

DECC Funding of District Heating and Mine Water Heat Extraction Feasibility Studies

EXE 211014
Item 8

EXECUTIVE MEMBER: Councillor Elaine Woodburn
LEAD OFFICER: Pat Graham
REPORT AUTHOR: John Groves

WHAT BENEFITS WILL THESE PROPOSALS BRING TO COPELAND RESIDENTS?

The grant funding facilitates studies to consider the feasibility of creating heat networks and sourcing energy from abandoned mine workings. If capable of implementation this potential introduces low carbon and efficient sourcing of energy and potentially creates opportunities to reduce energy for residents and businesses of the borough, particularly in those areas where fuel poverty is an issue for households.

WHY HAS THIS REPORT COME TO THE EXECUTIVE?

(eg Key Decision, Policy recommendation for Full Council, at request of Council,etc.)

<p>RECOMMENDATIONS: That the previously agreed arrangements to pass the responsibilities and requirements of the MoU to BEC are not utilised and that the Council act as responsible body for the use of the grant.</p>
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1. INTRODUCTION

- 1.1 With the support of BEC a successful bid for funding - £106k through the Heat Network Delivery Unit of DECC was secured to enable feasibility studies to assess the scope for district heating schemes in Whitehaven and the potential to use heat from water in abandoned mine workings. The bid was driven by BEC within a mandate to assess the scope for low carbon and sustainable energy projects, but was necessarily made in the Council's name.

The grant was made with a Memorandum of Understanding between the Council and DECC. The MoU included some clauses which transfer liabilities and to the Council. The detailed requirement of some of these clauses had not been flagged by DECC during the bid process. The requirements of the MoU were more onerous than presented by DECC and sought to indemnify the Secretary of State from actions carried out by recipients of the grant. Concern was raised by the incumbent S151 officer of the any such transfer. With limited specific appraisal of risk it was agreed, given the lead role which BEC had taken in the

process, to complete an agreement between the Council and BEC which passported responsibilities and liability in utilising the grant funding to carry out the feasibility studies. This was confirmed through an urgent business application in March 2014 to ensure the MoU was signed before the end of the last financial year – a request of DECC on the basis of that Departments financial expediency and efficient use of resource.

As different lead personnel from DECC have been engaged it has become apparent that there was an expectation that as recipient of the grant, it would be Copeland who were expected to lead on procurement and contractual arrangements. It was suggested that the passporting of such responsibilities to BEC would not be the preferred approach, that the Council should retain principle control of procurement and contracts, and that the agreement to provide for that approach should therefore become redundant.

- 1.2 The Council has not made any decision which is procedurally incorrect, but given DECC's aspiration that it is the Local Authority which receives the grant who should remain accountable to the terms of the MoU, it becomes necessary to consider the potential of risk and the scale of any liability which had been passed to BEC but would now rest with the Council.

2. DISCUSSION

Funding has been received and is held by the Council. Procurement processes have been initiated and through a competitive tendering process preferred bidders for the two feasibility studies have been selected. This procurement process has been delivered in line with the Council's service arrangements with the County Council Procurement Service.

Whereas it had previously been envisaged that suppliers would contract with BEC, contracts will now be with the Council.

Successful bids were less than the grant allocated allowing for a small contingency – given that the studies are largely desk based exercises, there is limited prospect of incomplete projects or physical activity which might result in the Council being left with outstanding issues to resolve. The procurement process ensures that bidders were of sufficient standing and appropriately resourced to carry out the studies.

The grant is very specifically targeted at the feasibility stage and seeks to demonstrate how projects may be taken forward, particularly focusing on attracting private sector delivery. It would only be at these later stages that consideration would need to be given to Council involvement and consequent

greater risk of projects becoming complex or failing because of unforeseen issues. The feasibility studies seek to establish the principles on which other parties could explore viability and scope for delivery and implementation. This is **not** the first stage of a process which would inevitably require the continued intervention of the Council. There may be scope for such intervention but this would need to be considered separately and under a further decision making process. Whilst levels of risk and potential liability at those later stages would be very different from those which now apply, current arrangements make no commitment to the involvement of the Council.

Accepting that the issues raised in the MoU are no longer passported to BEC will result in the Council taking responsibility for the oversight of the project and providing audit and financial monitoring process in line with DECC requirements. This will result in some resource implications for the authority with regard to the monitoring and reporting of spend, but these are not thought to be onerous. There may also be a financial requirement of the council, if DECC require an external audit of the grant, though based on the size of the project and past experience it is thought the cost would be unlikely to exceed £500-£1,000.

It is suggested that contractual arrangements with potential suppliers provide necessary obligation to contractors to complete studies in line with submissions. Payment is phased and related to staged completion of the work. BEC have maintained a consistent and high level input in support of this project, including funding. The Council can has control over the process of delivery of the feasibility studies. Should the outcome of studies indicate potential to move from feasibility to implementation and delivery, expertise within BEC could be utilised to guide the Council in pursuing matters further. This would be a distinct and separate process and the use of the grant now does not commit the Council to further action at a later point in time.

3. ALTERNATIVE OPTIONS TO BE CONSIDERED

- 3.1 If risk, potential liability and indemnity are considered to be unacceptable the grant could be declined and the process of initiating the feasibility studies stopped.

4. CONCLUSIONS

Whilst DECC's prescriptive and precise requirements are clearly place a requirement for more direct involvement of the Council than initially envisaged, in this instance this not considered to create undue demand on staff time or resources, external cost or risk or unacceptable levels of liability. It is acceptable to proceed with procurement process and allow the feasibility studies to progress.

5. STATUTORY OFFICER COMMENTS

- 5.1 The Monitoring Officer's comments are: No comments
- 5.2 The Section 151 Officer's comments are: The change in arrangements as proposed, will result in a limited resource implication for the authority and the potential cost of up to £1,000, but will enable the feasibility studies to go ahead.

The DECC requirement, in clause 42 of the appended MOU, that we indemnify them, is, for the purposes of this grant and these feasibility studies not thought to represent a risk to the authority, due to the scale and nature of the works to be carried out, however, the council will need to reconsider its position and any risk, and seek fresh approval to proceed, at each and every stage of this process should it continue past this initial stage.

- 5.3 EIA Comments: No comments
- 5.4 Policy Framework: No Comments
- 5.5 Other consultee comments, if any:

6. RESOURCE REQUIREMENTS

- 6.1 Resource requirements relate principally to leading a steering group to oversee the appointment of consultants and the production of the studies. The memorandum of understanding requires monitoring and audit process to enable demonstration of the correct use of the funds. As noted above this has the potential to have some relatively small resource and direct financial cost, not exceeding £1000.

7. HOW WILL THE PROPOSALS BE PROJECT MANAGED AND HOW ARE THE RISKS GOING TO BE MANAGED?

- 7.1 The MoU establishes a clear set of requirements to monitor and to report outcomes in terms of production of the studies. The bid process has established roles for Council officers – the Strategic Nuclear and Planning Manager, with support for technical officers in BEC, to operate as a steering group to ensure competence in production of the feasibility studies.

8. WHAT MEASURABLE OUTCOMES OR OUTPUTS WILL ARISE FROM THIS REPORT?

- 8.1 Production of two feasibility studies and consequent opportunities to assess the

scope for implementation of heat networks and sourcing energy for mine water within the Borough.

List of Appendices

Appendix A - **MEMORANDUM OF UNDERSTANDING**

List of Background Documents:

**MEMORANDUM OF UNDERSTANDING
Between the
SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE (DECC)**

**and
Copeland Borough Council**

MEMORANDUM OF UNDERSTANDING

Parties

1. The parties to this MoU are:

- a. The Secretary of State for Energy and Climate Change (the “Secretary of State” or the “SoS”), whose principal office is at 3 Whitehall Place, London, SW1A 2AW, and**
- b. Copeland Borough Council (the “Authority”), whose address is Copeland Borough Council, The Copeland Centre, Catherine Street, Whitehaven, Cumbria, CA28 7SJ.**

Background

- 2. The Department of Energy and Climate Change (“DECC”) has established a Heat Networks Delivery Unit (“HNDU”) with the objective of supporting a number of local authorities in England and Wales to identify and evaluate opportunities to develop new heating and cooling networks, and to expand existing heating and cooling networks. The Authority has applied for grant funding in one of the HNDU bidding rounds.**
- 3. The Secretary of State has agreed to provide grant funding to the Authority following successful evaluation of the application and the Authority has agreed to spend such funds on the external costs incurred to deliver the agreed heat network development stages as set out in the table in Annex 2 of this MoU (the “Agreed Costs”).**
- 4. The parties wish to record their agreement. This MoU therefore sets out, amongst other things, the monies available to the Authority under the grant, payment of the grant, how funds granted may be spent, commitments in relation to the administration of the grant and otherwise and how the parties will behave.**

5. In carrying out its activities, the HNDU may offer guidance and other non-financial support to the Authority in relation to the heat network development stages set out in Annex 2 of this MoU (“Project Support”). This MoU also clarifies the nature of the guidance and support that the HNDU may choose to provide and records the parties’ agreement as to liability and indemnities when the HNDU provides Project Support.

Definitions

6. The following definitions will apply throughout this MoU:

“MoU” means this memorandum of understanding including its annexes;

“Project” means the heat network development project (as per the bid submitted by the Authority as part of the HNDU bidding round), not the build or operation of a heat network itself.

“Agreed heat network development stages” means the scope of work HNDU has agreed to support through funding and/or guidance and support, as set out in the table in Annex 2 of this MoU. This will sometimes be a subset of the project.

Compliance with MoU

7. The Authority will at all times act in accordance with the agreements recorded in this MoU.

Payment of the grant

8. The Secretary of State will pay the Authority the amount specified in Annex 2 upon receiving the completed Section 151 Officer Declaration (Annex 3) and a valid grant claim form.

Purpose of grant

9. The parties have agreed that the Authority will spend the funds granted to it only on the Agreed Costs, and in accordance with the terms of this MoU.

Prohibited use of the grant

10. Without prejudice to any other provisions of this MoU, the parties have agreed that the grant will not be used:

- a) to pay any staff costs;**
- b) to pay for any accommodation costs;**
- c) to pay for any costs associated with constructing, operating or maintaining heat networks;**
- d) to pay the costs of events and workshops held by the Authority to manage stakeholders;**
- e) for activities of a political or exclusively religious nature;**
- f) in respect of costs reimbursed or to be reimbursed by funding from public authorities or from the private sector;**
- g) in connection with the receipt of contributions in kind (a contribution in goods or services as opposed to money);**
- h) to cover interest payments (including service charge payments for finance leases);**
- i) for the giving of gifts to individuals;**
- j) for entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);**
- k) to pay statutory fines, criminal fines or penalties;**
- l) to pay for any costs incurred before the date the MoU is signed, or before any earlier date specified for the use of the grant in this MoU; or**
- m) in respect of Value Added Tax that the Authority is able to reclaim from HM Revenue and Customs.**

EU Requirements and State Aid

11. The parties agree that the grant may only be spent in accordance with the rules governing State aid under Article 107 of the Treaty on the Functioning of the European Union (C83/47, 30 March 2010).

12. In particular, if the Authority's use of the grant could involve the giving of State aid to an undertaking and such aid is given on the basis that it falls within the De Minimis Regulation or the General Block Exemption Regulation, the Authority will take the necessary steps to ensure that the aid complies with the relevant Regulation (including notifying the Commission of the aid where relevant). The parties agree that, in the event that any State aid given by the Authority is required by law to be recovered from any undertaking, the Authority will be responsible for taking the necessary steps to recover that aid.

Procurement and other benefits to third parties

13. In so far as costs are incurred in the purchase of goods, works or services, the Authority has agreed to comply with all relevant requirements of law relating to public procurement.

Reduction, withdrawal and repayment

14. In accordance with the following paragraphs, it is the understanding of the parties that the Secretary of State may:

a) withdraw or reduce the grant, where the grant, or any part of it, has not been paid; and/or

b) ask the Authority to repay all, or any proportion of, the grant, together with interest (calculated in accordance with paragraph 18 and, in the case of late payment, paragraph 19), where the grant, or any part of it, has been paid (including in cases where the Authority has already spent the grant).

15. The parties have agreed that the Secretary of State may exercise the options referred to in paragraph 14 where the Secretary of State:

a) is required to cease grant funding or to recover all, or any proportion, of the grant by virtue of a decision of a court or of the European Commission; or

b) has reasonable grounds to consider that the payment of the grant, or the Authority's use of it, contravenes any requirement of law, in particular (but without limitation) EU law relating to State aid.

16. When exercising the options referred to in paragraph 14, the Secretary of State will notify the Authority of the grounds concerned and (except in a case falling within paragraph 15a), as far as possible, consider the Authority's representations made within any reasonable timeframe required by the Secretary of State.

17. A decision by the Secretary of State to ask the Authority to repay the grant will be communicated by letter, and the Authority will make that repayment within 30

days of the date of that letter or within any later reasonable timeframe agreed by the Secretary of State in writing.

18. Where the Secretary of State requests repayment, interest will be calculated from the date of the grant payment, in accordance with:

- a) the retail prices index over the relevant period (that index being taken as 0% for any period during which the index is negative); or
- b) any other rate required by law in the circumstances (including any rate required under EU law relating to State aid), if it is higher.

19. Where the Authority does not make the relevant repayment within the timeframe specified in paragraph 17, further interest on the outstanding sum (inclusive of interest already charged under paragraph 18) will accrue, after that deadline, at the statutory rate of interest under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances, if it is higher.

20. Should the Secretary of State not exercise his options under paragraph 14 or delay in doing so, this shall not constitute a waiver of those rights unless the Secretary of State confirms such a waiver in writing. Furthermore, any such written waiver shall not be taken as a precedent for any other, or subsequent, circumstances.

Suspension

21. The parties have agreed that the Secretary of State may suspend payment of the grant where:

- a) one of the grounds in paragraph 15 arises or one of the requirements under the MoU are not complied with by the Authority, pending consideration of the circumstances and the making of a decision; or
- b) the Secretary of State has reasonable cause for concern that one of those grounds may have arisen, or is likely to arise.

22. In the case of any suspension, unless the Secretary of State confirms a contrary agreement in writing:

- a) the Authority will continue to comply with the requirements of this MoU including any deadlines occurring during the period of suspension; but
- b) the Authority will not make any further use of the grant until the Secretary of State has authorised continued use of the grant in writing.

23. The Authority will inform the Secretary of State in writing if it has any concerns that any of the grounds in paragraph 15 might arise or that it will not be able to comply with the requirements of the MoU. If such concerns arise after the Authority has received a grant payment, the Authority will not make any use of the grant until the Secretary of State has authorised continued use of the grant in writing.

Working with HNDU

24. On receipt of a request by the Authority the HNDU may decide to provide Project Support to the Authority. Such support may include assisting the Authority

to review key documentation and answering ad hoc queries by telephone. In some cases it may also be possible for an HNDU staff member to attend certain Authority meetings. In any case where the HNDU provides Project Support the Authority must provide it with any relevant project documentation.

25. The HNDU will consider requests for Project Support on a case by case basis but will not:

- a) provide financial advice or any other advice;
- b) create heat network project documents for the Authority; or
- c) participate actively in Authority procurement.

Information sharing

26. The Secretary of State may share any information relevant to the grant with other public authorities and their agents and the European Commission if the Secretary of State considers this necessary.

27. In order to assist the Secretary of State and the HNDU in their work in relation to heat networks, the Authority may be asked to provide information at any point while the agreed heat network development stages are being completed and up to five years after their completion. The Authority has agreed to respond to any requests for information promptly and accurately.

Notices and contacts

28. The parties agree to contact one another using the contact information set out in Annex 1.

Freedom of information

29. The parties may be obliged to disclose information relating to the grant and this MoU under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or under any other requirement of law.

30. The parties will assist, and cooperate with each other as reasonably requested, to facilitate compliance with those requirements.

31. In the event that the Secretary of State provides information in response to a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Secretary of State may make that response publicly available for the purposes of transparency.

Publicity

32. The Authority agrees not to publicise their grant until such time as Secretary of State has made an official announcement of the successful local authorities from the relevant bidding round. Following that announcement the Authority may promote their grant and any HNDU involvement.

Record keeping

33. The Authority has agreed to keep records relating to any spending funded (or defrayed) by the grant. Such records should indicate:

- a. the identity of the third party concerned and their business;**
- b. the amounts they have been given;**
- c. the purpose for which the money was spent;**
- d. evidence that the contracts have been awarded in accordance with public procurement law; and**
- e. any significant sub-contracting by the Authority.**

Monitoring and Audit

34. The Authority has agreed to:

- a. respond fully, truthfully and promptly to any enquiries the Secretary of State, or the Comptroller and Auditor General, or their representatives, may make about the Agreed heat network development stages or the use of the grant and provide any information and evidence reasonably requested, including by providing a statement of grant usage (at such times, and in such form, as they may reasonably specify);**
- b. allow the Secretary of State, the Comptroller and Auditor General, and their representatives, access to all relevant documents and records, and reasonable access for inspecting any relevant site; and**
- c. where requested, ensure that any information or evidence provided to the Secretary of State, the Comptroller and Auditor General, or their representatives, is audited by an identified and independent reporting accountant or otherwise**

confirmed or verified by a person of such other relevant expertise as they may reasonably specify.

Intellectual property

35. In undertaking the Agreed heat network development stages, the Authority has agreed not to infringe the intellectual property rights of any third party.

36. Where the Agreed heat network development stages give rise to the generation of any intellectual property, the Authority agrees not to subsequently seek to make profit from the use of such intellectual property, for example through the use of licences.

37. The Authority agrees to allow the Secretary of State (and for these purposes this includes the Secretary of State for Energy and Climate Change and any Secretary of State fulfilling similar functions in the future) and any employees and contractors acting on his behalf royalty-free use of any intellectual property, deliverables or work undertaken in relation to the Agreed heat network development stages.

Compliance with the law

38. The Authority has agreed to comply with all laws and regulatory requirements and applicable standards.

Anti-discrimination

39. The Authority has agreed to comply with the requirements of the Equality Act 2010 and avoid any unlawful discrimination.

Responsibility for employees, contractors, agents and partners

40. The Authority has agreed to ensure that its employees, contractors, agents and partners comply with the principles set out in the MoU and that the Authority will be responsible for any breach by them of those principles. In particular, the Authority has agreed to be responsible for ensuring that other local authorities and/or organisations referred to in the bid, or which participate in the Project, comply with the principles of this MoU.

Warranties

41. In agreeing to this MoU, the Authority represents and warrants that:

- a. it has full capacity and authority to undertake the Agreed heat network development stages and to agree to the principles of the MoU and its Annexes;**
- b. it will obtain any consents necessary to undertake the Agreed heat network development stages; and**
- c. the information and evidence in its application and any other information provided by the Authority remains true, complete and accurate, and that its circumstances have not materially changed since submitting its application, the Authority knows of the existence of no circumstances which might materially and adversely impact on its ability to undertake the Agreed heat network development stages or meet with the principles set out in the MoU.**

Limitation of liability

42. The parties agree that the Secretary of State's liability to the Authority is limited to payment of the grant (and payment of the grant is subject to the Authority's compliance with the principles of the MoU and to upholding the Secretary of State's rights set out therein). The Authority remains entirely responsible for its risks and liabilities in undertaking the Agreed heat network development stages, and the Secretary of State shall have no liability for any consequence, direct or indirect, that may arise through the Authority's undertaking of the Agreed heat network development stages, its use of the grant, or reliance by the Authority on any support or guidance from HNDU or other DECC officials including on any Project Support.

Indemnity

43. The Authority agrees to indemnify the Secretary of State against all claims, demands, actions, proceedings, costs, charges, expenses, losses, damages or other liabilities arising from the Authority's acts or omissions, or those of its employees, contractors, agents, partners, other local authorities and/or organisations referred to in the application, or which participate in the undertaking of the Agreed heat network development stages, in using the grant or in benefiting from any Project Support.

Variation

44. No variation of the provisions set out or referred to in this MoU will be effective unless it is agreed in writing and signed by both parties. This does not prevent the Secretary of State making reasonable changes in relation to the administrative arrangements in MoU (such as departmental contact details).

Status

45. This 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 do, however, enter into the MoU intending to honour all their commitments under it.

46. Nothing in this 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 Authority will not hold itself out as having any such relationship with the Secretary of State.

Further funding

47. The Secretary of State is under no obligation to provide the Authority with any further funding in respect of the Agreed heat network development stages or for any other purpose.

48. An HNDU application, successful or not, made by an Authority does not preclude the Authority from applying for HNDU grant funding, guidance or support in subsequent HNDU bidding rounds.

Law and jurisdiction

49. This MoU shall be governed by and construed in accordance with English law, and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

References

50. In this MoU and its Annexes references to legislation, including EU legislation and any documents issued by the EU institutions, are to that legislation as amended or re-enacted from time to time (including any amendment or re-enactment having taken place before the date of this MoU).

**Memorandum of Understanding
between the
Department of Energy and Climate Change
and
Copeland Borough Council**

**Signed:-
For the Secretary of State for Energy and Climate Change**

Name: Stephen Brooks Date:

Position: Investment Director Heat Network Delivery Unit, DECC

**Signed:
For Copeland Borough Council**

Name..John Groves..... Date..24.3. 2014.....

Position ..Head of Nuclear, Energy and Planning.....

Annex 1: Key local authority and DECC contact details

Local Authority lead contact (LA to complete)

Local Authority name Copeland Borough Council

Contact name John Groves

Job title Head of Nuclear, Energy and Planning

Address including postcode Copeland Centre

Catherine Street

Whitehaven

CA28 7SJ

Telephone 01946 598416

Email john.groves@copeland.gov.uk

Department of Energy and Climate Change lead contact
Contact name Stephen Brooks
Job title Investment Director
Address including postcode Heat Networks Delivery Unit
Ground Floor, Kings B
c/o 3 Whitehall Place
London SW1A 2AW

Telephone 0300 068 6457
Email stephen.brooks@decc.gsi.gov.uk

Annex 2: Heat network development stages HNDU have agreed to support:

Kells & Sandwith
Heat network development stage description Grant funding
Feasibility study £53,600

Total £53,600
Whitehaven Town Centre
Heat network development stage description Grant funding
Feasibility study £18,760

Total £18,760
Hensingham
Heat network development stage description Grant funding
Feasibility study £16,175

Total £16,175
Westlakes Science & Technology Park
Heat network development stage description Grant funding
Feasibility study £18,760

Total £18,760

Total grant £ 107,295

Annex 3: Section 151 Officer Declaration

In my position as the Section 151 Officer for Copeland Borough Council, I confirm that:

a) Copeland Borough Council will accept the grant funding that it has been offered through the HNDU;

- b) The information and evidence pertaining to future grant claims will be complete, true and accurate;
- c) Copeland Borough Council will spend the grant money on carrying out the Agreed heat network development stages, in accordance with the terms of the MoU; and
- d) Copeland Borough Council will comply with the provisions of the Memorandum of Understanding dated [leave blank, DECC to complete when it signs] in connection with its delivery of the Agreed heat network development stages.

Signature:

Name:

Position:

Date: