

**NORTH YORKSHIRE COUNTY COUNCIL****EXECUTIVE****25 September 2007****ACCEPTANCE EVIDENCE FOR SECTION 31 GRANT CLAIM PURPOSES****Report of the Corporate Director – Finance and Central Services****1.0 PURPOSE OF REPORT**

- 1.1 To ask the Executive to recommend to the County Council that it specifically accepts the terms and conditions attached to Section 31 grant.

**2.0 BACKGROUND**

- 2.1 An issue has arisen in relation to the necessary level of “authority” the Department of Transport requires in relation to certain grant funded schemes.
- 2.2 For the funding of local transport major schemes, the Department for Transport (DfT) has moved from Transport Supplementary Grant, supported borrowing and Section 56 funding for their contributions to major schemes, to a 100% grant regime. This is based on powers contained in Section 31 of the Local Government Act 2003.
- 2.3 The total grant funding for the Scarborough Integrated Transport Scheme from the DfT is £29.8m; of this £26.2m will now be funded under the new Section 31 arrangements. Total Government funding for the Reighton Bypass Scheme is £6.6m; of this £2.1m will be provided under the Section 31 arrangements.
- 2.4 At the time (ie prior to 1 April 2007) the grant funding for the two schemes (and thereby the related terms and conditions) were accepted in the normal way by the Corporate Director – Business and Environmental Services and the Corporate Director – Finance and Central Services.

**3.0 GOVERNMENT’S POSITION**

- 3.1 Following the changes in grant arrangements introduced by the DfT, and as part of the DfT’s subsequent S.31 Grant Determinations for Major Schemes in 2007/08, the DfT has asked authorities to specifically confirm that they accept the terms and conditions of this grant and to provide documentary evidence to this effect.

3.2 The offer of S.31 Grant carries with it certain terms and conditions which the Authority has to accept before any grant will be paid. Some of these conditions carry a potentially significant financial impact upon the Authority, particularly the commitment by the Authority to repay the grant if the grant conditions are not met. These include, for example, the condition that the scheme must operate for a period of 10 years.

3.3 In the words of the Department

“However rare it may be to invoke these conditions, we are bound, as a matter of due diligence, to seek assurance that they have been accepted by the Authority in a way which would be legally binding.”

3.4 It should be noted these conditions are similar as those applied to the grant arrangements prior to 2007/08

3.5 The Department then advises that there are two ways in which the Authority may demonstrate that this necessary acceptance is in place.

- (i) that the Chief Finance Officer (or any other person) has the legitimate authority to accept the conditions on the Authority’s behalf. In this case they would sign the section that says “I accept the grant offer for and on behalf of XXXX Council”

In signing this the person is not only committing the Authority to meet the conditions but to repay the grant if the grant conditions are not met. If the person has the authority to do this there should be a document in writing that confirms this, for example something in the Constitution or Articles of the Council that defines the powers of the Section 151 Officer.

A copy of this document is needed as evidence, provided of course that it confers the necessary powers (eg to enter into binding financial agreements). If the list of the Section 151 Officer’s powers is particularly extensive it would be helpful for that Authority to indicate which particular power gives the authority to enter into the agreement and why. Powers to apply for grants or to make grant *claims* are not in themselves sufficient, nor is a general duty to “administer the financial affairs of the council”.

- (ii) if there is no single person who appears to hold such authority, or there is any doubt as to this, then the grant acceptance needs to be ratified by a body with the necessary authority such as the full council or a council committee.

In this instance the person signing the form is not directly accepting the conditions on the Authority’s behalf but is confirming that they have been accepted by a body that had the authority to do so.

In this case the Department would need a copy of actual minutes that agreed the grant conditions. (Please note that minutes should show not just that the grant was accepted but that it was accepted *under the terms and conditions offered*).

AND (unless the decision was of the full council) a copy of the document that confirms that the body that took the decision (eg cabinet) has the power to do so eg to enter into binding financial agreements.

#### 4.0 **NYCC RESPONSE**

4.1 A robust response to this issue has been submitted to the DfT by the Corporate Director - Business and Environmental Services and Corporate Director – Finance and Central Services.

4.2 In relation to the schemes themselves, it has been pointed out that

- the Reighton Bypass scheme is almost complete and grant to 31 March 2007 paid
- a significant amount of work has already been carried on the SITS scheme and grant to 31 March 2007 paid
- the Department decided to change to S.31 grant and then apply these conditions retrospectively
- County Council officers have previously accepted grant conditions on these two schemes that were similar to those now specified for S.31
- no other grant schemes (including ESF etc) apply acceptance criteria in this way

4.3 In addition, copies of the relevant extracts from the Financial Procedure Rules that relate to the submission of grant applications, certification of claims, etc, have been forwarded.

4.4 Claims submitted and not paid since 1 April 2007 on the two schemes amount to £1.5m on Reighton and £2.6m for SITS, a total of £4.1m now withheld by the DfT pending the resolution of this issue.

#### 5.0 **DfT RESPONSE**

5.1 The DfT officials have indicated that they do not regard the arguments / evidence put forward by NYCC as “sufficient for our purposes”. Effectively the DfT does not accept that the Corporate Director – Business and Environmental Services and / or Corporate Director – Finance and Central Services have the necessary authority to accept the terms and conditions attached to S.31 grant.

#### 6.0 **PROPOSED COURSE OF ACTION**

6.1 Because of this position, and the fact that the amount of grant outstanding but not being paid will accumulate, it is proposed that -

- (i) the Executive be asked to recommend to the County Council a set of words that make it unequivocally clear that the County Council accepts the terms and conditions attached to S.31 grant, and that for the future
- (ii) the Financial Procedure Rules be amended to provide the S.151 Officer with the authority to accept grant offers on behalf of the County Council.

6.2 If approved, these two actions should avoid the need to refer similar matters to the Executive and County Council again

6.3 In the avoidance of doubt, the full text of the S.31 conditions is attached (as **Appendix I**) so that if accepted by the County Council, the level of “authority” obtained will withstand any further challenge by the DfT.

## 7.0 **RECOMMENDATIONS**

- 7.1 That the Executive be asked to recommend to the County Council that it accepts the terms and conditions of S.31 grant as attached in **Appendix I**.
- 7.2 That the Executive asks the Audit Committee to consider an appropriate change to the Financial Procedure Rules that will provide the S.151 Officer with the power, in future, to accept grant offers on behalf of the County Council.

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## Appendix D: Section 31 grant for major local transport schemes

This document is intended to show the terms and conditions typically applied to Section 31 Grants for Major Local Transport Schemes. The terms and conditions applied to individual grants may vary.

### Definitions

In this annex:

- "Secretary of State" means the Secretary of State for Transport.
- "Department" means the Secretary of State acting by or through staff employed at the Department for Transport.
- "Authority" means an authority listed in Annex A.
- "Scheme" means [name of scheme] as approved by the Secretary of State.
- "Chief Finance Officer" means the most senior officer in an Authority responsible for its financial management, i.e. the officer appointed under s151 of the Local Government Act 1972.
- "Scheme Contractor(s)" means the company or Authority responsible for the build and overall delivery of the Scheme.
- "Project" means the process from initial design and construction to the Completion of the Scheme.
- "Completion" means the date on which the Scheme is fully brought into public use.
- "Grant Conditions" means the terms and conditions set out in this Annex B.
- "Auditor certification" means certification of the Scheme at the end of the [2007-2008] financial year. Certification must be by an auditor appointed by the Audit Commission.

### Grant terms and conditions

#### General

The Section 31 grant award described in this determination is solely in respect of the Scheme and is awarded to the relevant Authority.

This award shall not be used for any other scheme or project, nor shall it be transferable to any other person or authority. Where more than one Authority is progressing the scheme in partnership, one Authority may include in their claims expenditure incurred by the other Authorities and subsequently forward to the latter their share of grant as appropriate.

Section 31 grant is payable quarterly in arrears, based on expenditure lawfully incurred by the Authority. The Authority should note that Section 31 grant claims are therefore made on an accruals basis as set out in "The Code of Practice on Local Authority Accounting in the United Kingdom: A Statement of Recommended Practice" (SORP) issued by the Chartered Institute of Public Finance and Accountancy (CIPFA).

For the avoidance of doubt this means the Authority will not claim in advance of work having been undertaken but may claim on the basis of work done but not paid for.

The Authority should only include costs directly attributable to bringing the tangible fixed asset into working condition for its intended use, such as:

- costs of transport;

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- installation;
- commissioning;
- consultants' fees and labour costs of own employees arising directly from the construction;
- eligible preparatory costs as defined by the guidance to local authorities seeking funding for major transport schemes; or
- acquisition of the specific tangible fixed asset in accordance with the SORP.

The SORP defines costs which may be properly charged to capital and is fully compliant with the conditions stipulated in Financial Reporting Standard (FRS) 15. Capitalisation of directly attributable costs should cease when substantially all the activities that are necessary to get the tangible fixed asset ready for use are complete, even if the asset has not yet been brought into use. A tangible fixed asset is ready for use when its physical construction is complete.

Scheme costs should not include any revenue costs. Scheme costs should not include VAT, as VAT on local authority expenditure is reclaimable. Nor should the Authority's fees as agent to the Department, or auditors' fees or administration and other general overhead costs be capitalised. There may be circumstances in which the Authority will determine it is more appropriate to charge particular costs to revenue. In all circumstances it is for the Authority with its advisers to come to decisions on how to account correctly for the relevant expenditure.

The Department shall be kept fully informed in writing of any alterations / problems arising with the process of the build of the Scheme and where these are identified they shall be reported to the Department within 28 days of them arising. Ministers reserve the right to reconsider scheme approval decisions and any award of Section 31 grant as a result of any alterations or problems with the Scheme, or if full notification is not received within the 28 day period.

Continuing approval and an award of Section 31 grant under this determination is made:

- entirely without prejudice to any view that the Secretary of State may take on any future application for Transport and Works Act 1992, or other, planning powers or in accordance with any of the other functions the Secretary of State may be called upon to exercise;
- solely in respect of the Scheme, based upon the evidence submitted;
- entirely without prejudice to the requirements of any statutory process that may develop during detailed design and build and which may lead to any significant changes in Scheme design that could affect the appraisal case;
- entirely without prejudice to any additional action by the Authority which leads to any significant changes in Scheme design, which could affect the appraisal case;
- on the basis that there is no request by the Authority for increased central government contributions;
- on the basis that there is no gross cost increase that could affect the appraisal case;
- on the basis that all information requested of the Authority is provided within 30 days of request; and
- on the basis that the unified reporting and claim form sent quarterly by the Department is submitted on a quarterly basis whether or not a claim for grant is being made. Failure to comply with this condition h), such that it is unclear to the Department if grant is still required, may result in some or all of the grant allocated for the Scheme for [2007-2008] being reallocated elsewhere. The Department also reserves the right to adjust the level of grant awarded for the Scheme for [2007-2008] following a review of the information supplied in the unified reporting and claim form.

The Authority will ensure that all its promotional signage, advertising, marketing information, publications, leaflets and press releases about the Scheme, whether created prior to construction, during construction or after Completion of the Scheme, shall give due acknowledgement to the Department for providing part (or all) of the funding for the Project. The phrase "Part (or wholly)

funded by the Department for Transport," or such similar other wording as the Secretary of State may require, should be used. Where appropriate, the Authority is also required to use the branding requirements of the Cabinet Office initiatives of "Building for the Future" and the "Considerate Contractor" scheme.

## **During build**

The Authority will notify the Secretary of State, via Departmental officials, in writing within 28 days of any of the following:

- a material change in the facts advanced in support of the application for grant occurring at any stage before the Scheme is brought into use;
- any change in the route/overall design of the Scheme; or
- any increase of the estimated cost for the build of the Scheme.

## **Following completion of build**

The Authority will notify the Secretary of State, via Departmental officials, in writing within 28 days of any delay of a period of 28 days or longer in bringing the Scheme or parts of it into use.

The Authority will be responsible for maintaining full records of all capital expenditure on the Project, together with all related correspondence and other documents, including invoices. These records will be maintained for a minimum period of 6 years after the final award of grant under this determination. Record keeping by document imaging will be acceptable.

The Department reserves the right for it or its representatives to conduct onsite reviews during construction of the Scheme, and for a period not exceeding 6 years after Completion, to review relevant documentation held by the Authority.

The Authority will maintain full statistical records, in such format and such detail as the Secretary of State may from time to time require, for a period of no less than 10 years following Completion of the Scheme. These requirements are likely to include data on the patronage, modal shift and increase in revenue for the systems supported by the Department.

The Authority will monitor, in such terms and for such period as may be required by the Secretary of State, the effect of the Scheme on factors which have been put forward in the application for grant (e.g. regeneration).

The Authority will, within 28 days of receipt of a notice in writing from the Secretary of State, allow any person authorised by the Secretary of State access to any records held by the Authority that relate to the Project and/or this determination in order to inspect and take such copies of such records as the Secretary of State may reasonably require.

For a period of 10 years following Completion the Authority will notify the Secretary of State in writing of any discontinuance of use of all or a part of the Scheme which will or is expected to last for a period of more than six weeks. In relation to planned activity the Authority must notify the Secretary of State in writing 28 days before the discontinuance commences. In relation to unforeseen events the Authority must notify the Secretary of State in writing within 28 days of commencement of the discontinuance.

## **Arrangements for claiming grant**

Claims for grant payable shall be made in accordance with the following arrangements, or other such arrangements as may from time to time be required by the Secretary of State and notified in writing to the Chief Finance Officer.

Payment of grant will be made quarterly in arrears against certification, by the Chief Finance Officer, that expenditure has been correctly incurred in accordance with the Grant Conditions. Claims will be made by completing the unified reporting and claim form sent quarterly by the Department to the Authority. Claims must be submitted by the claim deadline for each quarter as

set out in Table 1 below. The Department will make payments by the payment date for each quarter as set out in Table 1.

Table 1

	<b>Quarter 1 (Apr-June 2007)</b>	<b>Quarter 2 (July-Sept 2007)</b>	<b>Quarter 3 (Oct-Dec 2007)</b>	<b>Quarter 4 (Jan-Mar 2008)</b>
Claim deadline	Last Friday of July	Last Friday of September	Last Friday of January	Last Friday of April
Payment date	First week of September	First week of November	First week of March	First week of June

Claims received after the claim deadline for any quarter will not be paid until the subsequent payment date. The Authority will be liable for any costs incurred through late payment of claims as a result of missing claim deadlines.

Within six months of the end of the [2007-2008] financial year, the Authority must submit its annual claim to an auditor appointed by the Audit Commission for Auditor certification. For the final claim for any scheme authorities are required to submit this to an auditor appointed by the audit commission for audit certification within six months of completion. The final payment of grant will only be met on receipt by the Department of the auditor's certificate.

## **Cessation, suspension and repayment of grant**

If at any time it appears to the Department that there has, or may have, been any failure by the Authority to observe any of the Grant Conditions, the Secretary of State shall be entitled to cease or suspend payment of Section 31 grant. This will include circumstances where any statement made or document produced by the Authority in support of the grant application is found to be false or incorrect in any material particular. Notice of the cessation or suspension of grant payment will be provided in writing to the Authority.

In circumstances envisaged by the previous paragraph, the Secretary of State further by notice shall be entitled to require the repayment of all or part of the grant already awarded. The Authority undertakes, as a condition of this grant award, to make such repayment of grant as may be specified in a notice from the Secretary of State within 28 days of the date of such notice or within such longer period as the Secretary of State may in writing determine.

In instances where costs have been incorrectly capitalised the Department shall be entitled to require the repayment of the grant paid in respect of such costs.

Recovery of over-claimed grant (and, if applicable, interest thereon) under the previous paragraph will normally be achieved through a reduction of grant paid in respect of future claims including the final claim submitted by the Authority. Where this is not appropriate or possible, recovery may be required through other means (including repayment of grant by the Authority or reduction of payments of other grants to which the Authority is entitled such as Integrated Transport funding).

The Authority is required to ensure that the Scheme continues to operate for a period of no less than 10 years from Completion. Modification of any element of the Scheme will only be permitted with the written consent of the Secretary of State. Failure to comply with this requirement may result in the reduction of payments of other grants to which the Authority is entitled commensurate with the cost of the element, or elements, of the Scheme that are no longer in operation.