

TRANSPORT FOR LONDON

FINANCE AND POLICY COMMITTEE

SUBJECT: FINANCIAL POLICIES

DATE: 20 JANUARY 2011

1 PURPOSE AND DECISION REQUIRED

- 1.1 The purpose of this paper is to seek the recommendation of the Committee that the Board approves revisions to the following financial policies:
- (a) Guarantees and Indemnities; and
 - (b) Financial Assistance.

2 BACKGROUND

- 2.1 The approval of these specific policies is a matter reserved to the TfL Board, in accordance with Standing Order No. 2. The Committee is required to consider the policies in advance of their submission to the Board.
- 2.2 These two policies were originally approved by the Board on 25 September 2001. These policies have now been reviewed and updated.

3 AMENDMENTS MADE

- 3.1 The Guarantees and Indemnities policy is attached at Appendix 1 and has been shortened and simplified. In particular, the requirements for record keeping are much less prescriptive; the obligation is that General Counsel will maintain a record of instances where a guarantee or indemnity is given. The Policy also makes it clear that TfL has the power to guarantee to discharge only the financial obligations of a party, and not performance obligations. A further clarification is that additional authority may be required if the risk exposure under a guarantee or indemnity given to a party outside the TfL Group exceeds the authority levels of the Managing Director, Finance.
- 3.2 The Financial Assistance Policy is attached at Appendix 2 and has also been shortened and simplified. The definition of financial assistance has been updated to include provision of loans to subsidiaries. Certain matters previously set out in detail in the Policy, such as conditions attaching to financial assistance, are covered in less detail. Instead, reference is made to detailed instructions included in the document entitled 'Procedure Note: Financial Assistance'. Compliance with this document is mandatory and may only be waived with the agreement of the Chief Finance Officer.

4 RECOMMENDATION

- 4.1 The Committee is asked to RECOMMEND that the Board APPROVES the Guarantees and Indemnities Policy and the Financial Assistance Policy.

5 CONTACT

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**POLICY ON GUARANTEES AND INDEMNITIES UNDER SECTION 160
OF THE GREATER LONDON AUTHORITY ACT 1999**

Issue date: xx xxxx 2011

Effective: xx xxxx 2011

This supersedes any previous policy.

1 PURPOSE

- 1.1 The objective of this Policy is to establish a mechanism for the approval and recording of guarantees and indemnities associated with guarantees under section 160 of the Greater London Authority Act (“GLA Act”).
- 1.2 Section 161 of the GLA Act requires TfL to publish an Annual Report as soon as possible after the end of each financial year, which (amongst other things) deals with guarantees given under section 160.

2 DEFINITIONS

- 2.1 A **guarantee** is an obligation to discharge a financial obligation (i.e. a promise to pay a debt) of another party in the event of default by that party. Note that TfL does not have the power to guarantee the performance obligations of another party.
- 2.2 An **indemnity** is an arrangement for TfL to indemnify a person who gives a guarantee under section 160.

3 ORGANISATIONAL SCOPE

- 3.1 This Policy applies to TfL and its subsidiaries. References to TfL in the remainder of this Policy should be read to mean either TfL or one of its subsidiaries, as appropriate.

4 LEGAL REQUIREMENTS

- 4.1 TfL may guarantee the discharge of a financial obligation of certain other legal entities, namely:
- (a) a subsidiary of TfL;
 - (b) a legal entity with whom TfL has entered into an agreement by virtue of section 156(2) or (3) of the GLA Act, where the guarantee is given for

the purpose of enabling that person to carry out the agreement (e.g. a Private Finance Initiative);

- (c) a legal entity with whom a TfL subsidiary has entered into a transport subsidiary's agreement under section 169 of the GLA Act, where the guarantee is given for the purpose of enabling that person to carry out that agreement (e.g. a guarantee enabling a private sector bus operator to carry out its contract to provide bus services with LBSL); and
- (d) a legal entity where, for the purposes of discharging its functions TfL guarantees the financial obligations of that legal entity, for the purposes of an undertaking carried on by that legal entity or its subsidiary.

4.2 TfL may also enter into arrangements so that a third party gives a guarantee, which TfL itself has powers to give, and TfL indemnifies that third party for doing so. This allows TfL to procure a guarantee from a third party – e.g. a bank or insurance company – and indemnify them accordingly.

5 APPROVAL OF GUARANTEES

- 5.1 No guarantee or indemnity associated with a guarantee may be given without the prior written approval of the Managing Director, Finance after taking legal advice.
- 5.2 Additional authority may also be required if the risk exposure under a guarantee (or indemnity associated with a guarantee) given in relation to the financial obligations of a legal entity other than a TfL subsidiary exceeds the Managing Director, Finance's authority levels as provided in TfL's Standing Orders.

6 RECORDING OF GUARANTEES AND INDEMNITIES

- 6.1 General Counsel shall maintain a record of all guarantees and indemnities given under this Policy.

7 POLICY OWNER

- 7.1 The Chief Finance Officer is the designated owner of this Policy.

8 APPROVAL AND AMENDMENTS

- 8.1 This Policy was approved by the Board on x/xx/2011.
- 8.2 This Policy will be subject to periodic review as considered appropriate by the Chief Finance Officer.



**POLICY ON FINANCIAL ASSISTANCE UNDER SECTION 159
OF THE GREATER LONDON AUTHORITY ACT 1999**

Issue date: xx xxxx 2011

Effective: xx xxxx 2011

This supersedes any previous policy.

1 PURPOSE

- 1.1 The objective of this Policy is to set out how TfL will provide financial assistance under section 159 of the GLA Act. All financial assistance must be given in accordance with this Policy.

2 FINANCIAL ASSISTANCE

- 2.1 Financial assistance is defined, for the purpose of this Policy, as the provision of a grant, loan or other payment by TfL to a third party in respect of expenditure incurred or to be incurred by that third party in doing anything that is conducive to the provision of safe, integrated, efficient and economic transport facilities or services to, from or within Greater London.
- 2.2 In accordance with section 159 and this Policy, TfL may provide financial assistance on an ongoing basis as set out below:
- (a) to its subsidiaries in the form of grants, loans and other payments to enable them to carry on their activities of providing transport facilities and services;
 - (b) to London authorities in connection with transport objectives in accordance with section 159 and in particular in respect of expenditure incurred or to be incurred in discharging any function of a highway authority or traffic authority; and
 - (c) from time to time to any other person or body for the purposes specified in section 159.

3 DEFINITIONS

- 3.1 **The GLA Act** means the Greater London Authority Act 1999.
- 3.2 **The Commissioner** means the Commissioner of Transport for London.

- 3.3 **Chief Officer** means any Managing Director, including General Counsel, and any other TfL Officer formally appointed to act on an interim basis as a Managing Director.
- 3.4 **The Chief Finance Officer** means the officer appointed under section 127 of the GLA Act.
- 3.5 **Subsidiary** means a company that is wholly owned by TfL either directly or indirectly and **Subsidiaries** means each of such companies together.
- 3.6 **London authority** means any London borough council or the Common Council.
- 3.7 **The TfL Group** means Transport for London and its Subsidiaries.
- 3.8 **Highway authority** has the same meaning as in the Highways Act 1980 (see in particular sections 1 to 9 of that Act).
- 3.9 **Traffic authority** has the same meaning as in the Road Traffic Regulation Act 1984 (see sections 121A and 142(1) of that Act).
- 3.10 **The Guidance Note** means the Guidance Note: Financial Assistance issued by the Chief Finance Officer.
- 3.11 **TfL** means Transport for London.
- 3.12 **Financial authorisation** means authorisation allow a London authority to incur financial obligations as referred to in paragraph 9.2 below.
- 3.13 **TfL's Standing Orders** means the following Standing Orders;
- (a) Standing Order 1 – Decision-making Structure and Proceedings; and
 - (b) Standing Order 2 – Scheme of Delegation.

4 APPLICATION

- 4.1 This Policy applies to the TfL Group, with the exception of Crossrail Limited.
- 4.2 This Policy replaces all previous policies in relation to the provision of financial assistance.

5 LEGAL FRAMEWORK

- 5.1 Section 159 of the GLA Act provides that TfL may give financial assistance to any body or person in respect of expenditure incurred or to be incurred by that body or person in doing anything which in the opinion of TfL is conducive to the provision of safe, integrated, efficient and economic transport facilities or services to, from or within Greater London.
- 5.2 Section 161 of the GLA Act requires TfL to publish an Annual Report as soon as possible after the end of each financial year, which (amongst other things) deals with financial assistance given under section 159.

6 APPROVAL OF FINANCIAL ASSISTANCE

- 6.1 Responsibility for taking the decision to provide, and for providing, financial assistance lies solely with TfL. TfL's subsidiaries, with the exception of Crossrail Limited, are prohibited from providing financial assistance.
- 6.2 Detailed instructions on the application of this Policy are contained in the Procedure Note. The Procedure Note has the status of a mandatory document and compliance may only be waived with the agreement of the Chief Finance Officer. To assist in accurately classifying expenditure as financial assistance a range of examples are set out in the Procedure Note. The Chief Finance Officer will provide direction in cases of doubt.
- 6.3 Financial assistance may be given subject to such conditions as TfL considers appropriate, including (in case of a grant) conditions for repayment in whole or in part in specified circumstances.
- 6.4 Chief Officers should determine the appropriate conditions to be imposed, having regard to the nature and materiality of the financial assistance being provided. The detailed application of conditions is set out in the Procedure Note.
- 6.5 All requests for approval of financial assistance must be reviewed by TfL Public Law team to ensure compliance with the GLA Act.

7 PLANNING AND BUDGETING FOR FINANCIAL ASSISTANCE

- 7.1 For all financial assistance provided, there is a requirement that:
- (a) the overall scheme cost is included within the latest approved business plan and investment programme; and
 - (b) provision is made in the current budget for expenditure to be incurred for schemes due to start in the current year.
- 7.2 In some instances this will necessitate a provision for aggregated schemes within a generic classification.
- 7.3 In exceptional cases, where the requirement and decision to provide financial assistance occurs after the compilation of the business plan and budget, the scheme will require approval at a higher level. The advice of the Director of Business Planning and Performance should be sought in such cases.

8 FINANCIAL ASSISTANCE TO SUBSIDIARIES

- 8.1 Chief Officers responsible for Subsidiaries must prepare business plan and budget submissions identifying financial assistance required from TfL to support their operations.

- 8.2 Chief Officers responsible for the Subsidiaries must maintain appropriate systems of financial management and control, in accordance with TfL's Standing Orders, to ensure the proper utilisation of funds received from TfL.

9 FINANCIAL ASSISTANCE TO LONDON AUTHORITIES

- 9.1 The Chief Officers responsible for managing the provision of financial assistance to London authorities must include within their budget and business plan submissions, bids for funds required for financial assistance to London authorities, in respect of:

- (a) Local Implementation Plan (LIP) proposals submitted by London authorities in accordance with the Mayor's Transport Strategy, the Mayor's LIP Guidance and relevant Transport Strategy Implementation Targets; and
- (b) major initiatives promoted by the TfL Group where these overlap or are additional to LIP proposals.

- 9.2 In deciding whether to grant financial assistance to a London authority and if so, the amount or nature of the financial assistance, the matters which can be taken into account include:

- (a) any financial assistance or financial authorisation previously given to the authority by any body or person; and
- (b) the use made by the authority of such assistance or authorisation.

- 9.3 Criteria for evaluation of bids, prioritisation of competing demands from authorities, approval of programmes and schemes, and subsequent monitoring, control and reporting are dealt with in the Procedure Note.

- 9.4 The responsible Chief Officers may only make available financial assistance where sufficient provision has been specifically included within the budget and business plan for the defined purpose of financial assistance in connection with the scheme or programme of works.

- 9.5 Where no, or insufficient, provision has been made or where the phasing of the funding within the budget and business plan differs from the anticipated incidence of the expenditure, beyond the tolerances set in the Mayor's LIP Guidance, then approval of the Managing Director, Finance will be required before financial assistance may be provided.

10 FINANCIAL ASSISTANCE TO OTHER THIRD PARTIES

- 10.1 Chief Officers must include within their budget and business plan submissions, bids for funds required for financial assistance to other third parties as set out above.

- 10.2 Subsequent to the approval of the budget, financial assistance will be approved in accordance with schemes of delegation in place for the approval of revenue projects.

11 MATTERS NOT TO BE TREATED AS FINANCIAL ASSISTANCE

- 11.1 For the avoidance of doubt, financial assistance does not include commercial agreements by which the TfL Group procures the provision or financing of any services or facilities for its own purposes.
- 11.2 The TfL Group from time to time, contracts London authorities and other third parties to undertake works and/ or provide services from which the relevant entity within the TfL Group derives a specified benefit and for which it accounts for the expenditure. Payments made under these arrangements **do not** constitute financial assistance.

12 REPORTING ON FINANCIAL ASSISTANCE

- 12.1 Section 161 of the GLA Act requires TfL to include within its Annual Report a statement of any financial assistance given under section 159.
- 12.2 Chief Officers must ensure that expenditure in respect of financial assistance is included and separately identified by the recipient in TfL books of account.

13 PROCEDURES GUIDELINES AND PROCESSES

- 13.1 This Policy is supported by the following documents:
- (a) The Procedure Note; and
 - (b) The Financial Services Centre's Work Instruction Section 159 Payments - Financial Assistance.

14 POLICY OWNER

- 14.1 The Chief Finance Officer is the designated owner of this Policy.

15 APPROVAL AND AMENDMENTS

- 15.1 This Policy was approved by the Board on x/xx/2011.
- 15.2 This Policy will be subject to periodic review as considered appropriate by the Chief Finance Officer.