

<b>Committee/Meeting:</b> Cabinet	<b>Date:</b> 17/7/2013	<b>Classification:</b> Unrestricted	<b>Report No:</b>
<b>Report of:</b>  Corporate Director Aman Dalvi  Originating officer(s) Jackie Odunoye Service Head: Housing, Regeneration & Sustainability  Authors: John Coker – Strategic Housing Manager (LBTH) Sarah K Pace – Head Business Development & Investment Planning (THH)		<b>Title:</b> <b>Assignment of IPR for ECO project</b>  <b>Wards Affected:</b> WEAVERS BETHNAL GREEN SOUTH	

<b>Lead Member</b>	Lead Member for Housing: Cllr Rabina Khan
<b>Community Plan Theme</b>	Great Place to Live
<b>Strategic Priority</b>	Ensuring value for money across the Council

## 1. **SUMMARY**

- 1.1 The Mayor consented in July 2012 to fund the Community Energy Saving Programme (CESP) programme, the CESP scheme has since developed at DECC's behest into the Energy Company Obligation (ECO).
- 1.2 The Department of Energy and Climate Change (DECC) funding of £2.254m has been secured to support the delivery of energy saving measures to increase energy performance of 637 homes to Avebury and Bancroft Estates. The scheme primarily comprises of External Wall Insulation (EWI) commonly referred to as Cladding, amongst other measures. The proposed CESP will be focussed on cladding because earlier investment has already addressed inefficient gas boilers – the selection of these estates is dictated by the constraints of the CESP programme. The impact will be to increase the SAP rating for these properties by plus 10-15.
- 1.3 The total scheme cost is estimated to be £6.7m, funded through Council resources, ECO funding and the DECC grant contribution. Provision of £809,000 has already been set aside to contribute towards CESP/ECO works. Cabinet approved a capital estimate of £409,000 within the Non-Decent Homes element of the Housing Capital Programme that was approved on 8 February 2011, and £400,000 has been earmarked within the repairs and maintenance budget.
- 1.4 The remaining scheme funding will be adopted through capital estimates agreed in July 2013 Cabinet following the additional DECC funding. The programme will not impose any costs on to leaseholders as it will be all in the main funded via national grants.
- 1.5 The Consultant (Carillion Energy Services) has developed, through surveys and other professional activities, schemes to secure CESP funding to improve the energy efficiency of homes owned by the Council across Avebury and Bancroft wards.
- 1.6 The Council acknowledge that certain Intellectual Property Rights (IPR)\* have been created during the course of the Consultant carrying out such surveys and other professional activities, and developing such schemes. The Council now wishes to obtain an assignment of all right, title and interest in and to such Intellectual Property Rights relevant to this scheme.

## **2. DECISIONS REQUIRED**

The Mayor is recommended to:-

- 2.1 Approve assignment of all right, title and interest in and to such Intellectual Property Rights relevant to this scheme as detailed in Appendix 3
- 2.2 Authorise the Corporate Director Development and Renewal in consultation with the Assistant Chief Executive (Legal Services) to finalise the terms of the contract with Carillion Energy Services
- 2.3 Agree the procurement of the contract for insulation works on HRA assets, funded by DECC, the Council and ECO, through the RENEW Framework following a competitive tendering process.
- 2.4 Authorise the Assistant Chief Executive (Legal Services) enter into all necessary documents to implement the decisions made in respect of this report.

## **3. REASONS FOR THE DECISIONS**

- 3.1 The assignment of the IPR proposed in this report allows the Council to enter into the relevant procurement process to secure the necessary ECO contribution and commence works.
- 3.2 The proposed energy savings programmes fall within the Great Place to Live strand of the Community Plan and in particular objective 2 - Improving and maintaining the quality of housing, including by maximizing energy efficiency.
- 3.3 It is imperative that the Council meet the spending agreement with DECC in which it was agreed that the delivery of the insulation works will commence in August 2013 and the whole scheme delivered six months later. The RENEW Framework presents a delivery avenue that is not only readily available but also appropriately procured.

## **4. ALTERNATIVE OPTIONS**

- 4.1 An alternative option would be for the Council to develop its own IPR, no contract has yet been signed with CES to this end although CES and THH have collaborated on this scheme with the intention of joint working. For the council to develop its own IPR at this stage would set the project back 4-6 months and place the DECC funding at significant risk as it would be impossible to deliver the scheme within the DECC agreed timeline. (See Appendix 1)
- 4.2 A further risk would be market interest in the ECO contribution; soft market testing indicates there is current interest in the councils proposed procurement; however a further lengthy delay may result in the potential partner energy companies discharging their interest in other schemes, which – at the moment – is mitigated by adopting the RENEW Framework.

## **5. BACKGROUND**

- 5.1 As part of the Housing Revenue Account Business Plan, the Authority is proposing to spend approximately £30 million on insulation and energy efficiency works as part of the capital programme over the next thirty years. This is made up of the following elements:-

**£ million**

Central Heating (includes radiators, boilers & communal heating)	13.9
Double Glazed Windows	13.1
Front entrance doors and/or rear/balcony doors (double glazed)	3.1
	<u>30.1</u>

- 5.2 These measures will help improve the energy efficiency of homes and in consequence help reduce residents' fuel bills.
- 5.3 Last year, Tower Hamlets Homes, working with Carillion Energy Services and in consultation with residents and the Council, sought to supplement resources available to improve the energy performance by accessing funding through the Community Energy Saving Programme (CESP).
- 5.4 CESP is funded by an obligation on energy companies and was designed to provide up to 100% of funding support in the most deprived neighbourhoods containing homes with poor energy ratings, e.g. poorly insulated blocks.
- 5.5 In developing a scheme it became apparent that some financial contribution would be required from the Council. In part this was driven by the design standard required by the borough.
- 5.6 Taking account of eligibility criteria and the likely level of CESP funding available from an energy company, schemes were developed to benefit 637 homes in Avebury and Bancroft estates.
- 5.7 The proposed scheme entailed improving thermal efficiency through external wall insulation (benefitting 599 homes), loft insulation (benefitting 108 homes), cavity wall insulation (benefitting 24 homes) and the installation of higher energy rated boilers where needed.
- 5.8 The proposed CESP works focussed on external cladding because earlier investment has already addressed inefficient gas boilers. Benefits of the programme include:
- Saving residents an average of £150 to £175 per year, based on a two bedroom flat, significantly alleviating fuel poverty
  - Making a demonstrable visible improvement to the external appearance of estates
  - Significantly reducing condensation in these properties
- 5.9 The total scheme estimate amounted to £7.1 m of which £5.2m was to be sought from the Community Energy Savings Programme (CESP) administered and paid for by the energy companies. In this scenario, the resulting contribution from the Council is approximately £1.9m.
- 5.10 Towards the end of last year the scheme faltered due to contractors quoting significant cost increases for the installation of cladding and energy companies showing unwillingness to commit to the level of resource required to make the scheme viable. The funding gap at this point amounted to approximately £2.2m
- 5.11 In November 2012 the Department of Energy and Climate (DECC) announced a Fuel Poverty Fund to which Councils could apply for grant to support initiatives aimed at helping low income and vulnerable people keep warm this winter. This opportunity presented us with a potential solution to bridge the funding gap.

- 5.12 The Council, in partnership with Tower Hamlets Homes and Carillion Energy Services submitted a bid to DECC for £2.2m and confirmation that the bid has been agreed in full has been received.
- 5.13 The funding regime to support energy schemes is in transition. CESP ended in March 2013 and was replaced by a new funding stream titled Energy Company Obligation (ECO).
- 5.14 Although detail of how ECO will operate is awaited from Government, Energy Companies appear keen to make an early start on meeting their obligation and are potentially willing to enter into agreement in advance of the announcement.
- 5.15 Soft market testing with energy providers is on-going to secure the maximum level of ECO funding possible. There is positive indication that funding can be secured to enable work to be carried out to improve energy efficiency to benefit 637 homes in Avebury and Bancroft neighbourhoods as originally planned.
- 5.16 The council envisage to procure this contract through the RENEW framework in order to meet the DECC timescales, and it is intended that the council go live with this procurement at the end of July 2013.
- 5.17 A project delivery timetable together with a summary of the scope of works is set out at Appendix 1 and 2.

## **6. ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS**

- 6.1 In August 2011, Tower Hamlets Homes went through a competitive market test to check the maximum income for Community Energy Savings Programme (CESP) eligible works in a selection of eligible areas. One proposal emerged which delivered 97.5% funding, (the others were in the region of 50% - 70%) this was Carillion Energy Services (CES). CES anticipated that with their own value engineering THH/LBTH would achieve a fully funded £6.7m scheme under CESP.
- 6.2 CES were appointed by Tower Hamlets Homes in September 2011 to develop proposals to improve the energy efficiency of homes across a number of Lower Layer Super Output Areas (LSOA) in the Borough.
- 6.3 CES's remit was to work up proposals to ensure that THH would maximise stock investment opportunities from energy supplier obligation schemes, at that time CESP.
- 6.4 CES sought to find the best funding and delivery solution and this work was completed taking into consideration Tower Hamlets Home's objectives and priorities. There were five parallel work streams:
- to review and analyse existing housing stock across a number of LSOAs;
  - to positively engage with the planners and develop a solution that was sensitive to its local context;
  - to lead and develop a strategy to encourage local employment;
  - to market test and then seek tenders for the scheme works; and
  - to work with the energy companies in finding the most advantageous funding package.
- 6.5 In October 2011, following extensive site visits and stock analysis, CES refreshed their initial proposals based on a different mix of measures to the original proposal. This involved less fuel switching, and more insulation works. Overall, this reduced the carbon points available to the scheme (and so the income) but CES remained confident that they could still deliver the fully funded £6.7m scheme.
- 6.6 The programme suffered further setbacks as market conditions significantly increased costs, these were finally relieved by the DECC funding awarded in 2013.

The award allowed THH to realign the project to the funding criteria of the new ECO. Carillion approached all 6 obligated energy suppliers; one supplier, British Gas, declared their interest, and was willing to fund the scheme at a level which made a 2 zone scheme commercially viable.

- 6.7 It was always planned that the contract would be with CES, who in turn would enter into contract with an energy company to deliver the scheme and provide CESP/ECO funding. However, British Gas was not comfortable with this approach preferring to contract directly with THH/LBTH.
- 6.8 LBTH Legal Services advised that to enter into contract with British Gas without a procurement exercise placed the Council at risk of challenge from other potential contractors and advised that procurement using the GLA administered RE:NEW Framework.
- 6.8 In addition to the need to procure, the change in contracting arrangements necessitated the assignment of Intellectual Property Rights relating to the work (specification, surveys, planning permission etc) carried out by CES and their sub-contractors.
- 6.9 To this end, THH appointed legal representatives to draft a Deed of Assignment to secure the relevant Intellectual Property Rights (IPRs). During negotiations it came to light that CES did not own all of the IPRs required for tendering. The need for CES to secure IPRs from third parties further extended the period of time it has taken to conclude the assignment of IPRs. Those negotiations have now been concluded as follows –

	Cost (£)
Stage 1 IPRs	550,415
Stage 2 IPRs	<u>149,585</u>
	<u>700,000</u>

## **7. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 7.1 This report seeks approval to purchase Intellectual Property Rights from Carillion Energy Services to enable the procurement of a partner to deliver energy efficiency projects to the Council's housing stock.
- 7.2 The report sets out the issues faced by the Council and Tower Hamlets Homes over the last eighteen months in developing schemes and generating external funding for energy saving works to estates.
- 7.3 As laid out in the report, the Council was previously in partnership with Carillion Energy Services to develop an external wall insulation scheme under the Community Energy Savings Programme (CESP).
- 7.4 To finance the Carillion scheme it was proposed that the £1,809,000 that had previously been set aside by the Council in relation to energy efficiency works was applied as a contribution. This was made up of £409,000 approved as part of the 2012-13 Housing Revenue Account capital programme and carried forward into 2013-14; £400,000 allocated within the HRA revenue Repairs and Maintenance budget; and £1 million of New Homes Bonus funding that was approved by Council in March 2012.
- 7.5 It was anticipated that the £1.8 million contribution would lever in £5.2 million of CESP funding, to deliver a total scheme of £7.1 million within the borough (paragraph 5.9). However due to various cost increases and the reluctance of energy companies to commit to the scheme, the Council and Carillion were unable to proceed with the programme.

- 7.6 The CESP initiative has now ended, but the Council has secured new grant funding of £2.254 million from the Department of Climate Change Local Authority Fund (Fuel Poverty), which with the resources already earmarked, means that a total contribution of £4.063 million is available towards an energy efficiency scheme.
- 7.7 As laid out in the report the Council now wishes to enter into a new procurement process to seek a partner energy company to deliver an energy efficiency scheme. The energy company will contribute significant funding under its 'Energy Company Obligation' (ECO) requirement. However, in order to progress, the Intellectual Property Rights for the scheme need to be obtained from the initial partner, Carillion, who will no longer be involved in the project (see paragraph 6.7).
- 7.8 The Intellectual Property Rights take the form of designs, plans, planning permissions etc. that the company has prepared or obtained in relation to the estates concerned.
- 7.9 The Intellectual Property Rights are valued at £700,000 (see paragraph 6.9), and it is anticipated that acquisition of these rights will enable a new scheme to the value of £6.7 million (including the costs of the IPR) to be developed. The proposed funding for the scheme will be as follows:

	£
ECO Funding - via Energy Partner	2,637,000
DECC Grant	2,254,000
New Homes Bonus	1,000,000
Housing Revenue Account Contribution	400,000
Housing Capital Programme	409,000
	<u>6,700,000</u>

- 7.10 In relation to the purchase of the Intellectual Property Rights, if agreed, the expenditure can only be funded from the mainstream LBTH resources because the DECC grant and the New Homes Bonus Allocation cannot be applied for this purpose.
- 7.11 The cost of the Intellectual Property Rights is significant, although officers consider that it is necessary to ensure that the project can progress in line with grant conditions.
- 7.12 It must be stressed that the acquisition of the Intellectual Property Rights is only of value to the Council if the energy efficiency scheme subsequently proceeds for the specific sites and DECC grant and ECO funding is secured. If the scheme does not progress the Council will have acquired an asset of limited use and value.
- 7.13 Although funding of £1.809 million has already been approved for energy efficiency works, in order that the full scheme can be adopted, a total capital estimate for £4,063,000 will need to be adopted by Cabinet in July to enable the DECC grant funding to be incorporated into the scheme. The Council's contribution will be capped at this level and it must be ensured that any funding risks caused by financial overspend lie with the partner energy supplier as part of any contractual arrangements entered into.
- 7.14 The report recommends that the procurement of the contract for insulation works is awarded through the RENEW Framework following a competitive tendering process (recommendation 2.3). It should be noted that although this process can be started, no formal contract or financial commitment can be entered into until Cabinet has approved the full capital estimate and funding of the scheme (see paragraph 7.13 above).

## **8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

- 8.1 The proposal may be supported by reference to the Council's general power of competence under section 1 of the Localism Act 2011. This enables the Council to do anything that individuals generally may do, subject to such restrictions and limitations as are imposed by other statutes. There are no relevant restrictions or limitations applicable to this proposal.
- 8.2 The Community Plan sets out the Council's sustainable community strategy within the meaning of section 4 of the Local Government Act 2000. The proposed energy savings programmes fall within the Great Place To Live strand of the Community Plan and in particular objective 2 - Improving and maintaining the quality of housing, including by maximizing energy efficiency.
- 8.3 The effect of adding a Council contribution to the cost of the measures (referred to in the body of the report) is that this could constitute procurement activity for the purposes of public law. This risk has been satisfactorily dealt with by the use of a procured framework which the Council is able to utilise
- 8.4 Before agreeing the proposal and adopting the capital estimate, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. Information is contained in the report relevant to these considerations.

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

- 9.1 The completion of work will help alleviate fuel poverty for 637 households living on the Avebury and Bancroft estates.

## **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1 Assignment of the IPR is a key element towards improving energy efficiency measures in the borough. This will reduce energy consumption and therefore will reduce carbon emissions from council properties

## **11. RISK MANAGEMENT IMPLICATIONS**

- 11.1 With the introduction of Self-Financing from April 2012, Tower Hamlets is responsible for running its HRA as a viable business, using HRA income in order to fund all HRA expenditure, including the capital works necessary to maintain and improve the housing stock, and the Decent Homes programme.
- 11.2 It is essential that the HRA medium-term financial strategy be kept under review, and is updated to reflect changes all decisions in relation to funding proposals, as well as in economic conditions and policy changes.

## **12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 12.1 There are no significant implications arising from these specific recommendations.

### **13. EFFICIENCY STATEMENT**

- 13.1 The allocation of resources towards energy efficiency measures that are proposed in this report should reduce energy consumption within dwellings managed by the Council. Further projects will be undertaken in partnership with Tower Hamlets Homes to identify further on-going efficiency savings to ensure that the HRA remains sustainable in the longer term.

### **14. APPENDICES**

Appendix 1: Project Delivery Timetable

Appendix 2: Project Scope – Summary

Appendix 3: Deed of Assignment of IPR (Appendix EXEMPT – Paragraph 3 – Information relating to financial or business affairs of the Council)

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## **Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012**

Draft Project Delivery Timetable  
Project Scope – Summary

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# Appendix 1

## ECO project timetable

Activity	Start	Finish
Purchase of design, design specification, tender specification, planning approval and issue of tender	01/07/13	05/07/13
Tender period to acceptance of offer and contract	09/07/13	27/08/13
Start on Site to works completion	28/08/13	24/01/14

## Appendix 2

Lower Super Output Area	Ward	Estate	Number	Block/Street	Number of dwellings/measures		
					External Wall insulation	Cavity Wall Insulation	Loft Insulation
E01004312	Weavers	Avebury	1-8	Speakman House	8		2
E01004312	Weavers	Avebury	1-8	Stuart House	8		2
E01004312	Weavers	Avebury	1-8	Karslake House	8		2
E01004312	Weavers	Avebury	1-8	Cadogan House	8		2
E01004312	Weavers	Avebury	1-20	Eversley House	19		4
E01004312	Weavers	Avebury	1-33	Rapley House	33		
E01004312	Weavers	Avebury	1-8	Snell House	8		2
E01004312	Weavers	Avebury	1-8	Culpin House	8		2
E01004312	Weavers	Avebury	1-24	Dence House	24		6
E01004312	Weavers	Avebury	1-16	McKinnonwood House	16		4
E01004312	Weavers	Avebury	1-8	Gillett House	8		2
E01004312	Weavers	Avebury	1-16	Hutton House	16		4
E01004312	Weavers	Avebury	1-8	Cheylesmore House	8		2
E01004312	Weavers	Avebury	1-16	Dickinson House	16		4
E01004312	Weavers	Avebury	1-8	Monk Bretton House	8		2
E01004312	Weavers	Avebury	1-8	Crewe House	8		2
E01004312	Weavers	Avebury	1-8	Cobb House	8		2
E01004312	Weavers	Avebury	1-16	Swinton House	16		4
E01004312	Weavers	Avebury	1-16	Simmons House	16		4

E01004312	Weavers	Avebury	1-8	Onslow House	8		2
E01004312	Weavers	Avebury	1-8	Warburg House	8		2
E01004312	Weavers	Avebury	1-24	Firth House	24		6
E01004312	Weavers	Avebury	1-8	Jackson House	8		2
E01004312	Weavers	Avebury	1-8	Hume House	7		2
E01004312	Weavers	Newling South	1-24	Briggs House		24	4
E01004312	Weavers	Granby	16, 20, 28	Granby Street			3
E01004213	Bethnal Green South	Bancroft East	1-10	Stannard Cottages	10		
E01004213	Bethnal Green South	Bancroft East	1-10	Rennie Cottages	10		
E01004213	Bethnal Green South	Bancroft East	1-20	Gibson Close	20		
E01004213	Bethnal Green South	Bancroft East	1-30	Barbanel House	30		6
E01004213	Bethnal Green South	Bancroft West	1-30	Redclyf House	29		6
E01004213	Bethnal Green South	Bancroft West	1-45	Bancroft House	45		9
E01004213	Bethnal Green South	Bancroft West	1-12, 1A-C,7A-C	Cephas House	18		
E01004213	Bethnal Green South	Bancroft East	1-30	Stothard House	30		6
E01004213	Bethnal Green South	Bancroft West	1-24	Ryder House	24		5
E01004213	Bethnal Green South	Bancroft West	1-30	Hadleigh House	30		
E01004213	Bethnal Green South	Bancroft West	1-54	Sceptre House	54		
E01004213	Bethnal Green South	Bancroft West	1	Stothard Street			1
E01004213	Bethnal Green South	Bancroft West	2, 12, 16	Lang Street			3

E01004213	Bethnal Green South	Bancroft West	1, 4, 6, 7	Colebert Avenue			4	
E01004213	Bethnal Green South	Bancroft West	4, 5	Winkworth Cottages			2	
					<b>599</b>	<b>24</b>	<b>115</b>	<b>738 Total</b>