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| Commissioner Decision Report 21 October 2015 |  TOWER HAMLETS |
| Report of: Aman Dalvi Corporate Director, Development and Renewal | Classification: Unrestricted |
| Release of Planning Obligation funding to East End Community Foundation (formerly Isle of Dogs Community Foundation) | |

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| Originating Officer(s) | Helen Green |
| Wards affected | Limehouse, Poplar, Lansbury, Blackwall and Cubitt Town Canary Wharf and Island Gardens |
| Key Decision? | Yes |
| Community Plan Theme | A Great Place to Live; A Prosperous Community |

Reasons for Urgency

The Council holds £991k that is legally required to be spent on social and community infrastructure within the Isle of Dogs. As agreed at Cabinet in 2005, the Isle of Dogs Community Foundation – IDCF, (now East End Community Foundation - EECF), are the delivery agent for these resources.

No funding has been released since 2012 due to the Council undertaking a formal review of the relationship and questions arising subsequent to the merger of the IDCF to form the EECF.

The organisation has specifically requested release of this money to plan budgets over the next few years and to enable engagement with the local community as soon as possible.

Executive Summary

In 2000-01 the Council produced the 'Millennium Quarter' Master Plan to manage increasing development pressures in an area to the south of Canary Wharf at the heart of the Isle of Dogs.

The focus of this document was to guide the ambitions of the development industry, ensuring that while they could be largely managed and met, that developers would need to deliver, cumulatively, a mixed use residential and commercial area where the local community would experience the maximum benefit from the regeneration activity. To do this an innovative S106 framework for contributions was devised and a formula adopted to secure resources from developments coming forward in the Master Plan area. This was then used to fund a range of identified infrastructure required to absorb the level of development proposed and support an expanding population. This included a commitment

to fund 'Community and Social Infrastructure' in the area.

At Cabinet in 2005, it was agreed the Isle of Dogs Community Foundation (IDCF) would be the delivery agent for the social and community element of the Master Plan. In effect IDCF would manage the implementation detail on the Council's behalf with the relationship secured through a Funding Agreement. From 2005/6 to date, £4,263,365 was channelled through the IDCF to deliver community and social projects in and around the Isle of Dogs. The resources coming from Millennium Quarter developments and from another similar agreement (using the same model) with Canary Wharf Group for the Riverside South site.

At the time the IDCF were asked for their view on the type of projects or programmes they would like to see funded by the resources from the MQ for community and social infrastructure. One of the suggested projects was an Endowment. This was to enable the IDCF to continue to deliver projects in the longer term. Through discussion it was proposed that an expendable endowment set at 20% of all payments made could be paid to the IDCF to hold and spend within a defined (long) period. The Council has to-date retained £991,798 in respect of this arrangement.

In 2012, the IDCF merged with the St Katharine and Shadwell Trust, to become the East End Community Foundation (EECF). The EECF has been established as a new registered charity and the IDCF is expected to be wound up. The EECF continue to manage the distribution of grants and funding to community groups and projects, but on a borough wide scale.

A good practice review of the operation of the IDCF conducted around the same time concluded that the relationship with the IDCF was successful; operating a model that delivered resources to a wide range of groups and projects which benefitted the local community. This report now seeks approval to provide the retained £991,798 Expendable Endowment money to the EECF, to enable them to continue to deliver social and community projects in the area on behalf of the Council.

It is intended to retain the spirit of the original agreements and ensure projects are restricted to the wards Limehouse, Poplar, Lansbury, Blackwall and Cubitt Town Canary Wharf and Island Gardens.

Recommendations:

The Commissioners are recommended to:

1. Note the money held specifically for the IDCF (now the EECF) is £991,798;
2. Agree that the Council enters into an Expendable Endowment Agreement with East End Community Foundation whereby the Expendable Endowment Sum of £991,798 is transferred to EECF.
3. Agree that delivery of Social and Community projects be restricted to the wards of Limehouse, Poplar, Lansbury, Blackwall and Cubitt Town and Canary Wharf and Island Gardens
4. Agree that any future monies paid, in relation to un-triggered payments secured in supplemental Riverside South s106 agreements or any further legacy MQ MQ agreements, should be provided to the EECF under the same terms.

1. REASONS FOR THE DECISIONS

1.1 There are a number of reasons for the requested decisions:

- The Council holds £991k that is legally required to be spent on social and community infrastructure within the Isle of Dogs. This money needs to be expedited to ensure the community value is realised.
- The Council does not have dedicated officers or a specific process in place to take forward the development, detailed implementation, administration and organisation of the expenditure of £991k (as a project fund as it wouldn't endow itself). As a third sector organisation, with detailed connections and a history in the area it is considered that the EECF can take this role on more appropriately and cost effectively.
- A formal review was carried out in 2012 which found the delivery of s106 planning obligations through the IDCF to be successful.
- The IDCF was specifically identified in the Riverside South s106 agreement as the only community organisation to manage all of the social and community monies from the development. The developer, Canary Wharf Group (CWG), has given written consent for the funds to be provided to the EECF. An alternative arrangement will only be acceptable by negotiating and completing a Deed of Variation at cost to the Council.
- The Greater London Authority (GLA) has given consent to the transfer of grant funds and endowments, awarded by the LDDC from the IDCF to the EECF, recognising the EECF are a registered charity with objectives that are in all respects similar to the IDCF and it would be unreasonable to refuse to give consent.
- The money was secured directly, at the time, in response to the extensive developments coming forward within the Isle of Dogs and the Millennium Quarter specifically, therefore the money needs to be expended to benefit the local community in this area.
- The Isle of Dogs has been identified as an 'opportunity area' in the London Plan and will be the subject to significant development. An Opportunity Area Planning Framework (OAPF) is being developed by the GLA to provide guidance and assist in managing emerging development pressures. In addition the South Quay Master Plan has recently been adopted at Cabinet by the Council. This in more detail will seek to manage development in the area. It is considered that the cumulative impact of new residents and workers coming into the area through all the proposed and future development will further impact on community and social infrastructure.

2. ALTERNATIVE OPTIONS

2.1 These are potential alternative options:

- **Terminate Relationship with IDCF and deliver projects in house**

2.2 The Council can terminate the relationship with the IDCF through the activation of break clauses within the Funding Agreements.

- 2.3 The Council can deliver social and community projects within the Isle of Dogs internally. However, there are currently no existing resources in place which could take forward this role therefore a process would need to be established, resources secured and officers engaged to deliver the programme. Setting up a new structure is not considered to be aligned to best value.
- **Continue relationship with EECF (formerly IDCF) and allow delivery on a borough wide scale**
- 2.4 The EECF deliver social and community projects across the East End (City of London, Hackney, Newham and Tower Hamlets). The restrictions on spend could be lifted to allow the monies held by the Council to be spent borough wide, beyond the current Isle of Dogs boundary.
- 2.5 The implications of spending the money more broadly and not in the spirit of the original purpose for which it was secured, could result in the Council being in breach of its legal responsibility to spend s106 money in accordance with obligations within specific legal agreements. In addition, spending funds over a much wider area could clearly dilute the impact of the resources and not deliver significant community benefits.

3. DETAILS OF REPORT

Background

- 3.1 In 1981 the London Docklands Development Corporation (LDDC) was established by the Government under the Local Government, Planning and Land Act 1980, to regenerate the area including the Isle of Dogs. The corporation finally wound up in 1998, however some of its regeneration programmes and projects were still unfinished.
- 3.2 The LDDC used its remaining resources to enable local community organisations to complete projects. The Corporation contributed a cash endowment of over £2 million to the Isle of Dogs Community Foundation (IDCF) to facilitate the continuation of the LDDC's substantial programme of grants for community organisations and activities into the long term.
- 3.3 Regeneration responsibilities were handed over to the Council in January 1997. The Council drafted and adopted the 'Millennium Quarter' (MQ) Master plan in September 2000 to enable the Council to continue to manage emerging development pressures in an area south of Canary Wharf. It set a detailed policy and implementation framework to manage the impact of development and ensure the local community would experience the maximum benefit from the continued regeneration of the area.
- 3.4 The master plan recognised the need to secure financial contributions to fund the cost of the provision of social, cultural and leisure services and facilities to serve the existing and new communities. In 2002, the MQ Planning Obligations Contribution Framework was drafted to establish the amount of infrastructure required to support the level of development coming forward as part of the Master Plan over its fifteen year lifespan. A total cost of £5.33 million for Community and Social Infrastructure was identified, including but not limited to; employment and education initiatives,

training and leisure activities, lifelong learning and community arts and cultural activities.

- 3.5 Following on from the LDDC legacy, the Council recognised the IDCF were best placed to continue to be the delivery agent for Section 106 social and community resources, secured as part of the MQ tariff. This was formalised at Cabinet in September 2005. A legal Funding Agreement was drawn up between the Council and the IDCF, in order to manage this relationship.
- 3.6 In addition, in 2008 the Council negotiated and secured a £2.5million contribution specifically for the IDCF in the s106 agreement relating to the commercial development at Riverside South, West Ferry Road (RS). A separate Funding Agreement was drafted in relation to this arrangement
- 3.7 Since 2006, money from these sources (one then both) has been provided to the IDCF. The Funding Agreements require the performance outputs of the IDCF to be consistent with the LBTH Community Plan, which outlines how the Council will continue to reduce inequality and poverty, particularly among the most disadvantaged in the Borough.
- 3.8 To enable the organisation to operate in the longer term, the Funding Agreement provided that a 20% expendable endowment would be held back pending the execution of an Endowment Agreement.
- 3.9 The IDCF merged with the St Katharine and Shadwell Trust in October 2012, to become the East End Community Foundation (EECF). The EECF continue to manage the distribution of grants and funding to community groups and projects, but on a borough wide scale.
- 3.10 The GLA has transferred grant funds and endowments, awarded by the LDDC from the IDCF to the EECF, recognising the EECF are a registered charity with objectives that are in all respects similar to the IDCF.
- 3.11 The Council intends to follow suit and transfer the Endowment funds held for the IDCF to the EECF. This will be subject to the completion and signing of an Expendable Endowment Agreement. The expendable endowment means that over the period of time specified the sum of money will slowly be spent (rather than just the interest), with the potential for additional years if projects that secure resources continue after the initial period.
- 3.12 The dissemination of these funds is critical going forward as the Isle of Dogs has been identified as an 'Opportunity Area' in the London Plan. As such, it will be subject to significant new housing, commercial and other development. Furthermore, the Council has adopted the South Quay Master Plan, replacing the MQ Master Plan, and which recognises that intense development pressures exist in the area and that some additional guidance is needed to guide development proposals. The area remains an attractive location for substantial development. This is reflected in the intense developer interest in the area. Inevitably over-time, this new development will contribute to the need for supporting infrastructure, including social, community and cultural facilities.

4. COMMENTS OF THE CHIEF FINANCE OFFICE

- 4.1 Following the adoption of the Millennium Quarter Master Plan in 2000-01, the Council has secured significant funding through Section 106 frameworks for spend on projects within the Isle of Dogs area. Specific resources were secured for the community and social elements of the Master Plan which is delivered through the Isle of Dogs Community Foundation (IDCF), with agreement for 20% of future Section 106 receipts that are generated in this area to also be set aside to finance these activities.
- 4.2 Following the merging of the ICDF and the St Katherine and Shadwell Trust to form the East End Community Foundation (EECF), this report seeks approval to transfer to the EECF as an expendable endowment, the sum of £991,798 that is currently held by the Council on behalf of the IDCF. This approach is consistent with that of the Greater London Authority which has already agreed to the transfer of LDDC grant funds and endowments from the IDCF to the EECF.
- 4.4 In addition to the current resources held, future Section 106 agreements in relation to the Riverside South and Millennium Quarter projects would also be provided to the EECF under the same terms.
- 4.5 A legally enforceable endowment contract will be entered into with the EECF to ensure that the Council's resources are protected and that funding is applied towards agreed outcomes.
- 4.6 The proposals in this report satisfy the requirements of the planning agreements entered into, however as alternative methods of delivery could potentially be undertaken, the proposed payment to the EECF should be treated as a grant which requires Commissioner approval under the terms of the Ministerial Direction of 17th December 2014.

5. LEGAL COMMENTS

- 5.1 There is no strict legal definition of grant. However, a grant is in the nature of a gift and is based in trust law. However, grants are often given for a purpose so it is sometimes unclear whether a grant has been made or the arrangement is a contract for services. A contract for services is not a grant and therefore, an arrangement which is classified as a contract for services would be outside the remit of the power conferred upon the commissioners to approve.
- 5.2 There will be many grants which are made by the Council for the purpose of discharging one of its statutory duties. However, as a grant is in the nature of a gift, it is considered there must be some element of discretion on the part of the Council as grantor as to whom a grant is made to and whether this is made. If the Council is under a legal duty to provide a payment to a specific individual or organisation, and cannot lawfully elect not to make such a payment, then that should not amount to a grant.
- 5.3 One of the key distinguishing features between a grant and a contract for services is that with a contract for services the recipient of the money has a pecuniary interest beyond that in the receipt of the money itself. This is often in the form of taking a profit from the received.

- 5.4 In this case, the Council is not under a legal duty to provide payment to EECF. The payment is discretionary and therefore considered to be a grant.
- 5.5 The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 5.6 The proposed grant may be supported under a variety of the Council's statutory powers, depending upon the outcomes achieved and the activities supported.
- 5.7 By virtue of section 111 of the Local Government Act 1972, the Council has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. This may involve expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights. The Expendable Endowment Agreement is made pursuant to section 111 as the Agreement is calculated to facilitate or be conducive or incidental to the discharge of the Council's planning functions.
- 5.8 The proposed grant may additionally be supported by others of the Council's statutory powers, such as its general power of competence. Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals generally may do, subject to specified restrictions and limitations imposed by other statutes. This general power of competence may also support the grant to the EECF.
- 5.9 The Council has a duty under the Local Government Act 1999 to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. This is referred to as the Council's best value duty. Best Value considerations have also been addressed in paragraph 7 of the report.
- 5.10 The Council must operate a fair and open application procedure to process a request to obtain funding. Requests for grant funding should ordinarily be measured against a predetermined set of criteria and the criteria themselves must be fair and transparent.
- 5.11 The grant agreement (being the Expendable Endowment Agreement) should include a clear monitoring process against defined parameters in order for the Council to demonstrate either: that delivery is in line with the permitted purpose and, therefore, the grant achieved its purpose; or provide clear delineation where outcomes were not achieved and the reasons for such failure are apparent. Monitoring should therefore include measuring performance against the expected outcomes.
- 5.12 The Treaty on the Functioning of the European Union (TFEU) provides that certain government activities may be prohibited because they give an advantage in a selective way to certain entities, which might affect competition within the internal market. Those advantages may amount to prohibited state aid, or may be state aid which is either expressly allowed by the Treaty, or which may be allowed, dependent on the circumstances. Certain activities are considered to be compatible with EU law however and which includes "aid having a social character" (see Article 107(2)(a) of

TFEU. In this case, the grant is for the provision of social and community facilities and services and is therefore not prohibited.

- 5.13 When implementing the scheme, the Council must ensure that no part of the funds issued represents a profit element to any of the recipients. The inclusion of profit or the opportunity of making a profit from the grant or third parties indicates that the grant is really procurement activity and would otherwise be subject to the Council's Procurement Procedures and other appropriate domestic and European law. This would mean therefore, that the Council would have failed to abide by the appropriate internal procedures and external law applicable to such purchases.
- 5.14 When making grants decisions, 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 do not (the public sector equality duty). A proportionate level of equality analysis is required to discharge the duty and information relevant to this is contained in the One Tower Hamlets section of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The EECF drafted the 'Vital Signs' report in 2014, which examines fairness and equality in the borough to focus attention and resources on identified inequalities so that they can be overcome. This complements the aspiration of 'One Tower Hamlets' which seeks to reduce inequalities and poverty in the borough, strengthening cohesion and making sure communities continue to live well together. The EECF is committed to delivering projects that satisfy objectives identified in the Community Plan, directly assisting the Council in contributing to the achievement of One Tower Hamlets.
- 6.2 After undertaking an equalities screening, there are not considered to be any adverse impact on equalities protected characteristics.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The EECF demonstrate best value as Council funds are match funded by donations and support from other businesses such as Canary Wharf Group, Clifford Chance, the Financial Conduct Authority, Northern Trust, Société Générale and TD Securities. As such the Council gets more return on their investment in social and community infrastructure (70p of external match funding for every £1 S106).
- 7.2 As historic work has been undertaken by officers to establish this third party delivery arrangement, there are no set up costs and resource implications on the Council are minimal.
- 7.3 As a grass roots organisation that has 25 years of experience of delivering social and community projects in the Isle of Dogs, the EECF can target funds effectively to increase employability, raise educational achievement and improve community wellbeing and social cohesion.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no environmental implications.

9. RISK MANAGEMENT IMPLICATIONS

- The EECF have completed a Pre-Qualification Questionnaire (PQQ) to ensure financial viability of the organisation.
- Termination clauses are drafted into the Endowment agreements
- The EECF are required to submit an investment strategy for approval by the Council prior to release of funds.
- The EECF are required to submit annual reports detailing income/interest/expenditure
- The council is entitled to raise a dispute if funds are considered to have been misapplied
- The EECF are prohibited from assigning rights to another party

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no Crime and Disorder Implications

11. SAFEGUARDING IMPLICATIONS

11.1 There are no safeguarding implications

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE

Officer contact details for documents:

N/A

