

Legal advice

Submission of a bid and acceptance of the funding was approved by Executive Board in September 2022 – Minute No 45, 46 and 48 (Social Housing Decarbonisation Fund – Wave 2.1). This report concerns the spend of the funding received. The awarded £47.2m from the Department for Energy Security and Net Zero (DESNZ) (formerly BEIS) is to support regional delivery of the Social Housing Decarbonisation Fund (SHDF) Wave 2.1 through the Midlands Net Zero Hub (MNZH), by securing improvement of energy performance of social rented homes in the region through the installation of energy performance measures. It should be noted that in the Minute No 45 that the Director of Carbon Reduction, Energy and Sustainability acceptance of the funding was subject to a business case and the funding conditions being submitted to and approved by the Director for Legal and Governance and the Corporate Director for Finance and Resources.

This decision is seeking authorisation to spend/ allocate the accepted funding to a range of to Local Authorities and Registered Housing providers in the Midlands to utilise/ facilitate the installation of eligible measures by March 2025.

The funding was accepted by the Council under a Grant Agreement pursuant to s 31 Local Government Act 2003. The City Council (acting through MNZH) will need to ensure, as the Accountable Body and responsible for the allocation of the funding that it does so in accordance with the grant funding conditions initially set by BEIS. The Council must ensure that it passes through/ cascades down to any recipients of grant funding, all relevant obligations in any subsequent grant agreement with recipient Local Authorities/ Registered Housing providers, to ensure the Council is able to meet its primary obligations under its grant agreement with BEIS. The Council has the power to undertake this role in accordance with the Localism Act 2011 pursuant to the general power of competence. In addition, an assessment of any grants made to these third parties will need to be undertaken to ensure compliance with the new Subsidy Control Regime. In each instance there will need to be an assessment as to whether there is a subsidy, if so whether an exemption applies and if not, compliance with the subsidy control principles. It is recommended that as the Accountable Authority, the Council adheres to the UK Government Subsidy Control Guidance, liaises and agrees a suitable subsidy assessment approach with DESNZ, to minimise risk of non-compliance with the Subsidy Control Act regime obligations and of clawback.

It is recognised within the approved funding bid that the success of the project will involve recruitment to identified posts to aid delivery of the project. It is proposed the identified posts and any external contractor are funded through the percentage of the grant permitted by DESNZ to administer the sums and monitor the activities of grant recipients. The creation of the new internal posts as per the recommendation in this report must be in accordance with the Council's Constitutional requirements and associated HR policies and procedures.

Subject to approval of the allocation of the required proportion of the funding to the staffing budget (as an executive decision), the creation the posts from within that budget would be as a non-executive decision under Delegation 16 of the constitution. As funding for these posts is temporary in line with the funding available and to be approved, the service will need to be aware of the associated redundancy costs after the employees have been in post for more than 2 years and budget accordingly. An appropriate exit strategy must be in place in order to terminate the contracts in line with NCC guidance in the event that the post/funding cannot be made permanent at the end of the FTC. Management will need to ensure appropriate timelines are in place to notify the affected employees and give appropriate notice.

As a result of Nottingham City Homes (an approved Registered Housing Provider recipient of funding as per the application bid approved by DESNZ) being brought back 'in-house' to the Council, the Council will need to ensure that it deals appropriately and compliantly, and with the consent of DESNZ, to the transfer of the appropriate element funding to the Council. When spending the funding, the Council will need to ensure to it meets the legal requirements relating to public procurement under the Public Contract Regulations 2015 and the Council's own Contract Procedure Rules, which will also ensure it meets its best value duty in this context.

The decision is presented a Leaders Key decision and is said to meet the exceptional circumstances test in article 10.21 of the Council's constitution as the MNZH officers advise key grant agreements with the recipients need to be signed and returned as soon as possible to enable consortium delivery and meet the departments (DESNZ) KPIs. MNZH Officers advise that due to these short timeframes, any delay will be detrimental to the project such that it is not possible to take the decision to the next scheduled meeting of the Executive Board. It is understood the Notice requirements in Article 13 - Access to Information Procedure Rules of the Council's Constitution have been complied with.

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