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**Report of:** *Executive Director, Place*

**Report to:** *Co-operative Executive*

**Date of Decision:** *23 June 2021*

**Subject:** **Green Homes Grant Local Authority Delivery Scheme**

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
- Expenditure and/or savings over £500,000	<input checked="" type="checkbox"/>
- Affects 2 or more Wards	<input checked="" type="checkbox"/>
Which Executive Member Portfolio does this relate to? Housing, Roads & Waste Management	
Which Scrutiny and Policy Development Committee does this relate to? Overview and Scrutiny Management	
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
If YES, what EIA reference number has it been given? (942)	
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-	
<p><i>“The (<b>report/appendix</b>) is not for publication because it contains exempt information under Paragraph (<b>insert relevant paragraph number</b>) of Schedule 12A of the Local Government Act 1972 (as amended).”</i></p>	

**Purpose of Report:**

The Green Homes Grant Local Authority Delivery (LAD II) Scheme is a government funding opportunity for retrofit insulation, energy efficiency and heating measures across all tenures of housing in low-income households with poor energy efficiency.

Specifically, the LAD II scheme is for retrofit of lower income homes (where the gross household income no more than £30,000 p.a.) with poor energy efficiency (Energy Performance Certificate (EPC) rating D-G).

Sheffield City Council completed an application for the LAD II funding, on the 26<sup>th</sup> of March 2021 and have now received confirmation that the funding application for the project has been approved by the Tees Valley Combined Authority for grant funding up to £3,003,507 . On signature on the grant documentation the Council will become the accountable body for the full award and the programme of work.

A summary of the proposals is provided at section 1.1.

**Recommendations:****It is recommended that the Co-operative Executive approves:**

- 1) The Council accepting the government's grant funding offer of up to £3,003,507 from Tees Valley Combined Authority (TVCA) and approves the Council entering into a memorandum of understanding and funding offer letter on the terms outlined in this report;
- 2) The energy efficiency and carbon reduction measures programme set out in the report.
- 3) The addition to the Housing Revenue Account (HRA) capital programme of a total of £786,683 for additional works to council housing stock being delivered as a result of the successful funding bid (being £636,733 grant funding and £149,950 additional match funding from the HRA)
- 4) The procurement route set out in section 3.2 for the residual element of the public sector housing works identified above not currently covered by existing contracts and procurement exercises;
- 5) The delegation of contract award for the above public sector housing contract to the Executive Director of Place in consultation with the Director of Finance and Commercial Services and the Director of Legal and Governance;
- 6) The principle of the Council acting on behalf of SYHA in undertaking the required procurement;
- 7) The principle of the Council entering into a council supply agreement with SYHA for the services provided by the Council relating to the procurement and contract delivery of the works to SYHA properties of which the exact working arrangements between the two parties will be subject to a future

- decision via the Leaders Scheme of Delegation prior to commencing any works on SYHA properties;
- 8) Additional funding to the non HRA capital programme of £194,718 for the works to be delivered to improve South Yorkshire Housing Association (SYHA) owned properties (being £72,843 grant funding and £121,875 additional match funding from SYHA);
  - 9) The procurement of a Principal Contractor, to deliver Private Sector works, by direct appointment from a national construction framework and delegation of contract award to the Executive Director of Place in consultation with the Director of Finance and Commercial Services and the Director of Legal and Governance on terms that are not materially different to those outlined in this report;
  - 10) The additional funding to the non HRA capital programme of £2,261,672.38 for the works to Private Sector Houses;
  - 11) That the Private Sector Housing Assistance Policy be amended to include the Green Homes Grant, as detailed in this report and set out in appendix 1 to the report.
  - 12) To the extent not already delegated to them by the Leader's Scheme of Delegation, delegates authority to the Executive Director of Place, the Director of Finance and Commercial Services and the Director of Legal and Governance to take any other decisions necessary in order to meet the aims and objectives of the report.

**Background Papers:**

N/A

<b>Lead Officer to complete:-</b>	
1	<p>I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.</p> <p><i>Finance: M Wassell/ D Watkinson</i></p> <p><i>Legal: David Cutting /Gemma Day/Stephen Tonge</i></p> <p><i>Equalities: Louise Nunn</i></p> <p><i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i></p>
2	<p><b>EMT member who approved submission:</b></p> <p><i>Mick Crofts, Executive Director, Place Portfolio</i></p>
3	<p><b>Executive Member consulted:</b></p> <p><i>Councillor Paul Wood, Cabinet Member</i></p>
4	<p>I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.</p>

<b>Lead Officer Name:</b> <i>Janet Sharpe</i>	<b>Job Title:</b> <i>Director of Housing and Neighbourhood Services</i>
<b>Date:</b> 07/06/2021	

## 1. PROPOSAL

### 1.1 The bid summary

The bid application made by SCC to Tyne Valley Combined Authority (TVCA) who are acting on behalf of the Department for Business Energy and Industrial Strategy (BEIS), sought £3,003,507 of grant funding and proposes to provide new insulation and energy efficiency measures in 782 homes. This comprises of 502 SCC homes, 15 South Yorkshire Housing Association (SYHA) homes and 265 homes in the private owner-occupied sector.

Grant funding for administration costs is also available and makes up £293,753 of the bid.

The Council have now received confirmation of their successful application.

### 1.2 Private Owner occupied

This aspect of the programme will target a range of housing types in EPC (Energy Performance Certificates) E, F & G. Eligible properties are found throughout the city, but area-based marketing will be used to enhance targeting and uptake. Marketing for this programme will focus on those with low income (household income no more than £30,000 pa) and owners of low EPC (E,F & G) rated homes. The focus is on homes which are predominately terraced and semi-detached properties in the private sector, including 'right to buy' properties. Private rented properties are not included in this bid but will be a priority for future bidding rounds.

### 1.3 Sheffield City Council (Social Rented)

The Council has been improving homes below EPC C in its own stock for some time and we now have fewer than 8,000 homes under EPC C. There are 251 properties within the SCC stock that are identified as having an EPC rating of E, F and G. Approximately 7000 properties are EPC D. However, properties that fall in the EPC rating D cannot form more than 50% of the total bid property numbers due to restrictions applied within the terms of the grant funding application set out by government.

LAD II provides an excellent chance to retrofit remaining EPC E,F & G rated housing stock. These properties are distributed across the city in a range of types including standard and some non-standard construction (e.g., 5M type houses with hybrid steel and timber frames). A mix of 251 E, F & G and 251 EPC D rated properties are included in the bid. The range of measures applied for will be tailored to each housing type but could include:

- Pitched roof insulation

- Cavity wall insulation
- Water cylinder insulation
- Replacement of single glazing with double glazing
- installation of Solar PV (Photo Voltaic) and a number of Air Source Heat Pumps

The Council has direct control of its own housing stock and existing technical and tenant liaison resource to oversee this work. The Council also has sufficient resource in the HRA Budget in 2021/22 to provide the match funding requirement of LAD II.

#### 1.4 South Yorkshire Housing Association (SYHA) (Social rented)

SYHA holds approximately 50 properties in Sheffield which are EPC E or F rated. The majority of these properties are Victorian/Early 20<sup>th</sup> century terraces. The proposal is for the piloting of a whole house retrofit approach of this housing type. The majority of homes are gas heated. Depending on the constraints of individual buildings (technical and/or high cost), and the willingness of tenants to accept certain measures e.g., a heat pump, this will result in intelligence and knowledge building for both SYHA and the Council. This improved knowledge can then also be shared city-wide with homeowners and private landlords. This housing type is common across Sheffield in the private sector and will continue playing an important role in meeting the city's housing needs into the future. Through this pilot we can develop and demonstrate a realistic retrofit route for this important housing type.

SYHA has good EPC coverage of its stock and properties have been identified via SYHA's asset management system. Because SYHA are only selecting 15 out of 50 potentially eligible properties if any of the 15 prove to be unsuitable properties they can be readily swapped for suitable properties during the delivery period.

It is proposed that the Council will enter into a supply agreement with SYHA to enable the Council to procure the works to the 15 SYHA properties, to manage the contract as a whole including the delivery of the required works and to invoice SYHA for their contribution towards the (non-grant funded) costs of the works. Details of this arrangement and contract have not yet been finalised and will therefore be subject to further approvals in accordance with the Leaders Scheme of Delegation.

## 2. Match Funding

The Council will contribute a total of £343,816 match funding from the Housing Revenue Account Capital Programme. Of this £193,866.67 is already approved and included in the approved capital funding for the awarded reroofing works which will deliver PV installations and the approved Elementals procurement currently underway. Therefore, this report proposes to seek approval of the balance of the match funding of £149,950.

Once the arrangements with SYHA are finalised, the estimate is that they will contribute £121,875 match funding for their element of the works

The grant will cover the whole cost of work to eligible privately occupied homes. Therefore, no match funding is required by Government from private homeowners for any work undertaken as part of this bid.

### **3. Procurement of Social Housing Sector contracts**

3.1 The Council has two works programmes already in place or planned, one of which has commenced on site and a further contract which is due to commence by September 2021. These are broader in scope than LAD II, but we intend to use them to deliver certain works in the Council housing stock. These include:

A) Roofing/PV- Avonside are contracted to deliver the Solar PV pilot in Council stock and deliver elements of loft insulation work. Avonside are PAS 2035 compliant (A standard that sets out a requirement to properly assess dwellings, design and implement retrofit work) and Trustmark accredited.

B) Elementals work is not yet tendered. This contract will cover some of the cavity wall insulation, ASHPs (Air Source Heat Pumps) , water cylinder insulation and double glazing. We will ensure that the specification includes, PAS2035, MCS<sup>i</sup> and Trustmark certification requirements. .

C) In addition to this, it is proposed that separate procurements for one or more contracts may be undertaken via a regional construction framework in accordance with Standing Orders for the residual Council properties within the bid and the 15 SYHA properties (if these arrangements are finalised).

3.2 To maximise the benefits from the short-term nature of LAD II, it is proposed to partner with a Principal Contractor for the private sector owned homes. On award of the grant a Principal Contractor will be appointed through a separate direct contract award mechanism via the Fusion 21 Framework to deliver the entirety of the private sector strand of the bid. The Principal Contractor will manage the entire customer journey with careful governance and programme management by the Council, via regular contract meetings with leads at the Principal Contractor and escalation of any issues for resolution and audit.

3.3 The Principal Contractor will use a thoroughly vetted and approved framework of contractors. The availability of this highly experienced network associated with having a pre-procured supply chain enables a high standard of quality and time efficiencies. The successful Contractor will compile and retain all records, completion certificates and accreditations ensuring operational, commercial and reputational risks are considered, captured and managed. The successful contractor will be required to be PAS2035 compliant, MCS certified, and Trustmark accredited.

### **4. Bid proposals delivery and management**

4.1 The Council places great importance on accurate financial management and governance of projects. To this end, the bid will be divided into manageable and controllable stages and strands with defined roles and responsibilities of Council and partners using a programme management approach.

4.2 The Council has held an officer steering group meeting weekly to develop the bid chaired by the Director of Housing and Neighbourhood Services. Following award, this group has been transformed into a programme team with the appointed contractors and SYHA eventually joining. At regular meetings, progress will be measured against the programme, delivery and spend to ensure that all works are running effectively and that the grant funding agreement is adhered to. This will

also provide an opportunity to escalate any customer service issues or public/member queries of the programme.

4.3 Each strand of the bid will be managed as distinctly separate but linked projects of an overall programme

- The overall programme management and coordination is proposed to be delivered by engaging a resource provided by Turner and Townsend, SCC's strategic delivery partner.
- The private sector strand will be project managed by the Principal Contractor who will report outputs/ outcomes via the programme management resource provided above.
- The Council's and SYHA housing stock delivery will be project managed by the Asset Management and Programme Works Team within Housing and Neighbourhoods Services with commercial support from CDS.

4.4 **Private Sector Housing Assistance Policy**

The Council's Private Sector Housing Assistance Policy sets out various forms of assistance available to private occupants to enable them to improve their housing accommodation in accordance with the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002.

Under the proposals in the Green Homes Grant relating to private sector housing, assistance will be provided to owner occupiers, in the form of energy efficiency works. The Private Sector Housing Assistance Policy will therefore need to be amended, to include this new form of assistance. It is therefore proposed that the Council's Private Sector Housing Assistance Policy be amended to include this new form of assistance, to be referred to in the Policy as a Green Homes Grant.

The proposed amendments to the Policy set out the Green Homes Grant entitlement conditions and the eligibility criteria including the criteria required under the bid.

The principle bid required eligibility criteria is that household income is no more than £30,000 pa, and eligible properties are low EPC (E, F & G) rated homes. In addition, to ensure fairness, in the event of over subscription, it is proposed that entitlement shall be on a first come first served basis, based on the date and time the application is received. The proposed Green Homes Grant, to be included in the Private Sector Housing Assistance Policy, is set out in appendix 1 to the report

5. **Governance**

5.1 The Council will develop strong governance frameworks to ensure oversight of delivery in all strands of our LAD II bid. Reports relating to this scheme will be presented post approval to the Councils Capital Gateway mechanisms have full visibility of the work.

5.2 Contracts will stipulate that contractors/partners must collate and report data in line with GDPR and adhere to LAD II guidance to allow the Council to monitor spend and delivery. The Council will manage and administer the grant and will establish internal audit and quality assurance processes internally for data submissions to Tees Valley Combined Authority (TVCA).

- 5.3 Any personal or special data will be collected and processed under the consent element of GDPR by individuals affected. GDPR Data sharing agreements will be drawn up with contractors. The Council will utilise its Information Management team to provide overall oversight on GDPR and related data matters.
- 5.4 All contractors undertaking the works will be Trustmark, PAS 2030:2019 and MCS (where relevant) registered and/or certified. All measures installed within the project will hold relevant guarantees and all installations will be compliant with current planning and building regulations. This will be monitored as part of the project governance. As required in the bid prospectus, all works will be carried out to PAS2035 standards

The Council will conduct Energy Performance Certificates (EPC) pre and post works providing reference numbers of each EPC to calculate expected energy savings with evidence reported to TVCA throughout delivery.

## **6. Risks**

- 6.1 Whilst LAD II offers potential benefits it also presents a range of risks and issues which have been considered. There has been a very significant delay in government issuing the final Local Authority allocations, bid documentation and funding conditions. Furthermore, there is now a significantly shortened timetable for delivery. Although the initiation of LAD II has been delayed the delivery deadline remains at 31/12/21. All retrofit works need to be completed by this date. This presents a very challenging deadline for delivery. The Council would need to procure and deliver works after approval in this very short timeline. The Council would likely have less than 4 months to deliver £3.8 million worth of retrofit works.
- 6.2 All contract management arrangements will need to be robust to ensure no liabilities arise after 31/12/21 as LAD II funding will not be available to meet these. This is particularly relevant to the Private Sector element of the works which lacks the resources of the HRA to meet any additional costs.
- 6.3 The Council Repairs and Maintenance Service is unable to resource the delivery of retrofit works under LAD II because of the technical criteria eligibility required of the LAD II scheme. The Council will need to procure external contractors to deliver retrofit works. The short timeline for delivery of LAD II mean that Council is unlikely to be able to prioritise social value or local supply chains in procuring works.
- 6.4 LAD II is currently a one-off funding opportunity and there are no plans at present for government to extend LAD II to future rounds beyond 31<sup>st</sup> December 2021. Therefore, SCC has no security of future funding for retrofit from government. Because of this SCC cannot recruit internal resources or promise to fund future retrofit via this scheme.

## **7. HOW DOES THIS DECISION CONTRIBUTE ?**

- 7.1 This decision will contribute to the ambitions within the Corporate Plan of achieving net zero by 2030, reduce fuel poverty and improve both energy efficiency and thermal comfort to 782 properties in both social housing and private housing sectors.

## **8. HAS THERE BEEN ANY CONSULTATION?**

- 8.1 Consultation will be undertaken with local ward members where the works are proposed to be undertaken
- 8.2 Tenant consultation and engagement for the social housing stock will be carried out through the tenant engagement forums such as HANAP (Housing and Neighbourhoods Advisory Panel) and any impacted TARAs (Tenant and Residents' Associations).
- 8.4 When the Council developed its Private Sector Housing Assistance Policy, approved in January 2020, it undertook a consultation process. A survey was available on Sheffield Consultation Hub during the summer 2019 for homeowners and private rented tenants. A purpose of the survey was to gather views on the vulnerable groups the proposed policy should assist, and gather information on private sector residents' living circumstances, the condition of their home and any help or assistance they may require in their home. The Council had regard to the consultation responses when it finalised the Private Sector Housing Assistance Policy. In addition, regard was had to the consultation responses in respect of that consultation, when developing the proposals relating to private sector housing detailed in this report.

A total of 217 households responded, 125 homeowners and 92 private renters, the main findings were:

- Respondents wanted more housing advice and information on the Council's website and for this to be promoted through social media.
- Respondents thought it would be helpful if the Council provided the following advice and support:
  - Home energy efficiency advice
  - Home insulation help
  - New boiler or heating system help
  - Interest free repayment loan

Further to this consultation, the proposal contained within this the body of this report to engage with the Contractor via the Fusion 21 framework and this arrangement will support additional engagement with the private housing sector residents in the city on the approved bid

## **9. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION**

### **9.1 Equality of Opportunity Implications**

- 9.1.1 An Equality impact assessment has been completed for the scheme proposals. The proposals contained within the scheme will have a positive impact on the poverty and financial inclusion strand. The proposals will deliver homes that are better insulated and more affordable to heat and therefore will contribute to reducing fuel poverty within the households impacted by the scheme proposals

### **9.2 Financial and Commercial Implications**

- 9.2.1 Memorandum of Understanding (MOU).

Key features (not exclusive) of the draft grant Memorandum of Understanding (MoU) and associated documentation are summarised below and in addition the Grant Manager will need to:

- Read, understand and comply with all of the grant terms and conditions.
- Ensure match funding (see Para 2 above) is available to use and can be evidenced.
- Ensure any back-to-back Funding Agreements with third parties protect SCC's interests and manage financial risks and responsibilities.
- Develop a viable exit strategy for when the grant funding ends to ensure that there are no unfunded ongoing costs as currently there are no identified funding sources available.

### **Status of the MOU**

- The MOU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MOU. The Parties enter into the MOU intending to honour all their commitments under it.
- Nothing in the MOU is intended to, or shall be deemed to, establish any partnership, joint venture or relationship of employment between the Parties, constitute either party as the agent of the other party, nor authorise either of the Parties to make or enter into any commitments for or on behalf of the other party. Accordingly, the Council will not hold itself out as having any such relationship with the funder.

### **Background.**

- Eligible Household means domestic dwellings with energy performance certificate rating - Band D, E, F, G and annual household income no more than £30,000. Band D properties must not exceed 50% of total homes upgraded across the region.

### **Purpose.**

- To establish the way the parties to this Memorandum of Understanding (MOU) will work together to deliver the project.
- Grant is for capital funding and the Council has committed to spend such funds to deliver the project.

### **Outcomes.**

- Primary purpose of the grant is to raise energy efficiency rating of low income/low EPC rated households up to a cap of 50% of Band D homes.
  - Tackle fuel poverty by increasing low-income household's energy efficiency rating/reducing energy bills,
  - Deliver cost effective carbon savings to carbon budgets and progress towards net zero by 2050.
  - Support clean growth, thermally comfortable homes/efficient and adapted to climate change,
  - Support LAs to build capacity/capability for large scale energy efficiency projects to low-income households,
  - Support economic resilience/green recovery re: economic impacts of C19, creating jobs.
  - Use delivery to inform development/design of further energy efficiency /heat schemes.
- 
- Funding subject to SCC providing documentation/information (see MOU for details)
  - Grant paid monthly in arrears based on incurred expenditure.
  - Grant for use from the date of the MOU until 31 December 2021.

- Capital funding to deliver outcomes for the Funding Period in line with their Sourcing Strategy
- Eligible Costs (see criteria)
- Average cost of upgrades not expected to exceed £10,000 per property.
- Eligible landlords to provide at least 33% contribution/subsidy not to exceed £5,000 on average per household.
- Grant is for capital funding, and where accounting standards permit the capitalisation of costs incurred for capital assets for LAD II (e.g., administrative and ancillary).
- SCC to keep LAD II delivery costs below 11% of total value of grant delivery.
- In all other cases capital funding must not be spent on revenue.

#### **Grant not to be used for:**

- Any measures which are not Eligible Measures.
- To fund any lending to third parties.
- Replace funding for an existing project, staff costs for an existing project/any projects to deliver statutory obligations. Grant may be used to extend geographical coverage, scope/scale of an existing project (and for additional staff costs attributable to the extension of the project)
- Use in respect of costs reimbursed by funding from public authorities/ private sector.
- Use in connection with the receipt of contributions in kind.

#### **Grant Relationship with Other Funding.**

- Grant must not be used to part fund measures with other Government schemes.
- SCC must introduce controls to ensure households receiving funding do not receive funding from GHG LAD I or other GHG schemes.
- Prevent funding being mixed with other government schemes (e.g., Social Housing Decarbonisation Fund) on the same individual measure.
- If a household grant in LAD 1 Phase was below cost limits (e.g., £5,000 for rented, £10,000 for low-income owner occupiers), additional LAD II measures can be installed as long as the cost threshold is not exceeded.
- GHG LAD II grant can be mixed with other third-party finance /LA budgets to deliver additional support.
- To claim Domestic Renewable Heat Incentive (DRHI), households must contribute to installation costs - so where LAD II provides full grant, these households will not be eligible for support under DRHI.
- If a household contributes (e.g., a landlord) then DRHI may be claimed. NB: DRHI/LAD II have different eligibility criteria, eligibility for LAD II does not guarantee DRHI.

#### **Subsidy Control**

- SCC to ensure grant does not breach any applicable subsidy control regime.
- To minimise the risk of repayment, SCC will:
  - Comply with subsidy control regime when using the Grant/delivery of LAD II.
  - Ensure Grant complies with subsidy control regime.
  - Obtain/retain declarations and information as required to enable SCC to comply with any applicable subsidy control regime, and to provide copies of such declarations and information to the funder when required.

#### **SCC will:**

- Comply with UK law on public procurement

- Not use the Grant, or any asset arising to generate revenue/make a capital gain unless agreed otherwise. Grant may be reduced by revenue or gain.
- Eligible Expenditure is net of VAT recoverable and gross of irrecoverable VAT. This means that all grants are outside the scope of VAT.

#### **Grant Withdrawal / Repayment / Suspension**

- Funder may request SCC to repay all/any proportion of the Grant if terms and conditions are not complied with (see full details)
- Funder may suspend grant payment in some circumstances (see full details).

#### **Governance.**

- SCC to comply with monitoring/reporting/performance requirements (see MOU details)
- A significant variation in SCC performance against targets and a recovery plan maybe requested
- SCC to provide ongoing due diligence, controlling, monitoring, reporting on any fraud (see MOU details)

#### **Monitoring and Audit.**

- SCC to comply with all requirements for monitoring and audit (see full details).
- Providing a statement of usage of the Grant when required

#### **Record Keeping.**

- SCC to keep all records for ten years records including evidence that contracts have been awarded in accordance with public procurement law (see full details)
- No variation of this MOU will be effective unless it is agreed in writing.

- Grant may be used only for the purposes that a capital receipt may be used for in accordance with regulations made under section 11 of the Local Government Act 2003.
- The Chief Executive/Chief Internal Auditor to sign an audit statement

#### **Commercial Implications**

All public sector procurement is governed by and must be compliant with UK National Law. In addition, all procurement in SCC must comply with its own Procurement Policy, and internal regulations known as 'Contracts Standing Orders' (CSOs).

Contracts Standing Orders requirements will apply in full to the procurement of services, goods or works utilising grants. All grant monies must be treated in the same way as any other Council monies .

### **9.3 Legal Implications**

- 9.3.1 The Localism Act 2011 provides local authorities with a “general power of competence” which enables them to do anything that an individual can do as long as the proposed action is not specifically prohibited. The Council also has a specific power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions (s111(1) Local

Government Act 1972). This gives the Council the ability to accept this grant from the TVCA and act on behalf of SYHA.

The Housing Act 1985 requires the Council to maintain and repair the housing it provides under its statutory duty as a local authority. Procurement of the proposed improvements will assist the Council in meeting its statutory housing functions by providing the ability to repair and maintain property it is responsible for.

Under the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (RRO) the Council may, for the purpose of improving living conditions in their area, provide assistance to any person, to enable them to adapt or improve their living accommodation. The power enables local authorities to give assistance to persons directly, or to provide assistance through a third party. The Council is therefore empowered to provide the Green Homes Grant detailed in the report and set out in appendix 1.

To use the powers provided in the RRO the Council must adopt a policy for the provision of the assistance. The proposed amendments to the Private Sector Housing Assistance Policy, to include the Green Homes Grant, complies with this requirement.

The ultimate beneficiary of the works proposed is the tenant rather than the property owner or landowner.

The grant specific MoU requirements are outlined above in paragraph 9.2 and as stated, officers working on this project must be aware of these requirements and ensure they are complied with.

Key terms of the MoU include restrictions on the eligible use of the grant; grant withdrawal and repayment provisions (clawback); compliance with Subsidy Control; prohibition on merging this grant with other funding streams or using it for commercial purposes; and monitoring and audit requirements.

Whilst the MoU explicitly states that it is not legally binding, it also states that the Parties do, however, enter into the MoU intending to honour all their commitments under it. The MoU also states that part of that includes specific compliance with the Subsidy Control regime in delivery of the programme meaning that the works must be procured in a fair and transparent competitive manner in accordance with the Public Contract Regulations 2015 (as amended).

The Council will also need to accept and sign a funding offer which contains for example a number of conditions precedents that need to be signed and satisfied before payment of the grant funding will be made, obligations of the Council, key milestones and outputs.

The Council are satisfied that there is no subsidy in relation to the proposals outlined in this report.

Any grants accepted by the Council can only be received following the approval of the Director of Resources & Head of Strategic Finance (Art 6.2.1 & Art. C.2.1.5 'Grant Funding') and then managed by an Executive Director (or their delegate) under Article 6.2.2 of the Financial Procedure Rules.

The Council are currently finalising the arrangements between the Council and South Yorkshire Housing Association (SYHA). If these are agreed then the Council will need to enter into a council supply agreement with SYHA to detail any arrangements between the parties. Any council supply agreement would be the subject of a further decision.

The Council is intending to enter into a Works and Services agreement with the successful supplier for the Private Sector element of the project. This agreement will be awarded via a framework. The contract value is below the works threshold. The requirements of the Works and Services agreement will mean that the supplier will have an obligation to deliver the services. This agreement will detail for example each parties' obligations, the works and services, payment terms, charges, liability, marketing, reporting and data protection. Some elements of the grant agreement the Council will enter in to with the funder will also be flowed down to ensure that the Council is not put into breach of this arrangement.

The Council must comply with all applicable legislation and regulations including but not limited to the Public Contracts Regulations 2015, Subsidy Control and the Council's Contracts Standing Orders.

#### 9.4 Other Implications

- 9.4.1 There are implications in terms of this scheme contributing positively to SCC's ambition of becoming a net zero carbon city. Otherwise, there are no other known implications and any legal or property implications are dealt with in the body of the report

### 10. ALTERNATIVE OPTIONS CONSIDERED

- 10.1 Alternative option one - Include in imminent procurement  
One option would be for the works for the 330 SCC properties which are not currently in a planned programme(referred to under item 3.2 above) is to include these in the imminent procurement of the Elemental contract. However, this increases the delivery risk should there be any procurement or tendering delays. This option was rejected on the basis that by spreading the delivery of the works over 3 contracts would reduce the risk of procurement or contract appointment delays.
- 10.2 Alternative option two – Do Nothing  
This option is not a viable option as this mean that the works to 330 Council properties would be delivered and the Council would lose the opportunity to maximise on grant funding, available under LAD II, to improve the energy performance of 330 of the worst energy performing Council properties
- 10.3 Due to the tight timescales for delivering the bid requirement, on receipt of approval of the grant funding, the recommended procurement and delivery options set out under section 3 above in this report are considered to be the most expeditious.

### 11. REASONS FOR RECOMMENDATIONS

- 11.1 The recommendations as set out in this report will enable the Council to deliver energy efficiency and carbon reduction measures to 502 Council properties, and potentially 15

properties owned by SYHA and 265 properties in the private housing sector if these elements of the project are agreed and finalised. The LAD II project provides an excellent opportunity to retrofit some of the least efficient stock across tenure in the city and will contribute towards measurable changes and improvements towards the city's net zero carbon 2030 ambitions.

## Appendix 1 - Green Homes policy amendment

### 16. Green Homes Grant

#### Summary

<b>Assistance</b>	<b>Eligibility</b>
A grant to undertake energy efficiency works to improve a property's Energy Performance Certificate (EPC).	<ul style="list-style-type: none"><li>• Owner Occupier</li><li>• Household income £30,000 or below</li><li>• Property with an EPC rating of E, F, or G</li></ul>

#### Purpose

- 16.1 The purposes for which a Green Homes Grant application may be made are to enable an Applicant to have energy efficiency work carried out on their Property to improve the Energy Performance Certificate (EPC) rating.
- 16.2 Subject to paragraph 16.9 the Green Homes Grant is only available in 2021.

#### Eligibility

- 16.3 To be eligible for the grant the Council must be satisfied that the Applicant meets all the following criteria:
- a) Aged 18 or over
  - b) Be an Owner Occupier
  - c) Have a combined household annual income of no more than £30,000 gross, before housing costs and including benefits.
  - d) That the Property occupied by the Applicant has an EPC rating of E, F, or G
- 16.4 Within the above criteria for eligibility, priority for awarding a grant will be determined having regards to the date and time the application is received, applications will be on a first come first served basis.
- 16.5 Where an application in accordance with paragraph 16.4 is made on time and the Applicant meets the eligibility criteria, when deciding whether to award a Green Homes Grant, the Council will have regard to the Council's available resources.

#### Works

- 16.6 The Council's contractor will check whether the Property holds a valid in date EPC. Where a property does not have a valid EPC the Council's contractor will carry out an EPC assessment to confirm the Property's EPC rating.

- 16.7 Where the Property has an EPC rating of E, F or G, the Council's contractor will determine the nature, quality, and extent of the works to be funded by the grant, which it will detail in a schedule of works (the Works).
- 16.8 Specific solutions will be tailored to the archetype of the Property. Expected upgrade measures to be installed may include but are not limited to:
- a) External Wall Insulation
  - b) Cavity Wall Insulation
  - c) Loft Insulation
  - d) Smart heating controls
  - e) Solar PV
  - f) Double Glazing
- 16.9 All Works will be completed in line with the deadline set in the Government's Green Homes Grant funding award which is currently the 31<sup>st</sup> of December 2021.

### **Conditions**

- 16.10 The Applicant will be subject to the following conditions attached to the grant:
- a) That they are an Owner Occupier of the Property
  - b) The Applicant provides a completed Owner's Consent Form
  - c) The Applicant provides a completed Owner's Consent Form in respect of any other person who is an Owner of the Property
  - d) The Works are undertaken by the Council's contractor
  - e) Payments for the Works will be made directly to the Council's contractor.

## Footnotes

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<sup>i</sup> MCS definition – Microgeneration Certification Scheme that provides proof that insulation or energy efficiency / heating installations have been designed, installed & commissioned to the highest standard using only **MCS** certified products by an **MCS** certified installer