

NORTH YORKSHIRE COUNCIL

NOTICE OF URGENT ITEM

Access to Information Procedure Rule 15 – General Exception

Acceptance of Defra Biodiversity Net Gain (BNG) s31 grant 31-6804

To the Chair of the Transport, Economy, Environment & Enterprise Overview and Scrutiny Committee

The Council's Constitution provides that if a matter which is likely to be a key decision has not been included on the Council's Forward Plan for the requisite period, the decision may still be taken if an urgency procedure is followed.

Under Access to Information Procedure Rule 15:

- 15.1 *If the publication of the intention to make a key decision is impracticable and a matter which is likely to be a key decision has not been included in the forward plan for the requisite period as set out in Rule 13.2, then subject to Rule 16 (special urgency), the decision may still be taken if:*
- (a) *the Assistant Chief Executive (Legal and Democratic Services) has informed the Chairman of a relevant overview and scrutiny committee, or if there is no such person, each member of that committee by notice in writing, of the matter about which the decision is to be made;*
 - (b) *the Assistant Chief Executive (Legal and Democratic Services) has made copies of that notice available to the public at the offices of the Council and on the Council's website; and*
 - (c) *at least five clear days have elapsed following the day on which the Assistant Chief Executive (Legal and Democratic Services) complied with (a) and (b).*
- 15.2 *As soon as reasonably practicable after the Assistant Chief Executive (Legal and Democratic Services) has complied with (a) to (c) above, s/he must make available at the Council's offices a notice setting out the reasons why compliance with Rule 13.2 is impracticable and publish that notice on the Council's website.*

It is anticipated that on 29 August 2023, the Executive Member for Open to Business will consider a report seeking his permission to authorise the Corporate Director of Resources to accept new burdens BNG funding offered by DEFRA to the value of £231,116 in order to prepare for and implement mandatory requirements for BNG.

One of primary goals of the Environment Act 2021 is to protect and expand UK habitats and halt or reverse species decline by 2030. One of the policies was Biodiversity Net Gain (BNG); it is the mandatory requirement for developments needing planning permission to demonstrate a 10% biodiversity net gain at the time of submission. This can include creation of new habitats or enhancement of existing habitats on development sites. Defra has confirmed that all major development will need to secure 10% BNG from November 2023, with small scale developments being brought into the scheme from April 2024.

All habitats created or retained that form part of the 10% (whether onsite or off site) must be secured for a period not less than 30 years to include monitoring and management. It is expected that section 106 agreements will be used to secure the long-term management

obligations. Enforcement of the section 106 will be the responsibility of the Local Planning Authority. Every five years each Local Planning Authority will be required to report the losses and gains of biodiversity through the planning process.

Resource constraints are a big concern for local planning authorities, there is a need to prepare policy guidance, development management systems, additional ecological staff resource to review and comments on the BNG submissions, input from legal services to draw up section 106 agreements, investment in data systems to provide baseline habitat maps, systems for monitoring and reporting to Defra and resources in planning and enforcement. Additionally, there will be a need for training for all staff involved in the process and for planning committee members.

In March 2022, Defra provided £10,047 of grant funding in the form of a Section 31 grant to each Local Planning Authority (LPA) (County and District) to prepare for BNG. In March 2023, Defra offered additional revenue funding of £26,807 per North Yorkshire LPA (except Harrogate BC who received £43,467) to support ongoing preparatory work for BNG to cover the period 22-23. This funding was secured by each of the former eight North Yorkshire authorities and totalled £231,116. To date Defra funding has been pooled and used to appoint a BNG Officer who is focusing on preparing the authority for the mandatory roll out, including training. In addition, the 22-23 funding is being used to recruit an Ecologist and Assistant Ecologist who will be in place by November 2023 to assist existing staff with the determination of planning applications in relation to BNG.

On 4th August 2023, Defra offered additional revenue funding of £231,116 to North Yorkshire Council (using the same funding formula as the previous year considering each of the eight former authorities). This funding will be paid as a Section 31 grant and is intended to cover work undertaken during the period 1st April 2023 – 31st March 2024 and continues to be in support of the preparation and implementation of new BNG burdens. The s31 grant must be claimed by 31st August 2023. Therefore the decision to accept the offered funding cannot reasonably be deferred, to enable the timely consideration and progress of this matter.

The intention to make the key decision has been published on the Forward Plan but not for the full, requisite 28 clear day period.

In accordance with the General Exception provisions in Access to Information Procedure Rule 15, I am therefore informing you as Chair of the Transport, Economy, Environment & Enterprise Overview and Scrutiny Committee that it is intended that this matter be considered by Executive Member for Open to Business on 29 August 2023.

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services)

Dated: 10 August 2023