checked by UK and European auditors with no confirmed adverse findings. There is one outstanding audit report from the European Court of Auditors (the auditors of the EU), the findings of which are now being considered by the European Commission. There are unlikely to be further audits during the fund's lifetime.

Links to strategies

18. The projects approved for funding contributed to London's 2007-13 ERDF Operational Programme targets and the previous administration's environmental and economic development strategies.

Impact assessment and consultation

19. EU rules require that all Financial Instruments are subject to independently-drafted 'ex-ante' assessments into their viability prior to their set-up. The LGF was subsequently evaluated as part of the 2007-13 London ERDF programme evaluation.

Financial comments

20. Approval is sought for the novation of the LGF funding agreement, associated responsibilities and documents from the EIB to the GLA. Once the agreements are in place, the funds held by the EIB will be transferred to the GLA and available balances will be pooled and invested alongside GLA cash to maximise interest earned. Interest earned will be ring-fenced to the LGF.
21. The transferred responsibilities will be undertaken by existing staff within the GLA's EPMU and Finance teams at no extra cost, saving costs to the LGF of EIB management fees which to date have averaged circa £580k per annum.
22. Legal fees for the contract novation are currently estimated at £30k. These are one-off costs and will be borne by the LGF.
23. Sub-fund managers' fees and costs are funded by investment returns and there will be an annual charge to the LGF until 2021/22. The fees comprise a fixed element and a variable component linked to agreed performance criteria. Sub-fund manager fees have first call on the returns earned and to date have averaged £1.4m per annum.
24. Paragraph 7 to this report sets out a schedule of forecast returns to the LGF and these are sufficient to meet the abovementioned calls on the fund. Returns accrue to the ERDF, GLA and LWARB in proportion to the amounts originally contributed. As required by European Commission Regulations, the exit strategy of the LGF sets out how returns will be used. However, any future decisions on changing the use of GLA and ERDF returns will be subject to the GLA's internal decision making process, additionally, for ERDF returns any decisions will also have to comply with European Commission restrictions on the use of ERDF resources.
25. Any cash transferred and future returns attributable to LWARB will be handled in accordance with the new funding agreement between GLA and LWARB.

Legal comments

26. This report indicates that the decisions requested of the Director concern the exercise of the GLA's general powers, fall 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 improvement of the environment in Greater London (its 'principal purposes'); and in formulating the proposals in respect of which a decision is sought, officers 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 affect the health of persons in Greater London and health inequalities between persons in Greater London, the achievement of sustainable development in the United Kingdom, and climate change, and its consequences; and
 - consult with appropriate bodies.
27. As part of the novation, the GLA will be required to become a limited partner in respect of two of the sub-funds. GLA has the power to do this pursuant to section 12 of the Local Government Act 2003 which states that the GLA has the authority to invest for any purpose relevant to its functions and section 30 which permits the GLA to do 'anything' that it considers will further any of its principal purposes (as summarised in paragraph 26 above). Therefore, the novation will be from the EIB to the GLA rather than to a GLA subsidiary.
28. Osborne Clarke are appointed as external legal advisers to the GLA and the EIB on the LGF novation. Officers must ensure appropriate due diligence is undertaken by the GLA prior to the novation. Officers must ensure all relevant documentation is put in place before the GLA undertakes this role.

Planned delivery approach and next steps

Activity	Estimated Timeline
Legal novation of documentation and transfer of LGF funds	31 st January 2017
Audited accounts prepared by EIB	30 th April 2017
Final EIB reconciliation	30 th June 2017

Appendices:

Annex A – Projects Supported by London Green Fund

Annex B – London Green Fund documents to be novated

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:

Alex Conway has drafted this report in accordance with GLA procedures and confirms that:

✓

Assistant Director/Head of Service:

Martin Clarke 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:

The Corporate Investment Board reviewed this proposal on 23 January 2017.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. J. Clarke

Date

24.1.17

Annex A – Projects Supported by London Green Fund

1. Foresight Environmental Fund – waste reduction (managed by Foresight)		
Project Name	Project Summary	LGF equity Contribution (£m)
Plasrecycle	The UK's first dedicated plant for recycling post-consumer shopping bags and films. It has capacity to handle 20,000 tonnes per annum.	5.19
TEG	Organic waste-to-energy facility, comprising London's first anaerobic digestion plant, with capacity to process 30,000 tonnes p.a. of organic waste and generate 1.4MW electricity for about 2000 households. Also involves an In Vessel Composting plant creating 14,000 tonnes p.a. of compost for agricultural use.	5.2
Closed Loop	Extension of facilities that produce food-grade recycled polyethylenes from plastic bottle waste.	4.79
LRRE Ltd.	This is an 85,000 tonnes per annum waste recycling facility and 4.5MW waste-to-energy plant.	5.2
React Energy	Development of a 9MW biomass CHP plant.	5.02
Willen Biogas	An Anaerobic Digestion facility powered by 32,400 tonnes of food waste each year, generating 7,400 MWh of renewable electricity.	4.3
Orion Waste	Expansion of an existing materials recycling facility.	1.16
Wastebeater	Development of a materials recycling facility	1.85

2. London Energy Efficiency Fund (managed by Amber)		
Project Name	Project Summary	LGF loan Contribution (£m)
Tate Foundation	Retrofit and installation of energy saving measures to support development at Art Gallery, including waste heat recovery from sub-station.	17.8
LB of Croydon	Energy efficiency measure in Council properties including primary schools, civic buildings and libraries.	3.5
Salters Company	Funding for energy efficiency measure across two sites of one of the 'Great 12' Livery companies - will result in energy saving of 39%.	4.6
LB Hackney	Loan for the installation of communal heating systems for 10 of London Borough of Hackney tower blocks.	4.5

St George's Hospital	Funding for energy efficiency measure across hospital properties and installation of combined heat and power facility.	13
Lee Valley Heat Network	The LVHN will use a well-established pipe technology to deliver hot water for heating to public and commercial buildings. The heat to feed this network will be generated from Edmonton's energy-from-waste facility.	6
Greenwich Peninsula ESCO Ltd	CHP energy centre to create local heat network for huge regeneration site.	8.5

3. Greener Social Housing (managed by the Housing Finance Corporation)		
Project Name	Project Summary	LGF loan contribution (£m)
Gallions	Loans to Registered Providers of Social Housing - for energy efficiency measures in over 2500 properties across London. Measures include: heating/ventilation, building fabric (e.g. cavity wall insulation), micro generation and Water & lighting	4
Origin		4
A2Dominion		4

Annex B – London Green Fund documents to be novated

The current structure comprises the Funding Agreement and Costs Letter, which effectively creates the London Green Fund and tasks EIB with its implementation; and three sub-‘Urban Development Funds’ investments sitting “underneath” the LGF which are LEEF, FEF and THFC.

Documents to be novated/terminated:

1. **Funding Agreement** and **Costs Letter** for the LGF - between GLA, LWARB & EIB – this sets out the basis on which EIB operates and administers the London Green Fund including the selection of UDFs, and the basis on which EIB recovers its fees and other costs. The Costs letter will no longer be required.

Both the Funding Agreement and the Costs Letter will be terminated. A new streamlined Funding Agreement between the GLA and LWARB will be signed.

2. **London Energy Efficiency Fund (LEEF)**

- a. The **Senior Contingent Loan Agreement (CLA)** between the EIB and LEEF. This sets out the terms of a senior loan that is made available by the EIB using LGF funds to LEEF. The CLA will be novated to the GLA. The GLA will become the lender. LEEF remain as the existing borrower. The restatement of the facility will include the adjustment to the definition of “Match Funding” that was agreed by way of short amendment letter in May 2015.
- b. The **Limited Partnership Agreement (LPA)** which creates/constitutes the LEEF UDF and which EIB has acceded to as a limited partner. EIB acceded as an limited partner of LEEF to facilitate LEEF making equity investments into projects, with EIB’s investment participating in the upside and downside of such investments. EIB will be released as party to the LPA and a Deed of Adherence to the LPA will be drafted for the GLA to become a limited partner.
- c. The LPA is coupled with a **Side Letter** – which sets out (between EIB and LEEF only) additional controls and restrictions on the activities of LEEF in connection with the LPA. This existing Side Letter will be terminated and a replacement agreed and addressed from LEEF to GLA.
- d. An **Intercreditor Deed** between the (debt) creditors of LEEF was entered into between EIB, a bank, INPP (a fund managed by Amber) and LEEF. This governs the relationship between LEEF’s lenders in circumstances under which EIB and the bank (and INPP) each advance debt to LEEF. This will be novated from EIB to the GLA.
- e. LEEF has created **security interests** over some of its bank accounts in favour of the EIB. They include a Commitment Holding Account, a Reserve Account and various LLP (EIB Referenced) Accounts (one for each project). This benefit of these security interests will be novated to the GLA, as well as registering and notifying the account bank of the new beneficiary of the security.

- f. There will be a transfer of security interests in relation to each of the seven LEEF current project investments (i.e. assignments of the benefit / receivables under the **on-lending agreements, assignment of security interests**, etc).

3. Foresight Environmental Fund (FEF)

There are similar, but simpler, arrangements for the FEF – which is an equity-only UDF. So for FEF, there are no loan agreements or intercreditor arrangements. Instead, EIB has acceded as a limited partner to the **LPA** that creates/constitutes FEF. As with LEEF, there is a **Side Letter** on similar terms that further restrict the activities of FEF (but only as between EIB and FEF). Further, a simpler account structure exists over which EIB has the benefit of **security interests**. Therefore the steps taken will be:

- a. Release of EIB as party to the **LPA** and a Deed of Adherence to the LPA for the GLA.
- b. Cancellation of existing FEF **Side Letter**, Execution of replacement addressed to the GLA.
- c. Transfer of **security interests** over Commitment Holding Account plus registering new entity for the security

4. The Housing Finance Corporation Limited (THFC)

Although the THFC investment sits within the LGF, the THFC was not set up as a bespoke UDF but an investment into an existing vehicle which supports the retrofit of energy efficiency schemes for housing in and around London. This investment will be novated from EIB to the GLA.