

## **Legal Comments - Local Net Zero Hub Programme 2022/23 – Variation 3 to Original MOU**

The purpose of the grant is to provide support to Nottingham City Council towards expenditure lawfully incurred or to be incurred by them, as outlined in a 3<sup>rd</sup> variation to Memorandum of Understanding (“the MoU”) Title: Local Net Zero Hub Programme 2022/23 dated 27.10.2022 (“The Original MoU”). The Third Variation further varies the original MOU as already varied by the First Variation (dated 10/03/2023) (“MOUV1”) and the Second Variation (dated 14/08/2023) (“MoUV2”) and would take the total grant award under the programme to £4,486,710.53. With a grant value of £1,770,000 for the period 2024 to 31.03.2025, it represents a key decision that can only be taken by the Leader in exceptional circumstances if it is not possible to take the decision to a scheduled meeting of the relevant Executive Committee. In the interests of good decision making and transparency the decision should set out what the exceptional circumstances are that explain why Department for Energy Security and Net Zero require the acceptance the grant to be signed before the next Executive Committee.

For clarity and transparency officers are advised to reflect the precise nature of the decision and amend the decisions to be taken wording accordingly and to annex/ cite previous relevant governance decision making documentation and MOU’s as appropriate appendices/ background documents to this decision. The following re-wording may be appropriate:

- 1) To accept and spend grant funding totalling £1,770,000 from Department for Energy Security & Net Zero (DESNZ) to deliver the Third Variation to the Local Net Zero Hub Programme 2022/23 dated 27.10.2022 (“The Original MoU, as set out in DESNZ LOCAL NET ZERO CAPACITY SUPPORT SECTION 31 GRANT DETERMINATION (2024/25: No. XXXX) as at Annex B.
- 2) To delegate authority to the Head of Midlands Net Zero Hub, in consultation with the Director of Environment and Sustainability to:
  - a. sign and return to (DESNZ) a copy of the MoU, the Section 31 grant determination notice, grant claim form Section 151 officer declaration.
  - b. spend the core and additional funding (subject to prior s151 officer/SCB approval) in-line with the Local Net Zero Programme MOU Annex B GRANT DETERMINATION (2024/25: No. XXXX), including on the matters specified in (c) – (e) below:
  - c. procure, tender award and enter into contracts for appropriate specialist consultancy services, as guided by the Midlands Net Zero Hub Board to deliver on the MoU objectives.
  - d. award grants to third party partners and enter grant agreements, to fund procurement of specialist consultants, as guided by the Midlands Net Zero Hub Board to deliver MoU objectives; and
  - e. establish the position of a Heat Network Zoning Officer on 2 year fixed term contract (H or I grade) and continuation of existing PSDS roles for an additional 2 years, noting recruitment to the roles is a non-executive function.

The funding for the Local Net Zero Hub Programme must be used by the Authority towards the programme objectives as set out under the scope clause of the Original MOU and is subject to the Authority continuing to provide the information as required by Annex 1 to the original MOU.

Specifically, the 3<sup>rd</sup> Variation provides and expects the funding to be allocated toward the following proposed tasks and in the following amounts:

**Proposed tasks**

£1,770,000 for Local capacity support including:

<b>Grant Amount</b>	<b>Proposed Task</b>
£1,200,000	DESNZ Local Net Zero Hub Programme
£100,000	Communications and Conferences (including APSE)
£70,000	Additional programme: Heat Network Zoning <b>Annex 6 DESNZ Zoning Implementation Support for Local Authorities Specification</b>
£400,000	Additional programme: Public Sector Skills <b>Annex 7 Public Sector Decarbonisation Skills Funding Specification</b>

If there is an underspend then there is an expectation that the Authority and DESNZ will work together to agree how the Authority will spend any unspent Grant funding in line with the expected objectives of the Local Net Zero Programme subject also to an agreed extension to the funding period . If the Parties are unable to reach an agreement described above, then the Authority agrees to repay the unspent Grant within 30 days of the end of the Funding Period.

Where the Authority provides any funding to third parties for activities undertaken during the Funding Period, it must ensure that the relevant provisions within the MOU as now varied are cascaded down and included in any such arrangements with third parties , including a grant agreement, to meet the grant funding purposes and minimise risk of clawback.

The Authority is reminded of the need to ensure at the point at which it is procuring goods, services etc in delivering the programme and utilising the funding that it must comply with the relevant UK procurement laws (which change to the new Procurement Act 2023 regime in October 2024), alongside the Council’s own Contract Procedure Rules. When managing its supply chain the Council should expect its suppliers and subcontractors to meet the standards set out in the Government Supplier Code of Conduct published by the HM Government on best practice expectations referenced below:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf).

The Authority cannot use the grant, or any asset financed wholly or partly by it, to generate revenue or make a capital gain, except to the extent agreed as part of the grant. The grant will be subject to clawback in any of the circumstances set out in the MOU (paragraphs 37-43), and in particular if the Authority's use of it, contravenes any requirement of law, in particular (but without limitation) law

relating to subsidy control. When entering into the 3<sup>rd</sup> Variation the authority must continue to comply with Subsidy Act 2023 regime expectations in the use for the additional funding. As previously advised in relation to the Original MOU, MOUV1 and MOUV2 the Council must complete its own Subsidy Control Principles assessment for any third party provided with funding that amounts to a “subsidy” under a grant and retain all declarations and information as may be required to enable both the Authority and the Secretary of State to comply with any applicable subsidy control regime requirement, and to provide copies of such declarations and information to the Secretary of State if required to do so. Government guidance published on 11.11.2022 (as updated from time to time – last updated on 18 December 2023) regarding subsidy control compliance must be referred to and utilised by the Council.

The creation of the new and continuation of existing internal posts as per the recommendation in this report must be carried out in accordance with the Council's Constitutional requirements and associated HR policies and procedures. The employing service are reminded of the accrual of enhanced employee rights after 2 years employment including the right to statutory redundancy payment. Subject to approval of the required staffing budget (as an executive decision) sought (presumably funded by the identified funding amounts in the above table relating to Heat Network Zoning and Public Sector Skills), the creation the post from within that budget would be as a non-executive decision under Delegation 16 of the constitution.

Richard Bines - Solicitor - Contract and Commercial Team – 10.06.2024