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## COUNCIL

### Council Summons and Agenda

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You are hereby summoned to attend an **Ordinary Meeting of Ryedale District Council** to be held in the **Council Chamber, Ryedale House, Malton** on **Thursday, 8 October 2015** at **6.30 pm** in the evening for the transaction of the following business:

#### Agenda

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1 **Emergency Evacuation Procedure**

The Chairman to inform Members of the Public of the emergency evacuation procedure.

2 **Apologies for absence**

3 **Public Question Time**

4 **Minutes** (Pages 5 - 20)

To approve as a correct record the minutes of the Ordinary Meeting of Council held on 3 September 2015.

5 **Urgent Business**

To receive notice of any urgent business which the Chairman considers should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.

6 **Declarations of Interest**

Members to indicate whether they will be declaring any interests under the Code of Conduct.

Members making a declaration of interest at a meeting of a Committee or Council are required to disclose the existence and nature of that interest. This requirement is not discharged by merely declaring a personal interest without further explanation.

**7 Announcements**

To receive any announcements from the Chairman, the Leader and/or the Head of Paid Service.

**8 To Receive any Questions submitted by Members Pursuant to Council Procedure Rule 10.2 (Questions on Notice at Full Council)**

**From Cllr Clark to the Chair of Planning**

Have you reconsidered your position as Chair of Planning?

**From Cllr Clark to the Chair of Planning**

Could the Chair of Planning please inform Council why he has not with his committee produced a policy on fracking for Ryedale?

**9 To Receive a Statement from the Leader of the Council and to Receive Questions and Give Answers on that Statement**

**10 To consider for Approval the Recommendations in respect of the following Part 'B' Committee Items:** (Pages 21 - 50)

**Policy and Resources Committee – 24 September 2015**

Minute 23 - Exempt Information (page 21)

Minute 24 – Land at Wentworth Street, Malton including the Motion on Notice proposed by Councillor Paul Andrews and seconded by Councillor Burr (page 21)

*Note:*

*A redacted public version of the report regarding the above item is attached. The full exempt version was circulated to all Members ahead of Policy and Resources Committee.*

Minute 25 – Budget Strategy 2016/17 (page 39)

**11 Notices on Motion Submitted Pursuant to Council Procedure Rule 11 (Pages 51 - 60)**

Proposed by Councillor Clark and seconded by Councillor Joy Andrews.

RDC is a consultee for the planning application currently in front of NYCC to perform a test frack and go into production for up to 9 years at the KM8 site in Kirby Misperton. The Planning Committee must discuss this by mid October in order that they can offer a view. RDC has no policy on fracking. The eyes of the country and the world will be watching with interest in the decision making process and we have yet to debate this issue. It is complex and of great significance for the future of Ryedale at many levels not least its economy, jobs, health and potential costs to the council. This process is now in its 11th hour so we must avoid losing our voice by taking it past midnight. This issue must therefore be debated on the 8th October 2015. If we do not debate the issues at this point then the voice of Ryedale people will become muted in the decision making process at NYCC.

On the scientific evidence to date Ryedale Liberals believe that the case for fracking is not made.

- 84% of peer reviewed science shows significant risks or impacts on health.
- 88% shows risks and impacts on air quality.
- 66% shows risks to water quality.
- The impact on agriculture is not known but is liable to be negative.
- The impact on tourism is not known but is liable to be negative.
- The impact in traffic is not known but is liable to be large.

This council therefore resolves:

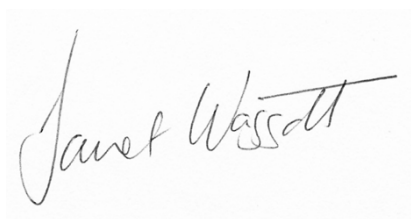
- (i) On the present information available RDC calls for a 5 year moratorium on fracking in Ryedale. When sufficient evidence becomes available RDC can reconsider its policy.
- (ii) It therefore calls upon the Planning Committee to take this decision into account when making its recommendation to NYCC on the KM8 planning application.

*Note :*

*(i) The motion on notice calls for a moratorium of five years on fracking which would fetter the Council's discretion to make a consultation response after considering all representations from statutory and non statutory consultees. The District Council meeting on 17 February 2015 considered a Monitoring Officers report on the legal principles that need to be observed by the District Council in decision making. A copy of the report is attached on the agenda at page 51.*

*(ii) The Planning Committee will be considering the matter as a consultee.*

**12 Any other business that the Chairman decides is urgent.**

A handwritten signature in black ink, reading 'Janet Waggott', written in a cursive style.

Janet Waggott  
Chief Executive

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## Council

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Minutes of Proceedings

At the **Ordinary Meeting of the District Council of Ryedale** held in the **Council Chamber, Ryedale House, Malton** on **Thursday 3 September 2015**

## Present

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Councillors	Acomb
	Joy Andrews
	Paul Andrews
	Steve Arnold
	Val Arnold (Chairman)
	Bailey
	Burr MBE
	Clark
	Cleary
	Cowling
	Cussons
	Duncan
	Evans
	Farnell
	Frank
	Gardiner (Vice-Chairman)
	Goodrick
	Hope
	Ives
	Jainu-Deen
	Jowitt
	Maud
	Oxley
	Raper
	Sanderson
	Shields
	Thornton
	Wainwright

## In Attendance

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Simon Copley  
Peter Johnson  
Phil Long  
Janet Waggott  
Anthony Winship

## Minutes

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### 29      **Apologies for absence**

Apologies for absence were received from Councillors Keal and Windress.

### 30      **Public Question Time**

There were no public questions.

**31 Minutes**

The minutes of the Ordinary Meeting of Council held on 9 July 2015 were presented.

**Resolved**

That the minutes of the Ordinary Meeting of Council held on 9 July 2015 be approved and signed by the Chairman as a correct record.

**32 Urgent Business**

There were no items of urgent business which the Chairman considered should be dealt with as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972 (as amended).

**33 Declarations of Interest**

The following interests were declared:

Councillor Paul Andrews declared a personal non-pecuniary but not prejudicial interest in agenda item 10 minute 54 (Judicial Review) as he had been lobbied by residents in Malton and the Malton Town Council, of which he was a member, and as a supporter of local business.

Councillors Steve Arnold, Cleary, Cowling, Cussons, Farnell, Frank, Goodrick, Hope, Jainu-Deen, Raper and Thornton declared personal non-pecuniary but not prejudicial interests in agenda item 10 minute 54 (Judicial Review) as they had been lobbied by Councillor Paul Andrews by letter and email.

Councillor Val Arnold declared a personal non-pecuniary but not prejudicial interest in agenda item 11 (North Yorkshire Fire and Rescue Service – Fire Service Review 2015) as a member of the North Yorkshire Fire Authority. She took no part in the discussion or the vote on the item.

Councillor Shields declared a personal non-pecuniary but not prejudicial interest in agenda item 11 (North Yorkshire Fire and Rescue Service – Fire Service Review 2015) as a substitute member of the North Yorkshire Fire Authority.

Councillor Clark declared a personal non-pecuniary but not prejudicial interest in agenda item 11 (North Yorkshire Fire and Rescue Service – Fire Service Review 2015) as a deputy member of the North Yorkshire Fire Authority.

Councillor Goodrick declared a personal non-pecuniary but not prejudicial interest in agenda item 12 (Funding for Citizens Advice Bureau) as the Council's representative on the Citizens Advice Bureau.

Councillor Clark declared a personal non-pecuniary but not prejudicial interest in agenda item 12 (Funding for Citizens Advice Bureau) as North Yorkshire County Council's representative on the Citizens Advice Bureau, which was an advisory role.

Councillors Val Arnold, Clark, Sanderson and Shields declared personal non-pecuniary but not prejudicial interests in agenda item 13 (Devolution – Combined Authorities) as North Yorkshire County Councillors.

#### 34 **Announcements**

With the Chairman's permission, the Chairman of the Overview and Scrutiny Committee made the following announcement:

*"I have met with KPMG who are our appointed Auditors and who were appointed by the Public Sector Audit Appointments Ltd, a statutory function delegated by the Secretary of State for Communities and Local Government and who are therefore fully independent of the Council. I asked them to consider the issues raised by the Judicial Review outcome particularly if public money has been wasted and if officers deliberately misled Members.*

*Work is ongoing and a report will come to Audit Committee in the future."*

The Chief Executive made the following announcements:

- That officers from Ryedale will attend a meeting with other Districts in North Yorkshire to discuss the current migration issue.
- That she had been asked if she would like to express an interest in applying for the role of Police Area Returning Officer for York and North Yorkshire.

#### 35 **To Receive any Questions submitted by Members Pursuant to Council Procedure Rule 10.2 (Questions on Notice at Full Council)**

1. Councillor Thornton submitted the following question:

To Councillor Windress, Chairman of Planning Committee:

"In relation to the ministerial guidance on affordable contributions on small developments, how much has the government's misleading of Tory controlled RDC cost the Council?"

In the absence of the Chairman of Planning Committee, the Vice Chairman Councillor Frank replied

*"This matter was the subject of a detailed report to members of the Planning Committee on 10<sup>th</sup> February 2015 and then by Full Council at the meeting held on 24<sup>th</sup> February 2015. The report set out the reasons for not seeking developer contributions, the significance of any risks and the implications for the implementation of the Ryedale Plan and the decision*

*making process. A list of 15 no. Applications that were affected was also included as part of the report.*

*The ministerial statement has not 'cost' the Council anything in terms of how it processed or dealt with the respective applications.*

*However the decision not to seek developer contributions from small sites related to both off site commuted sums for affordable housing and Public Open Space (POS).*

*15 No. Applications were listed in the report to Council on 24<sup>th</sup> February 2015 – the foregone contributions were £325k for affordable housing and £58k for POS.*

*In the intervening period officers have identified another 11 no. Applications where contributions would have been sought if Policy SP3 and SP11 had been applied.*

*No detailed figures are available for each of these later applications as they were not subject to detailed consideration by a valuer. However it is estimated that the addition developer contributions foregone is approx £300k for affordable housing and £30k for POS.*

*Total – Housing £625k  
Total – POS £88k.”*

Councillor Thornton asked the following supplementary question:

“Thank you for those figures. I should point out that it's not the Council that has lost this money £625,000, £88,000 that's £700,000 - it's the public who have been disadvantaged. They've lost potential affordable housing, they've lost public open spaces. I don't think that RDC is flush with money to be able to let this slip. It seem that the slavish adherence to ministerial statements and officers' advice has cost the public considerably and should we not deal with that advice in the Chamber with detailed questioning and exploration of possible responses to perhaps avoid this loss in future?”

Councillor Frank replied that a written answer would be provided.

2. Councillor Joy Andrews submitted the following question:

To Councillor Windress, Chairman of Planning Committee:

“What is the breakdown of the costs of the attempted sale of WSCP to date?”

As this question fell within the remit of the Chairman of Policy and Resources Committee, Councillor Cowling replied

*“Members will be fully aware of the distinction between the two roles of the Council on matters relating to WSCP namely :*

*(i) Role of the Council as a landowner;*



*(ii) Role of Council as a Local Planning Authority*

*This question is interpreted as relating solely to the Role of the Council as a landowner.*

*The costs of relating to the proposed disposal of WSCP are **TOTAL £145,988.00.***

3. Councillor Clark submitted the following question:

To Councillor Windress, Chairman of Planning Committee:

“Has Councillor Windress considered his position as Chair of Planning?”

In the absence of the Chairman of Planning Committee, the Vice Chairman Councillor Frank read a statement from him:

*“If I thought I needed to consider my position as Chairman of RDC's Planning Committee then I wouldn't need to be prompted by the Liberal Leader.”*

Councillor Clark asked the following supplementary question:

“On the basis that tonight he was unaware of the Planning costs of the sale of Wentworth Street car park and that it is a rough estimate of those costs - has cost the people of Ryedale in excess of £500,000 - on that basis what has he done about that because if he's not considering his position then how is he going to improve his performance in future?”

Councillor Frank replied that a written answer would be provided.

36 **To Receive a Statement from the Leader of the Council and to Receive Questions and Give Answers on that Statement**

Councillor Cowling, the Leader of the Council, presented the following statement:

*“The items for my Leader's statement are included on your agenda this evening and I am happy to answer any questions you may have as each item arises.*

*In addition over the last two months I have attended various meetings about Devolution and that has certainly taken up a lot of my time. I have also attended a meeting with North Yorkshire County Council, Scarborough Borough Council and our LEP to have a first look at the results of the work that is being done on preparing plans to dual parts of the A64 - you will recall that our council contributed £25k towards the first stage of this process. I will arrange for these proposals to be available to all Members of the Council so that all councillors will have a chance to view the proposals and be able to ask any questions of the officers involved. It will be a committee decision if we wish to contribute towards funding the next stage. I believe that this work and improving mobile and broadband connectivity are the biggest improvements that this Council can help facilitate to achieve greater future economic success for the benefit of the whole of Ryedale.*

*The only other thing that I wanted to add which is exceptionally good news for the Pickering wards is the completion of the Pickering flood defences today."*

The following questions were received on the Leader's Statement:

1. From Councillor Burr

"Whilst every Leader has a particular style I honestly feel that giving us a verbal statement directly in the meeting is not good enough. Could I respectfully ask that you provide us with a written statement within the Council agenda, like our previous leader Cllr Knaggs used to give us? This was much more appropriate and respectful of fellow Councillors to absorb the information that they need to decide on asking questions. So my question is, could we adopt a more businesslike procedure and have a detailed statement sent out with the Council agenda in the future? I do believe this has been asked for previously?"

The Leader replied:

*"I understand that it's personal choice as to whether I even do a Leaders Statement or not, so I'll let you know."*

2. From Councillor Paul Andrews

"Will the auditors be instructed to interview Council Members including opposition Members who have opposed the use of Wentworth Street car park as a superstore? Will they also instructed to interview businesses who have been affected including and I emphasise, Fitzwilliam Estate?"

This question had been copied to the Council's auditors, KPMG, and a full response from them had been received. A copy of this was circulated to all Members at the meeting.

3. From Councillor Paul Andrews

"What other modes of enquiry are available in which the community will have confidence and that must include a review of costs, benefits and affects of the decision to sell Wentworth Street car park with planning permission?"

The Leader replied:

*"You've asked what other modes of enquiry are available in which the community will have confidence that must include a review of all costs, benefits and effects of the decision to sell Wentworth Street car park with planning permission? I've no idea what other modes are available. I'm sorry you don't have confidence in the auditors and I think even when you've read the response from the auditors to your concerns, I still don't think you'll be happy but whatever form of enquiry it would be this*

*Council and therefore the public that would have to pay for it and you're going to say that he who pays the piper plays the tune. I'm afraid that will be the case whoever does an enquiry, so I don't think I'm ever going to be able to satisfy you unless of course Fitzwilliam Estate would like to pay for an enquiry. Then we might say that would be weighted in their favour."*

Councillor Paul Andrews then asked the following supplementary question:

"How about a Scrutiny Committee?"

The Leader then replied:

*"I believe that is what the Scrutiny Committee are doing through the auditors."*

4. From Councillor Paul Andrews

"When will Members receive officers' comments on the documents I submitted, one of them in draft, to the Chief Executive shortly after the meeting in May of Councillors and officials of GMI and which I sent in their final form to all Members and the Planning Department on 14 July and these are the documents to which Members have received from me over the last few days. So when will I receive the officers' comments on those documents?"

The Leader replied:

*"You've asked me when will Members receive the officers' comments on the documents that you've submitted. I'm afraid I can't answer that, you'll have to ask the officers involved."*

Councillor Paul Andrews then asked the following supplementary question:

"Can I have an answer from the Chief Executive please because these documents have been before her for a very long time?"

The Chief Executive then replied:

*"I do beg Cllr Andrews pardon because yes he has pointed out these matters to me. When I looked at the documents I realised that they had been before the Planning Inspectorate in the body of evidence, I actually thought they had already been considered by the whole process and that we had already made our comments. I didn't think that there was anything new in there so I do beg your pardon and I will speak to you directly because I thought it was something that we had already done."*

5. From Councillor Ives

“Councillor Cowling you stated that you are working and consuming a lot of your time at the moment on devolution which I thank you for but would the Council leader agree with me that devolution is giving power back to local communities on an unprecedented scale and it is delivering a key Government commitment and it is to be welcomed?”

The Leader replied:

*“I would absolutely agree with you that devolution is the best offer that local government has had for many, many years. It gives the opportunity for local people to take decisions on what it the bulk of the money that is spent in our areas and it is an opportunity that we should be very grateful for and snatch it with both hands.”*

6. From Councillor Clark

“I fully understand why you don't want to do written Leader's statements and have them in the agenda. I have complete sympathy with that situation from your standpoint. It seem one way out for you. However, this evening you were reading out your statement, or part of it, or what applied to something later on and I wonder if we could have a copy of whatever it was you read out as your Leaders' statement?”

The Leader replied:

*“The answer is yes.”*

Councillor Clark then asked the following supplementary question:

“When?”

The Leader then replied:

*“Now.”*

7. From Councillor Clark

“Could the Leader of Council please inform me, so that I can inform Councillor Joy Andrews, of the total planning cost involved in the process towards the sale of Wentworth Street car park?”

The Leader replied:

*“That will be a written answer, it's not something I carry about in my head.”*

Councillor Clark then asked the following supplementary question:

“In view of the lack of leadership and the state that we have got into in relation to that process, not only should that be a number that she has in her head, it ought to be a number that will come out from her sleep. On that basis do you intend to get a grasp of the numbers in relation to the cost to the public or are you going to say in the future I'll let you have a written reply because I don't have that number in my head?”

The Leader then replied:

*“The problems around Wentworth Street car park are well known, you don't put up for sale a car park or any other piece of land without incurring costs. There is a cost to this Council of dealing with planning applications but I suppose we can set a cost against that cost against the many thousands of pounds that GMI Holbeck have paid for their planning application. There is a long way to go yet with that issue. We can't ignore the planning application that sits on our desk and I'm sure the final figures, when we've got there will be made available to all members of this Council.”*

8. From Councillor Paul Andrews

“Bearing in mind that the application proceeded on the basis of out of date figures, an out of date customer survey and that customer survey will now have to be redone, do you really think that this Council is ever going to be able to issue planning consent without this being judicially challenged again?”

The Leader replied:

*“I am absolutely certain that if this Council were to grant planning permission for Wentworth Street car park that it would be challenged at judicial review. I am absolutely certain that if a Planning Inspector granted planning permission for Wentworth Street car park that it would be challenged at judicial review and I'm absolutely certain that if they didn't get their own way at judicial review they would go to the next level of court. So yes, wherever it goes, wherever the answer is yes to Wentworth Street car park, it will be challenged.”*

Councillor Paul Andrews then asked the following supplementary question:

“Then don't you think it's time that the Council changed direction on Wentworth Street car park?”

The Leader then replied:

*“That is a decision for this Council to make when it is in full possession of all the facts and the implications of changing its mind.”*

- 37 **To consider for Approval the Recommendations in respect of the following Part 'B' Committee Items:**

**Licensing Committee – 21 July 2015**

**Minute 4 – The Gambling Act 2005 - Draft Statement of Principles**

It was moved by Councillor Hope and seconded by Councillor Frank that the following recommendations of the Licensing Committee be approved and adopted.

That Council be recommended:

To adopt the Gambling Act 2005 - Statement of Principles.

Upon being put to the vote the motion was carried.

**Resolved**

That Council adopt the Gambling Act 2005 - Statement of Principles.

Voting Record

28 For

0 Against

0 Abstentions

**Overview and Scrutiny Committee – 30 July 2015**

**Minute 22 – Treasury Management Annual Report 2014/15**

It was moved by Councillor Wainwright and seconded by Councillor Acomb that the following recommendations of the Overview and Scrutiny Committee be approved and adopted.

That Council be recommended:

a. That the treasury management report for 2014/15 be noted;

b. That the actual 2014/15 prudential and treasury indicators in this report be approved.

Upon being put to the vote the motion was carried.

**Resolved**

a. That the treasury management report for 2014/15 be noted;

- b. That the actual 2014/15 prudential and treasury indicators in this report be approved.

Voting Record

28 For

0 Against

0 Abstentions

**Planning Committee – 18 August 2015**

**Minute 53 – Developer Contributions from Small Sites**

It was moved by Councillor Frank and seconded by Councillor Hope that the following recommendations of the Planning Committee be approved and adopted.

That Council be recommended to resolve to:

- (i) No longer treat the Ministerial Statement of 1 December 2014 on support for small-scale developers, custom and self-builders as a material consideration in the planning process;
- (ii) To apply full weight to Policies SP3 (Affordable Housing) and Policy SP11 (Community Facilities and Services) of the Ryedale Plan - Local Plan Strategy.

Upon being put to the vote the motion was carried.

**Resolved**

That Council resolves to:

- (i) No longer treat the Ministerial Statement of 1 December 2014 on support for small-scale developers, custom and self-builders as a material consideration in the planning process;
- (ii) To apply full weight to Policies SP3 (Affordable Housing) and Policy SP11 (Community Facilities and Services) of the Ryedale Plan - Local Plan Strategy.

Voting Record

28 For

0 Against

0 Abstentions

**Minute 54 – Judicial Review - The Queen on the Application of Milton (Peterborough) Estates Company trading as Fitzwilliam (Malton) Estate v Ryedale District Council**

It was moved by Councillor Frank and seconded by Councillor Hope that the following recommendations of the Planning Committee be approved and adopted.

That Council be recommended:

- (i) That the outcome of the judicial review proceedings be noted;
- (ii) That Council meet the award of costs from the improvement, contingency and emergency fund.

Upon being put to the vote the motion was carried.

### **Resolved**

- (i) That the outcome of the judicial review proceedings be noted;
- (ii) That Council meet the award of costs from the improvement, contingency and emergency fund.

### Voting Record

20 For

1 Against

6 Abstentions

Councillor Paul Andrews requested that his vote against the motion be recorded.

## **38 North Yorkshire Fire and Rescue Service - Fire Service Review 2015**

The Chief Executive submitted a report (previously circulated) which provided Members of Council the opportunity to agree a response to the consultation document of North Yorkshire Fire and Rescue Service (NYFRS), Fire Cover Review 2015.

Councillor Cowling moved and Councillor Steve Arnold seconded the following motion:

*“That Council decide whether they wish to support option 1 or option 2.”*

Councillor Ives moved and Councillor Duncan seconded the following amendment:

*“This Council:*

*- supports option 1 over option 2 in relation to the proposals concerning the future of Malton Fire Station, which is to replace the day crewed fire engine with a day crewed Tactical Response Vehicle; and*



*- encourages integration across the emergency services and the wider public sector.”*

Upon being put to the vote the amendment was carried.

Voting Record

19 For

5 Against

3 Abstentions

The substantive motion was then put to the vote.

**Resolved**

This Council:

- supports option 1 over option 2 in relation to the proposals concerning the future of Malton Fire Station, which is to replace the day crewed fire engine with a day crewed Tactical Response Vehicle; and
- encourages integration across the emergency services and the wider public sector.

Voting Record

18 For

5 Against

4 Abstentions

Councillor Paul Andrews requested that his vote against the motion be recorded.

**39 Funding for Citizens Advice Bureau**

The Chief Executive submitted a report (previously circulated) which updated Members following the presentation from Ryedale Citizens Advice Bureau (CAB).

Councillor Cowling moved and Councillor Frank seconded the recommendations in the report.

Councillor Cowling moved and Councillor Frank then seconded the following amendment:

*“To ask that CAB officers work closely with RDC officers to keep them up to date with their financial situation.”*

Upon being put to the vote the amendment was carried.

Voting Record

27 For  
0 Against  
0 Abstentions

The substantive motion was then put to the vote.

**Resolved**

(i) That Council agree to allocate the provision of the additional £35k to Ryedale CAB.

(ii) To ask that CAB officers work closely with RDC officers to keep them up to date with their financial situation.

Voting Record

27 For  
0 Against  
0 Abstentions

40 **Devolution - Combined Authorities**

The Chief Executive submitted a report (previously circulated) which updated Members on the current position regarding the ongoing national devolution debate, regional developments and how these may impact on Ryedale District Council.

Councillor Cowling moved and Councillor Frank seconded the recommendations in the report.

Councillor Cowling moved and Councillor Frank then seconded the following amendment:

*"To delete 2.1 and replace with:*

*It is recommended that Council agree to be part of a combined authority within Yorkshire as a general principle, proposals for which are to be submitted to the Treasury by the 4 September deadline."*

A procedural motion that the question now be put was moved, seconded and carried.

Upon being put to the vote the proposal was carried.

**Resolved**

That Council agree to be part of a combined authority within Yorkshire as a general principle, proposals for which are to be submitted to the Treasury by the 4 September deadline.

## **Recorded Vote**

### For

Councillors Steve Arnold, Val Arnold, Cleary, Cowling, Duncan, Evans, Farnell, Frank, Gardiner, Hope, Ives, Jainu-Deen, Oxley and Raper

### Against

Councillors Joy Andrews, Paul Andrews, Clark, Thornton and Wainwright

### Abstentions

Councillor Jowitt

## **41 Any other business that the Chairman decides is urgent.**

There being no other business, the meeting closed at 11.05pm.

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**REPORT TO:** FULL COUNCIL

**DATE:** 8 OCTOBER 2015

**SUBJECT:** PART 'B' REFERRALS FROM POLICY AND RESOURCES COMMITTEE ON 24 SEPTEMBER 2015

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**23 Exempt information**

**Decision**

- i. That under Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended), the public be excluded from the meeting for the discussion of the report on the following item as there would be a likely disclosure of exempt information relating to the financial or business affairs of any particular person (including the authority holding that information) and that under Paragraph 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended), exempt information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- ii. That officers be instructed to review the report with a view to redacting any exempt information to enable the report to be published in the public domain; and
- iii. To amend the recommendation in the report to add "if it is not within six months then to take steps to terminate the contract."

Voting record

For 9

Abstention 1

**24 Land at Wentworth Street, Malton including the Motion on Notice proposed by Councillor Andrews and seconded by Councillor Mrs Burr**

Considered - Report of the Chief Executive after which the following motion was debated;

Motion on Notice proposed by Councillor Andrews and seconded by Councillor Mrs Burr

The Council is asked to resolve that as:

- Clarification is needed for the business community in Malton and Ryedale
- The Contract for the sale of WSCP to GMI is due to expire (unless renewed) on 4 May 2015; and
- The Contract cannot be completed until GMI can provide a superstore developer to build a superstore on WSCP, and to date GMI have failed to comply with this condition; and
- WSCP is, by reason inter alia of its location and absence of direct access to the A64, not a prime site for a superstore; and

- The recent collapse of the market for new superstores is a permanent change in the business environment

The Council therefore resolves not to renew the contract to sell WSCP to GMI.

#### **Recommendation to Council**

That the following motion not be approved;

The Council is asked to resolve that as:

- Clarification is needed for the business community in Malton and Ryedale
- The Contract for the sale of WSCP to GMI is due to expire (unless renewed) on 4 May 2015; and
- The Contract cannot be completed until GMI can provide a superstore developer to build a superstore on WSCP, and to date GMI have failed to comply with this condition; and
- WSCP is, by reason inter alia of its location and absence of direct access to the A64, not a prime site for a superstore; and
- The recent collapse of the market for new superstores is a permanent change in the business environment

The Council therefore resolves not to renew the contract to sell WSCP to GMI.

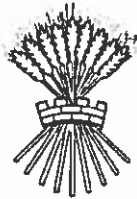
#### Voting record

For 2

Against 7

Abstention 1

**RYEDALE  
DISTRICT  
COUNCIL**



## Private Document Pack

Please Contact

Nicki Lishman

Extension

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Wednesday, 16 September 2015

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## **POLICY AND RESOURCES COMMITTEE**

Thursday 24 September 2015 at 6.30 pm

Council Chamber, Ryedale House, Malton

### **Documents marked to follow on the Agenda**

- 8 Land at Wentworth Street, Malton including the Motion on Notice proposed by Councillor Andrews and seconded by Councillor Mrs Burr (Pages 3 - 22)**

The Council is asked to resolve that as:

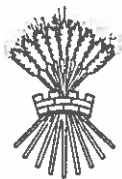
- Clarification is needed for the business community in Malton and Ryedale
- The Contract for the sale of WSCP to GMI is due to expire (unless renewed) on 4 May 2015; and
- The Contract cannot be completed until GMI can provide a superstore developer to build a superstore on WSCP, and to date GMI have failed to comply with this condition; and
- WSCP is, by reason inter alia of its location and absence of direct access to the A64, not a prime site for a superstore; and
- The recent collapse of the market for new superstores is a permanent change in the business environment

The Council therefore resolves not to renew the contract to sell WSCP to GMI.

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## RYEDALE DISTRICT COUNCIL



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<b>PART B:</b>	<b>RECOMMENDATION TO COUNCIL</b>
<b>REPORT TO:</b>	<b>POLICY &amp; RESOURCES COMMITTEE</b>
<b>DATE:</b>	<b>24 SEPTEMBER 2015</b>
<b>REPORT OF THE:</b>	<b>CHIEF EXECUTIVE JANET WAGGOTT</b>
<b>TITLE OF REPORT:</b>	<b>LAND AT WENTWORTH STREET, MALTON</b>
<b>WARDS AFFECTED:</b>	<b>MALTON DIRECTLY, ADJACENT WARDS INDIRECTLY</b>

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### EXEMPT INFORMATION

**Exemption Category:** Certain information in this report is considered to be exempt as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

**Reason for Exemption:** The information relates to the financial or business affairs of a particular company and the Council itself; and

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

*The public interest test has been considered and, in all the circumstances of the case, the public interest in maintaining the exemption is considered to outweigh the public interest in disclosing the information.*

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### 1.0 PURPOSE OF REPORT

- 1.1 To consider, as landowner, a request from GMI Holbeck Land (Malton) Ltd for an extension of the time limits set out in the Conditional Agreement for Lease entered into in May 2011 and to give Officers advice to Members on the implications of the Motion on Notice submitted by Councillors Burr MBE and P Andrews.

### 2.0 RECOMMENDATION

- 2.1 In order to allow the purchaser to meet its obligations set out in the Agreement and the consequent transfer by long leasehold of the land, the Council is recommended:
- (i) Maintain the agreement until the planning application is reconsidered by the planning committee.

### 3.0 BACKGROUND

- 3.1 This report concerns the transfer by long leasehold of part of Wentworth Street Car Park in Malton to a company that intends to develop the site with a medium sized food store and petrol filling station. Under the terms of the Conditional Agreement for Lease (the Agreement) the company applied for planning permission for the redevelopment. Due to the unexpectedly long time which has been taken by the planning process, outside its control, the company has been unable to progress its proposals within the timeframe provided for in the Agreement.
- 3.2 At the Judicial Review held on 11 June 2015 the planning decision for the Wentworth Street Car park site was quashed in the High Court by Mr Justice Dove. This has been reported to Planning Committee and Council 03.09.2015. It is important to recognise that the Judicial Review deals only with the process by which the planning permission was granted. It makes no findings on the decision to enter into the Conditional Agreement for Lease and redevelopment of the site or whether it is proper to extend the agreement. Nor does it consider the suitability of the site for retail use.
- 3.3 The report considers the Council's position as landowner seeking best consideration for an under utilised asset Wentworth Street Car Park. In considering this the Council should consider the matter as the landowner and it should not make a decision based on planning issues, such as the use of the site, which is considered by the Council's Planning Committee in its role as local planning authority.

### 4.0 HISTORY

- 4.1 This matter was originally considered by Council in 2009. In order to assist newly Elected Members of the Council reference to the reports, and decisions which have previously been made in relation to this matter, are summarised below.
- 4.2 The Council has a duty and responsibility as a local authority landowner to ensure the best utilisation of its assets. Government guidance to local authorities on asset management advised local authorities to "ensure that they secure better value for money whilst making more effective use of their asset base as the foundation for delivering high performing public services" The Audit Commission (Room for Improvement, 2009) warns that, in the current economic climate, councils will need to do far better in managing their assets, if they are to achieve expected savings and maintain services in the coming years.
- 4.3 Following consideration of a report by Policy and Resources Committee on 25 June 2009 and a recommendation to Council 9 July 2009, Full Council resolved "That expressions of interest be invited for the purchase and redevelopment of either the whole or part of the Wentworth Street Car park site (as shown on the plan at Annex A to the report) for future use, and that following the receipt of such expressions, the matter be referred back for consideration". The report considered by Members proposed that "developers are advised that the Council's consideration, as landowner, of submitted proposals will include reference to the following factors, in addition to the value that would be raised through the land asset:
- The amount and type of parking to be provided, including during construction – proposals should support the vitality of the wider town centre and encourage linked trips to retailers and services in Malton and Norton;
  - The wider regeneration benefits for Malton town centre

- A major new investment in Malton
  - The integration of the scheme with the town centre and urban design and transport impacts
  - The extents to which the proposals can help achieve benefits for the local economy and community.
  - A capital receipt to fund other projects
- 4.4 A market testing exercise was approved by Council on 9 July 2009 and showed that there was a healthy market interest in the purchase of Wentworth Street Car Park and adjoining District Council owned land for redevelopment, in tandem with provision of a sizable car park to serve both the development and the wider town centre.
- 4.5 The sale would lead to a significant capital receipt. This could be used by the Authority to fund capital projects, including regeneration and community projects in Malton and Norton and across Ryedale. This approach was consistent with the efficient use of Council assets and was in line with asset management good practice.
- 4.6 The expressions of interest received suggested that the site could accommodate forms of development that would strengthen Malton's role as the rural capital of Ryedale, however these and other planning issues would be assessed through an entirely separate planning analysis of any application submitted for this site.
- 4.7 At its meeting on 17<sup>th</sup> November 2010 the Council considered and approved a recommendation to accept an offer to purchase land at Wentworth Street Car Park in Malton on a Long Leasehold basis. This decision was subsequently implemented through the completion of a Conditional Agreement for Lease (the Agreement) with GMI Holbeck Land (Malton) Ltd (GMIHL) which was completed in May 2011.
- 4.8 The Conditional Agreement for lease with GMIHL includes a timeframe to undertake various actions needed to bring forward and secure a development. This timeframe was considered to be reasonable for the actions to be undertaken in normal circumstances.
- 4.9 The arrangement includes a number of conditions in the form of performance milestones and timeframes for the various steps needed before transfer of a leasehold interest in the land from the Council to the company and the undertaking of development of their proposals for a supermarket on the site. These milestones were set to allow a reasonable yet demanding timetable for the company to meet the challenges for converting a site with potential into a deliverable proposition.
- 4.10 A period of 4 years was provided for satisfaction of the conditions and included a requirement to secure a planning consent for the company's proposals.

## **5.0 POLICY CONTEXT AND CONSULTATION**

- 5.1 To create the conditions for economic success is one of the five priority aims of this Council, and this aim includes objectives of creating opportunities for people and for economic activity and infrastructure.

- 5.2 Any planning application submitted as part of the contractual arrangement would be considered by the Local Planning Authority against the provisions of the Development plan and all other material considerations.

## 6.0 REPORT

- 6.1 The issues which need to be taken into account when considering the request from GMIHL to be given more time to meet its obligations under the terms of its agreement with the Council are:

- Have there been any significant changes to the original reasons for a sale of the land?
- Is the additional time likely to result in completing the sale?
- Do the revised agreement terms still provide best value?
- Is it likely that there will be a claim against the Council if it refuses the request and terminates the contract?

- 6.2 Have there been any significant changes to the original reasons for a sale of the land?

- 6.3 The answer to this question is no as the key objectives for inviting interest in the land for an appropriate development were and still are:

- The Council still has a duty to obtain best value ,
- the asset is still underutilised
- There is still a need to generate a capital receipt;
- There is still a need to deliver an appropriate scheme to help to deliver the town centre strategy and provide economic benefits to Ryedale.

- 6.5 A summary of the chronology of events contributing to the delay in progressing the planning application is set out in Annex A.

- 6.6 Is the additional time likely to result in completion of the sale?

- 6.7 The following comments are subject to the outcome of the planning process. Advice from a company specialising in the retail sector obtained by GMIHL is that a development as envisaged is unlikely to be seen on site for up to 3 years but that their proposals, as set out in their planning application, match the direction which the sector is taking. GMIHL remains confident that, given the opportunity to hold meaningful discussions with a range of potential operators, it will still be able to deliver a suitable development which will provide the anticipated economic benefits to the area. In order to have meaningful conversations GMIHL have stated that they need to have a contract in place which is why they have asked for an extension of time. These discussions cannot go ahead until the planning permission is confirmed or otherwise.

- 6.8 Officers have also taken separate advice from retail experts CBRE. Their view was obtained in February 2015 and is:

*"... we would not anticipate significant interest as a supermarket at the present time. However, the scheme is likely to prove of more significant interest in the medium to longer term, potentially within the next 18 to 36 months."*

- 6.9 Whilst there can be no absolute certainty, it appears that when the market improves the proposals of GMIHL will be attractive to operators and lead to completion of a successful development.
- 6.10 **Do the revised agreement terms still provide best value?**
- 6.11 The CBRE report considered the market conditions in February 2015 and concludes that the current market value of the site is less than the price agreed with GMIHL. Consequently, the extension to the time limits set out in the legal agreement would continue to satisfy the Council's requirement to obtain "the best consideration that can reasonably be obtained."
- 6.12 **Is it likely that there will be a claim against the Council if it refuses the request and terminates the contract?**

## **7.0 OPTIONS AND RISKS**

- 7.1 The Council has 3 options in relation to this agreement, all carry different consequences. It could;
- Maintain
  - Extend
  - Terminate
- 7.2 **Risks of maintaining the existing Conditional Agreement for Lease, no termination, no extension**
- 7.3 The Council can continue to work with GMIHL to see if GMIHL can deliver a scheme within the existing agreement. This would be reflected in the submission by GMIHL of a planning application. If this can be delivered it means that the Council gets the benefits of the scheme without having to incur the expense of going back to test the market. If this is not possible within 6 months then the Council should take steps to terminate the agreement. The Council would have to start the disposal or procurement process again to ensure that it receives the best consideration for WSCP.
- 7.4 **Risks of extending the Conditional Agreement for Lease**
- 7.5 If both parties agree the Agreement can be extended for an agreed period of time under the same terms and conditions.
- 7.6 The information from GMIHL's consultants points to active demand for a proposed store and petrol filling station returning in 9-18 months time. GMIHL are confident when assessing a further period for negotiation that the terms of the Agreement can

be delivered within an additional 3 year period. In addition, officers have obtained independent advice from CBRE which supports this view subject to achieving an implementable planning permission. This option would avoid the associated costs of remarketing the site and drawing up a new legal agreement, both of which would be required, to ensure the Council obtains best value, best consideration, for the site.

- 7.9 It should be noted that it is suggested by FWME that the "threat of a development" on this site at WSCP will deter their stated operator (Booths) from investing in Malton. This information reported by Booths is that they are not entering new markets for at least 2 years.

#### **7.10 Risks of terminating the Conditional Agreement for lease**

- 7.11 Either side can terminate the Agreement but one or other party must terminate the Agreement for it to be terminated, if neither party terminates, the Agreement remains in place. There are no additional risks for the Council if this option is taken. The developer may proceed with the planning application 'at risk'. RDC could take this course of action if they choose to with some financial risk.

- 7.14 If the Council terminates the Agreement it would repay the deposit of £100,000 to GMIHL within 21 days. This is not a risk as the deposit is held within the Council's balance sheet.

- 7.15 The consequences of terminating the Agreement are that the proposed sale on a long leasehold basis and the objectives for such a sale will not be achieved. No capital receipts will be obtained and there will be no resulting funds to support a capital programme to deliver beneficial projects for the people of Ryedale.

- 7.16 There is a reputational risk that the Council finds itself in a position where developers do not trust the Council to work as a partner. This could have an impact on market confidence and inward investment in the future. There is also the opposite view which is that sufficient time has already been given and that the Council's reputation has

already been damaged due to the legal challenges and subsequent costs incurred by the Council.

- 7.17 The Council has to get the best use for its assets. If the Council decide to terminate this contract it will in time have to consider the best use for WSCP and go back to the market which will incur additional costs. If this action was chosen the Council has the opportunity to consider the representations made by those opposed to this scheme and open discussions to see if there is a scheme where all interested parties can work together for the greater good of Malton and wider Ryedale.
- 7.18 If the Council were to decide to take this course of action it could either remarket the site as a land disposal, which is the route it chose to take in 2009, or it could decide to go to public procurement and go through an OJEU procurement process of open competition or competitive dialogue.
- 7.19 Members are aware that there is an opinion shared by a number of Organisations and individuals including Fitzwilliam (Malton) Estate (FWME), Malton Town Council (MTC), Norton on Derwent Town Council, and the Ward Members for Malton that the best approach is to terminate the contract with GMIHL and consider alternatives. It is their view that the original agreement has not been delivered in the time agreed and that since the agreement was entered into the market conditions have changed to the point that it is this scheme is no longer deliverable and that it is not the right project for the land at WSCP. That the Council goes back to the drawing board and thinks again about how it can get the best consideration for the underutilised land at WSCP.
- 7.20 It is important to clarify that If Members choose to terminate the Contract with GMIHL for the conditional lease agreement of WSCP this does not mean that it is also terminating or changing the Local Plan Strategy and concept of the Northern Arc. If members do decide to terminate the agreement with GMIHL they will have to give consideration to the disposal of WSCP and the future strategy for the site.

## **8.0 FINANCIAL ISSUES**

- 8.1 The Council must explore every opportunity to make more effective use of public assets (particularly where a significant sum can be raised to help fund beneficial projects). Any capital receipt obtained from this site has the potential to support capital projects that deliver each of the Council's priorities, including meeting housing needs and maintaining a high quality sustainable environment and economic development.
- 8.2 Like many other relatively small district councils, the Council has limited scope to achieve anything other than a basic capital programme without the generation of capital receipts. The leasehold sale of Wentworth Street Car Park, therefore, has a role to play in enabling the Council to support capital projects that are desirable in the public interests.
- 8.3 If a claim for costs is received and is successful the financial position of the Council is that it has of uncommitted New Homes Bonus and in addition the Council has other reserves which have been earmarked for specific purposes but could be used if required, however use of these reserves would lead to a reduction in financial resilience going forward.

## **9.0 LEGAL ISSUES**



- 9.1 If the Council chooses not to extend the longstop date contained within the Agreement then the Council would have the power under clause 3.8 of the agreement to terminate the Agreement and simply repay the deposit that is *"unless the reason for the conditions not having been satisfied is the act, default or delay of the Council under this clause 3"*.
- 9.2 It is GMIHL's considered view that they have been severely hampered in the delivery of the redevelopment of this site by a series of unforeseen factors which have fallen outside of their control and consider these delays to be due to the Council. GMIHL own a strip of land adjacent to the current access and they also make the point that the failure by Taylor Wimpey to deliver the access road planned for 2013 means that no operator of a medium sized foodstore would be able to operate from WSCP until this has been delivered.

**Janet Waggott**  
**Chief Executive**

**Author:** Janet Waggott, Chief Executive, and Julian Rudd, Head of Economy

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**Background Papers:**

Relevant files with exempt papers as referred to in the report.



## **GMI Holbeck Land (Malton) Limited**

**Middleton House  
Westland Road  
Leeds  
LS11 5UH**

**For attention of the Chief Executive  
Ryedale District Council  
Ryedale House  
Malton  
North Yorkshire  
YO17 7HH**

**15.09.2015**

**Dear Sirs**

### **Malton: The Wentworth Street Car Park.**

We write further to the Briefing meeting of the 15<sup>th</sup> June 2015 and Members agreement to await the outcome of the Judicial Challenge before committing to a resolution in respect of the contract between Ryedale District Council and GMI Holbeck Land.

The Decision from the Judicial Review to quash the Planning Permission was extremely disappointing with the failings identified outside of our control. Following consideration we decided not to Appeal the Decision as a supporting party to RDC.

Our determination to deliver development and investment for Malton and Norton has not diminished and despite the setback we are undertaking a detailed review of recent changes to food store demand before progressing a new planning application.

The advice from retail consultants remains consistent with confidence that demand for new medium sized store of 45 – 50,000 sq. ft. from major food store operators will return and that we will be able to commence development within a 2 to 3 year horizon. This being conditional upon the resolution of outstanding matters as set out in our earlier letter of the 5<sup>th</sup> March

More immediate demand is now emerging from convenience store operators who are actively responding to the dynamics of multi store shopping with structural shifts in trading relationships. Sainsbury and Netto are in partnership and Aldi and M&S have forged new development alliances, Morrisons M Local store chain has been sold to a new entrant into the market and Lidl store requirements now include a 26,000 sq. ft. format. The result is that our consultants are now asking that we adapt our designs to include options for sole and shared trading.

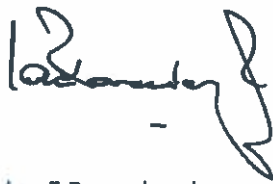
Despite the returning and churning market we remain unable to offer any potential traders a deliverable development on the Wentworth Street Car Park due to highway improvement delays. We have done what we can to facilitate access to the site through the acquisition of necessary land as directed by the Highway's Authority. On the other hand we still await the construction of the essential new Broughton Road /Pasture Lane link road programmed at the time of our agreement for completion in 2013. Potential food store operators will not put resources into a detailed feasibility let alone commit to an agreement without a commitment to the delivery of approved access.

Notwithstanding the determination to deliver and our confidence in the returning market we are reluctant to increase the considerable expenditure of close to £900,000.00 invested to date without an extension of the contract.

Should your Council decide to terminate our contract we will await the outcome of the Council's policy for the future of the car park and the return of our deposit. We will retain the land that we acquired to facilitate redevelopment of the car park and pursue projects remote from Malton and Norton.

Yours faithfully

Regards

A handwritten signature in black ink, appearing to read 'Ian Barraclough', with a stylized flourish at the end.

Ian F Barraclough

For and on behalf of GMI Holbeck Land (Malton) Limited



## Pinsent Masons

### BY EMAIL & POST

Ryedale District Council  
Ryedale House  
Malton  
North Yorkshire  
YO17 7HH

Your Ref BS/CONV-09-R001

Our Ref 64732206.1\MCB\639313.07004

For the attention of Mr Anthony Winship, Head of Legal Services

23 September 2015

Dear Sirs

### WENTWORTH STREET CAR PARK, MALTON

Thank you for your letter 22 September 2015.

Our client's response to your letter and the Council's forthcoming consideration of whether to renew / extend its conditional sale contract of the Wentworth Street Car Park ("WSCP") with GMI Holbeck Land (Malton) Limited ("GMI") at a meeting of the Council's Policy & Resources Committee on 24 September 2015 is as follows:-

1. Given the extensive history and public funds that have been expended to date by the Council (with no return) in respect of WSCP, our client considers that the Council's decision to treat the Report and deliberations on whether the conditional contract for the sale of WSCP should be extended / renewed as exempt by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended) is extremely concerning and is inconsistent with what should be the Council's overarching duty to be open and transparent when making decisions. This point is reinforced by the defensive tone and content of your letter dated 22 September 2015.
2. We note that our letter dated 12 June 2015 (and enclosures) will be made available to the Officers and Members attending the meeting of the Policy & Resources Committee on 24 September 2015. The points made in those letters remain unchanged;
3. Please confirm that the Officers and Members attending tomorrow's meeting will also be provided with the following information / documents:-
  - 3.1 a copy of the Judgment of MJ Dove in the WSCP judicial review;
  - 3.2 the Inspector's Decision Letter and Costs Decision Letter in the Livestock Market Appeal Inquiry;
  - 3.3 Full details of the costs incurred by the Council in dealing with the WSCP, including, but not limited to:-
    - (a) the costs of dealing with the conditional sale contract with GMI;

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- (b) the costs of the Council's unsuccessful defence of our client's appeal against the Council's refusal of our client's planning application to develop the Livestock Market Site in Malton, including the adverse costs paid to our client following the Costs Decision Letter;
- (c) the costs incurred by the Council in its unsuccessful defence of our client's judicial review application that resulted in the Council's decision to grant planning consent to the proposed development at WSCP being quashed together with a fair and reasonable estimate of the likely costs that the Council are liable to pay our client when our client's costs claim is agreed or determined.

4. It remains our client's position that the Council does not have any lawful or commercial grounds to extend or renew the sale contract for the WSCP with GMI. Our client therefore expressly reserves its position in this regard.

Please confirm that a copy of this letter will be made available to the Officers and Members attending the meeting of the Policy & Resources Committee on 24 September 2015.

Yours faithfully

  
Piers Masons LLP



Pinsent Masons LLP  
1 Park Row  
LEEDS  
LS1 5AB

Our Ref: FBB / CONV-09-R001

Please ask for: Anthony Winship

Ext: 267

E-mail: [anthony.winship@ryedale.gov.uk](mailto:anthony.winship@ryedale.gov.uk)

For the Attention of Matthew Baker

DX 723621 MALTON 2

28 September, 2015

Dear Sirs

## **Wentworth Street Car Park, Malton**

Thank you for your letter of the 23 September 2015, which is in response to my letter of 22 September 2015.

In response to your numbered points;

- 1 Your comments are noted. As previously stated in my letter to you of 17 June 2015 the Council fully understands its duties as to the content of exempt reports and will continue to address such matters in a suitably mindful manner.
- 2 Noted.
- 3 Your comments are noted; Members of the Committee will be presented with an Officer's Report. That report contains information which is considered to be relevant to the matter before the Committee. Members have previously been provided with information relating to WSCP, including the judgment of MJ Dove, through the Council's Planning Committee on 18 August 2015 and then Full Council on 3 September 2015.
- 4 Your client's position is noted.

A copy of your letter of 23 September 2015 was circulated to Members during the Committee proceedings on the night of the Committee.

Yours faithfully

K A Winship  
Council Solicitor

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**REPORT TO:** FULL COUNCIL

**DATE:** 8 OCTOBER 2015

**SUBJECT:** PART 'B' REFERRALS FROM POLICY AND RESOURCES COMMITTEE ON 24 SEPTEMBER 2015

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**25 Budget Strategy 2016/17**

Considered – Report of the Finance Officer (s151)

**Recommendation to Council**

That Council be recommended to approve the following strategy for the preparation of the 2016/2017 budget:

- (i) Proposals to be brought forward for a freeze in Council Tax for the next financial year
- (ii) Increases in fees and charges to be to a maximum of 4.5% on a cost centre heading basis excluding VAT and only those charges officers recommend above this figure to be considered by the relevant policy committee
- (iii) Efficiencies to be maximised
- (iv) The use of New Homes Bonus in line with the medium term financial plan and
- (v) Options for service cuts to be provided. These proposals to be considered by the Resources Working Party and brought to the Policy and Resources Committee and Council.

Recorded vote

For – Councillors V Arnold, S Arnold, Bailey, Burr, Cowling, Hope, Ives and Oxley

Against – Councillors Clark and Keal

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<b>PART B:</b>	<b>RECOMMENDATIONS TO COUNCIL</b>
<b>REPORT TO:</b>	<b>POLICY AND RESOURCES COMMITTEE</b>
<b>DATE:</b>	<b>24 SEPTEMBER 2015</b>
<b>REPORT OF THE:</b>	<b>FINANCE MANAGER (s151) PETER JOHNSON</b>
<b>TITLE OF REPORT:</b>	<b>BUDGET STRATEGY 2016/2017</b>
<b>WARDS AFFECTED:</b>	<b>ALL</b>

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

- 1.1 This report forms the basis of preparation and planning for the 2016/2017 Council budget.

### **2.0 RECOMMENDATIONS**

- 2.1 That Council is recommended to approve the following strategy for the preparation of the 2016/2017 budget:
- (i) Proposals to be brought forward for a 1.99% increase in Council tax;
  - (ii) Increases in fees and charges to be to a maximum of 4.5% on a cost centre heading basis excluding VAT and only those charges officers recommend above this figure to be considered by the relevant policy committee;
  - (iii) Efficiencies to be maximised; and
  - (iv) The use of New Homes Bonus in line with the medium term financial plan.
  - (v) Options for service cuts to be provided. These proposals to be considered by the Resources Working Party and brought to the Policy and Resources Committee and Council.

### **3.0 REASON FOR RECOMMENDATIONS**

- 3.1 The proposals will ensure the Council sets a balanced budget for the forthcoming year with minimal impact on Council services.

#### **4.0 SIGNIFICANT RISKS**

- 4.1 The significant risk is that efficiencies cannot meet the shortfall and cuts to front line services will be required. This is mitigated through a whole Council approach to savings identification and investment proposals leading to savings through budget review, shared services and service reviews. (see risk matrix).

#### **5.0 POLICY CONTEXT AND CONSULTATION**

- 5.1 The budget strategy is a key process affecting all service delivery and linking to the Council Plan and all of the strategic plans as well as providing the means for attaining the Council's objectives and priorities.
- 5.2 Public consultation will take place to inform the budget process. Early consideration of options for cuts by members will facilitate timely and meaningful consultation.

### **REPORT**

#### **6.0 REPORT DETAILS**

- 6.1 The annual budget setting process for the Council will necessitate the identification of savings to deliver a balanced budget. The Medium Term Financial Plan (MTFP) as approved by members with the Council's Financial Strategy in February 2015 set out the projected financial position. At that time the Council set a 0% increase in its part of the Council Tax bill for 2015/2016. This was supported by additional Government grant equivalent to a 1.0% increase in Council tax.
- 6.2 Within the MTFP projection was the need to identify nearly £400k of efficiency and cuts for the 2016/2017 budget. This position was based on the following assumptions:
- Further Cuts to Government Revenue Support Grant (RSG) of 33% in 2016/2017
  - No significant Changes to the Business Rate Retention base
  - Using £338k of New Homes Bonus to support revenue
  - A Council Tax increase of 1.99% in 2016/2017
  - Pay Inflation of 1%
  - Price inflation of 3%
- 6.3 There are a number of key influences on the finances of the Council for 2016/2017 which then impact on the budgetary position. These include:
- Government grant
  - The Business Rate Retention Scheme
  - Council Tax increase
  - Income from Fees and Charges
  - Issues arising from the current year
  - Pay and price inflation
  - Revenue effects of the Capital Programme
  - Efficiencies
  - Use of New Homes Bonus and Cuts to Services/Additional income

#### **Government Grant**

- 6.4 The Council has no indication at present of the likely level of Government Grant for 2016/2017. Details of the provisional grant settlement are expected in early

December 2015. This announcement may also provide a provisional figure for 2017/18.

#### **The Business Rate Retention Scheme**

6.5 The basic operation of the Government Support for RDC in 2015/2016 is as follows:

- The Council continues to collect Business Rates.
- 50% is paid over to the Government.
- Of the remaining 50%, 9% is paid to the County Council and 1% to the Fire and Rescue Service.
- The Council will be provided with a set amount of the remainder it must pay (the Tariff) over to the Government (whatever the business rate income is). RDC keeps the rest.
- Growth in business rates above a baseline target could lead to an increase in RDC resources.
- In 2014/15 the Council incurred a small deficit from the business Rates Retention Scheme. Under regulations this deficit impacts on the revenue account in 2015/16, however the council has made provision within reserves in 2014/15 to accommodate this shortfall.
- The Council continued as a member of the North Yorkshire Business Rates Pool in 2015/2016, which incorporates 5 Districts and the County Council. The benefit of forming the pool is that the levy rate on growth above target is reduced to zero. This benefit is shared between the pool members in accordance with the agreement. In 2014/15 the council saved £61k as a result of being in the Business Rates Pool.

6.6 For the 2015/2016 budget the following table sets out the relevant figures.

	<b>Government Target £m</b>	<b>2015/16 Budget £m</b>
Business Rates Income Ryedale	16.545	17.988
RDC Share (40%)	6.618	7.195
Tariff payable to Government	5.131	5.131
Sub total	1.487	2.064
Funding Target	1.487	1.487
Levy payment (50%)		0.289
Business Rate Income retained by RDC	1.487	1.775

6.7 For the 2016/2017 budget there are a number of factors which will change the income from the Business Rates Retention Scheme:

- Changes to the Business Rate base
- Collection Rates for Business Rates
- The inflation factors to be applied to the Business Rate Multiplier and tariff
- The final position of the Business Rates Pool in 2015/2016 and it's continuation into 2016/2017.

#### **Council Tax Increases**

6.8 The Council's MTFP is predicated on a 2% increase in Council Tax for 2016/2017. The 2015/2016 charge was £176.72 per band D property. The Council has not increased the Council tax for the last 6 years.

6.9 The Government confirmed the referendum limit for increases in Council Tax in 2015/2016 at 2%. The referendum principles were published on 3 February 2015.

Councils wanting to increase above this level must undertake a referendum of residents. As the cost of this would be c£70k, the Council would need to be considering a 4%+ increase in Council tax to make it worthwhile. Referendum principles for 2016/17 have yet to be confirmed.

- 6.10 A rise of 2% would equate to £3.53 per year (under 7p per week) or less for the majority of Ryedale residents. Members should note that the full Band D charge is currently £1,554.06 taking into the account the charges from the County Council, Fire and Police services. RDC therefore makes up just over 11% of the final bill. A 1% increase in the Council's charge raises approximately £36k.
- 6.11 The Council accepted the Government's Council Tax freeze offer in 2015/2016, as a result the Council received a grant equivalent to 1% of Council Tax in 2015/2016. At this point it is not known if the 2015/2016 CT freeze grant will be baselined into RSG as has been the case in previous years, or whether the Freeze Grant will be available in 2016/17.
- 6.12 Whilst Council has accepted the various council tax freeze offers from the Government so far, with the overall financial projections for the Council over the next 4 years, accepting the grant is a short term benefit but not a long term benefit, which may lead to greater service cuts. The Council took the Freeze grant in 2015-16. The following table sets out the overall effect on Ryedale finances from accepting or rejecting the offer next year (assumes no Council Tax Base Growth and 1.99% increase in all years where freeze not accepted):

	<b>Reject Offer (£000)</b>	<b>Accept 16/17 Offer (£000)</b>
2016/17	3,620	3,549
2017/18	3,692	3,620
2018/19	3,765	3,692
2019/20	3,840	3,765
2020/21	3,916	3,840
Freeze Grant		36
Total RDC Income	18,833	18,502
<b>Difference</b>		<b>331</b>
Ongoing		77

- 6.13 Therefore to Summarise:
- Over the next five years if the Council accepts the 2016/17 Freeze grant offer only, and it is not baselined, it will have £331k less Council Tax income. This money will need to come from existing service delivery in cuts/additional income. Plus every year thereafter the Council is £77k worse off than rejecting the offer.
- 6.14 Against this projection and the profile of the Council's finances up to 2021 (Annex A), which is prepared on the basis of a 2% increase in Council Tax, use of New Homes Bonus to support revenue and service cuts of £400k being required over the next two years. The officer recommendation is that the Council does not accept the Council Tax Freeze grant offer.

- 6.15 There are other issues which will impact on the Council Tax income next year:
- Growth in the Council Tax Base through new properties. An estimate for growth has been included in Annex A based on previous history
  - The Local Council Tax Support Scheme (LCST). The Council Tax base is suppressed by the cost of LCST. Further work is ongoing in this area, the cost of which is affected by the decision of the four major precepting Authorities on next years council tax rises.

### **Income**

- 6.16 It is important that the Policy and Resources Committee recommend to Council an outline target for increases in income. Clearly where officers believe that increases in line with the strategy will be counterproductive to overall income, or where there is potential scope for increasing above the target these would be considered by the Policy and Resources Committee. The recommended target increase is up to 4.5% on a cost centre heading basis excluding VAT.

### **Current Year issues (2015/16)**

- 6.17 Benefit Administration grant reduced in 2015/16 and is likely to reduce again in 2016/17.
- 6.18 Further pressure on the dry recylcate income budget as the demand for recyclable materials falls along with a reduction in oil prices.
- 6.19 Ryecare have failed to win any new contracts and are unlikely to do so, although officers have been working to increase income from private lifelines.
- 6.20 Closure of Pickering TIC from September 2015.
- 6.21 Reduction in the value of reclaimable court costs relating to Council Tax and NNDR recovery.
- 6.22 Proposed changes to the delivery of the Land Charges Service, the timescale for change and the financial impact on Ryedale are still uncertain.

### **Pay and Price inflation**

- 6.23 The 2015/16 budget included provision for a 2.2% pay rise for all employees, an increase has yet to be agreed for 2016/17.

### **Revenue effects of the Capital Programme**

- 6.24 The MTFP incorporates predictions around the revenue impact of Capital Decisions, in particular the borrowing to finance the Brambling Fields junction upgrade.

### **Towards 2020**

- 6.25 Following on from the success of the One-11 (2011/12), Going for Gold (2012/13) and Round 3 (2013/14) Programmes, Officers are progressing the 'Towards 2020' programme. The purpose of the programme is to deliver £1.2m of savings by 2019/20, whilst minimising cuts to services.
- 6.26 A series of ongoing staff briefings have taken place to ensure that employees are aware of the financial projections.
- 6.27 Taking into account the savings delivered through the previous programmes and through delivering a balanced budget in 2014/15 and 2015/16, officers are clear that

finding a further £1.2m of savings is a significant challenge given the reduced base position.

- 6.28 Towards 2020 is a programme aimed at delivering savings over the next 4 years, the strategy will revolve around the following key headings:

**Our Future Workforce - Target £500k**

- 6.29 The Council has asked for expressions of interest in voluntary redundancy (VR) in line with its Redundancy Policy. A number of applications have been received, these applications have been evaluated in terms of the impact on service provision and cost. Where proposals were received that delivered savings in staff costs that could be achieved through reorganisation and service redesign which would not impact on service levels and deliver a financial saving in the 2016/17 base budget, these have been taken forward.
- 6.30 A moratorium on the filling of vacant posts has been put in place, a review of vacant posts has been undertaken by officers in line with the criteria for Voluntary Redundancy and it is the intention to remove a number of vacant posts from the establishment.
- 6.31 All of the above will be efficiencies as service levels will not be affected.

**Managing Resources - Target £490k**

- 6.32 Continuation of the Budget Review Process with Heads of Service and Service Unit Managers, involving a 'line by line' analysis of spend with the aim of delivering £100k p.a. of efficiencies. The target also includes a forecast £90k saving from the provision of the leisure contract in 2017/18.

**Service Reviews - Target £210k**

- 6.33 Taking into account all of the above, further savings will be required to balance the budget over the next 4 years should the Council need to reduce its base budget by the predicted £1.2m. Work is ongoing, with service reviews underway and Officers will work with Members, initially through the Resources Working Party. The need to make service cuts will become clearer when the grant settlement for 2016/17 is announced in December.

**2016/2017 Budget Efficiencies, Cuts and New Homes Bonus**

- 6.34 The Council has successfully reviewed all services in the preceding five years. This has seen many services reorganised and restructured as well as jobs and roles changing through investment in IT. This process over the 5 years highlighted £3.3m of savings, the majority being efficiency savings.
- 6.35 The forecast at Annex A assumes £135k of efficiencies and £250k in service cuts in 2016/17 and officers are working to achieve this level of savings. Individual work plans within the Towards2020 programme have been scheduled to initially deliver efficiencies before looking at service cuts. At this time Officers believe that the total savings requirement for 2016/17 can be achieved through a combination of the current VR process, the deletion of vacant posts and the annual budget review process.
- 6.36 The issues highlighted in this report show that there will be a budget shortfall which cannot be met by efficiencies. This shortfall can be met by using one or a combination of the following:

- Using New Homes Bonus (NHB) to support revenue
- Use of Reserves
- Cuts to services/Additional Income

- 6.37 The Council has performed well in earning NHB to date. The projection is that the Council will receive around £1.69m in NHB in 2016/17. Of the £3.877m earned in total in the previous 5 years, £0.734m has been used to support the revenue budget and £0.288m to support the capital programme, drawdown of NHB in line with the Medium Term Financial Plan will be required in order to ensure no further cuts in 2016/17.
- 6.38 The Council's 2015/2016 budget did not plan to draw on the Council's General Reserve. The Council's reserves are adequate however the use of reserves to bridge revenue budgets only provides a short term solution to financing difficulties.
- 6.39 Only unavoidable growth can be accommodated at this time. Within the MTFP £250,000 is included for growth items.

## 7.0 IMPLICATIONS

- 7.1 The following implications have been identified:
- a) Financial  
The financial impacts are detailed within the report.
  - b) Legal  
There are no new legal issues around the budget strategy.
  - c) Other  
All savings proposals will be evaluated to identify direct other implications where possible.

## 8.0 NEXT STEPS

- 8.1 The following table sets out the timetable for the budget process:

Resources Working Party unplanned or exceptional budget matters arising	12 November 2015
Member briefing on budget	13 January 2016
Policy and Resources Committee consider 2016/2017 Budget	4 February 2016
Full Council formally set budget and Council Tax	23 February 2016

**Peter Johnson**  
**Finance Manager (s151)**

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**Background Papers:**  
None.

## RISK MATRIX

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
Efficiency savings unable to meet the shortfall therefore service cuts will be required.	Cuts to front line services, reputational damage to Council, possible poor external inspection.	5	D	Co-ordinated approach to savings identification, looking at budget as a whole. IT investment to change working patterns and make efficiencies. Ongoing service reviews and budget review of revenue budgets. Any cuts will be fully worked up and considered by members at an early stage	5	C

Score	Likelihood	Score	Impact
1	Very Low	A	Low
2	Not Likely	B	Minor
3	Likely	C	Medium
4	Very Likely	D	Major
5	Almost Certain	E	Disaster



### Medium Term Revenue Forecast 2015/16 - 2019/20

	2015/16 Budget £'000	2016/17 Projection £'000	2017/18 Projection £'000	2018/19 Projection £'000	2019/20 Projection £'000	
Base Budget and Inflation						
Base Budget	7,175	6,823	6,515	6,385	6,383	
Pay Increase & General Inflation	150	165	165	165	165	
	7,325	6,988	6,680	6,550	6,548	
Add Future Cost Increases						
Budget Pressures	330	250	340	150	150	
Capital Programme Borrowing	22	0	0	0	0	
Deduct Future Savings						
Efficiency Savings	-178	-135	-100	-100	-100	
Service Cuts/Additional Income	-224	-250	-150	-100	-100	
NHB Applied to Revenue (Additional)	-413	-338	-385	-117	-47	
Council Tax Freeze Grant	-39					
Net Revenue Budget	6,823	6,515	6,385	6,383	6,451	
<b>Financing</b>						
RSG	1,315	882	592	397	266	
Business Rates	1,775	1,811	1,847	1,884	1,921	
Collection Fund Surplus	104	50	25	25	25	
Council Taxpayers	3,549	3,702	3,848	4,000	4,159	
CT Base Growth	80	71	74	77	80	
Budget Requirement	6,823	6,515	6,385	6,383	6,451	
<b>NHB Note</b>						
2011/12 Earned	215	215				
2012/13 Earned	225	225	225			
2013/14 Earned	268	268	268	268		
2014/15 Earned	419	419	419	419	419	
2015/16 Estimate	260	260	260	260	260	
2016/17 Estimate		300	300	300	300	
2017/18 Estimate			300	300	300	
2018/19 Estimate				300	300	
2019/20 Estimate					300	
NHB Earned	1,387	1,687	1,772	1,847	1,879	
Applied to Revenue cumulative	559	897	1,282	1,399	1,446	
Applied to Capital	288	288	288	288	288	
To be allocated	540	502	202	160	145	1,549

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**RYEDALE  
DISTRICT  
COUNCIL**



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<b>REPORT TO:</b>	<b>COUNCIL</b>
<b>DATE:</b>	<b>17 FEBRUARY 2015</b>
<b>REPORT OF THE:</b>	<b>COUNCIL SOLICITOR AND MONITORING OFFICER ANTHONY WINSHIP</b>
<b>TITLE OF REPORT:</b>	<b>MONITORING OFFICER'S REPORT UNDER SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989</b>
<b>WARDS AFFECTED:</b>	<b>ALL</b>

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## **1.0 PURPOSE OF REPORT**

- 1.1 Members of Council are asked to consider this Monitoring Officer's report in relation to the Motion on Notice received on Friday 21 November 2014 which is Item 4 (iv) on the agenda for the Council meeting on 17 February 2015 and part of which is as follows:

*"1. Ryedale District Council completely opposes all Fracking in Ryedale"*

- 1.2 This report is prepared on the assumption that the above motion seeks to commit the District Council to oppose any fracking related proposals prior to consideration of any such matter by the Council's Planning Committee.
- 1.3 The contents of this report should not be interpreted as favouring any side in the fracking debate. The central focus of the report is on the legal constraints that the Council must comply with in its decision making process.
- 1.4 As the Monitoring Officer for Ryedale District Council, I have a duty to make a report under Section 5 of the Local Government and Housing Act 1989 on any proposal, decision or omission by the authority, or a Committee which has given rise to, or is likely or would give rise to:-
- (1) A contravention of law or any code of practice made or approved by or under any enactment; or
  - (2) Such maladministration or failure as is mentioned in Pt III of the Local Government Act 1974, ie in connection with action taken by or on behalf of the authority, in the exercise of the authority's administrative functions.

1.5 This requirement is referred to in the Council's Constitution: Part 2 Articles of the Constitution, Section 11.4 functions of the Monitoring Officer – Ensuring lawfulness and fairness of decision making.

1.6 Under Section 5(5) of the same Act the authority shall consider the report. In this case the meeting is the Council meeting to be held on 17 February 2015.

## 2.0 **RECOMMENDATIONS**

2.1 It is recommended that:

- (i) This report be received; and
- (ii) That a further report be put to the Policy & Resources Committee meeting to consider and recommend to Council amendments to the Council Procedure Rules relating to motions on notice to clarify the circumstances when a motion on notice may be rejected.
- (iii) It is my recommendation that Members do not adopt the proposed policy as drafted.
- (iv) Council considers this report and has due regard to the advice in it before deciding whether or not to approve the motion set out in paragraph 1.1 above to bring finality to it.

## 3.0 **BACKGROUND**

3.1 The key events and points of this case which are the context for the motion on notice referred to above are as follows:

- (i) Councillor Clark and seven other Members have requisitioned an extraordinary meeting of council by an undated requisition received on Friday 21 November 2014.
- (ii) The requisition for an extraordinary meeting of council was made pursuant to Council Procedure Rule 3.1(iv) in the Council's constitution.
- (iii) That requisition includes a proposed motion on notice moved by Councillor John Clark and seconded by Councillor Tommy Woodward relating to fracking in the District of Ryedale which includes the following proposal for the District Council to resolve:

*"That Ryedale District Council completely opposes all fracking in Ryedale"*

- (iv) By a press release dated 25 November 2014 a company called Third Energy announced its intention to apply for permission to hydraulically fracture an existing well at Kirby Misperton in the District of Ryedale:
- (v) The legal position is that no fracking, or drilling for oil or gas, can take place without:

- (a) Planning Permission, from the Minerals Planning Authority (in this case North Yorkshire County Council or the North York Moors National Park Authority); and
  - (b) Planning Permission for any ancillary related development which is a District matter from Ryedale District Council.
  - (c) Environmental permits, from the Environmental Agency.
- (vi) The MPA, the EA and where relevant Ryedale District Council or the North York Moors National Park Authority hold public consultations before coming to their respective conclusions.
  - (vii) As the Mineral Planning Authority, North Yorkshire County Council must consult Ryedale District Council under Article 22 of the Town and Country Planning (Development Management Procedure)(England) Order 2010.

#### **4.0 INTRODUCTION**

The scope of the report is to consider the following issues:-

- (i) Must all motions on notice be put to Council.
- (ii) The meaning of the motion on notice having regard to the every day meaning of the words used;
- (iii) The administrative law concept of fettering discretion by the adoption of an over rigid policy
- (iv) The legal implications of the motion on notice;
- (v) Potential personal liabilities of Members
- (vi) Whether or not there has been any illegality or maladministration for the purposes of Section 5 of the Local Government & Housing Law 1989;
- (vii) The recommended way forward for Council

#### **5.0 REPORT**

##### **5.1 MUST ALL MOTIONS ON NOTICE BE PUT TO COUNCIL?**

An original motion is one propounding a substantial issue for consideration and action at a Council meeting. The proper officer must consider whether the motion on which notice has been given is one that may properly be accepted.

If the motion may properly be accepted and notice has been given in time, then the proper officer must proceed to place it on the agenda for the next council meeting. If she considers the terms of the motion out of order, illegal, irregular or improper, she should consult the chairman or take such other action as may be laid down in standing orders.

A standing order covering these matters might be framed in these words:

*“1. If notice is given of any original motion that, in the opinion of the proper officer, is out of order, illegal or defamatory, the proper officer shall immediately submit such notice to the chairman and it shall not be accepted and placed on the agenda without his sanction. In the event of non-acceptance, the proper officer shall so inform the member giving notice including the reasons for rejection.”*

*2. Where the deficiency in the motion on notice is technical, the Proper Officer shall seek to assist the mover to alter the notice of motion so as to achieve the movers purpose lawfully.”*

With a standing order of this kind the decision to reject a motion on notice is a decision of the Chairman of Council, which may only be taken on the advice of the Proper Officer.

Other Councils may have more detailed standing orders.

Where councils have the above standing order in its constitution, a motion that seeks to require the local authority to do something that it patently cannot do would be out of order and one that sought action that was ultra vires or otherwise illegal would be out of order. One that was defamatory or offensive could be ruled out as improper.

The Council Procedure Rules in the Councils existing constitution do not currently make explicit provision for rejecting motions on notice. Members of Council are asked to consider the merits of including provision for the rejection of motions on notice in the Councils constitution and this is included as a recommendation of my report.

The motion on notice received on Friday 21 November 2014 as proposed by Councillor John Clark could not be rejected prior to the despatch of the agenda for a Council meeting on the basis of the provisions of the Councils current constitution.

## **5.2 MEANING OF THE MOTION ON NOTICE**

The text of the motion on notice received on Friday 21 November 2014 is as follows:-

*“In view of the following facts:-*

- The statutory authorities have neither the people, expertise of the independently verified data to safely control Fracking.*
- As a result, risk and prevention of dangers will depend on industry self regulation.*
- The worldwide evidence to date is that Fracking is an unacceptably high risk strategy.*
- Ryedale District Council can only condone or oppose Fracking.*

*It follows that:-*

- i Ryedale District Council completely opposes all Fracking in Ryedale.*
- ii Ryedale District Council calls upon all Thirsk, Malton and Filey parliamentary candidates for the forthcoming general election to state clearly if they either oppose or support Fracking”*

For the purposes of ascertaining the meaning of the motion, this report focuses on the following text :

*“ i. Ryedale District Council completely opposes all Fracking in Ryedale”.*

The meaning of this text is clear in that it proposes an absolute policy on matters relating to fracking in Ryedale. This can be interpreted as a blanket policy of opposition before hearing the facts of the case.

This means that the motion, if passed, applies across all council functions, including as landowner, as local planning authority and as an economic development authority.

### **5.3 ADMINISTRATIVE LAW CONCEPT OF FETTERING DISCRETION AND THE ADOPTION OF AN OVER RIGID POLICY**

Members are aware that the decisions of Council and its Committees are subject to the supervisory jurisdiction of the courts which have set minimum quality control standards for local authority decision making.

Decisions of the Council and its Committees are subject to the normal public law principles. These principles include the requirement that laws enacted by Parliament be faithfully executed and that local authority decisions be congruent with legislative purpose. Another important principle is that power should not be exercised in an arbitrary way.

The District Council is subject to the common law principles which apply to all decision-making by local authorities, including the requirement to take a reasoned decision based upon all material information.

Where no right of appeal exists the decision of a Council or Committee can be challenged by way of a court procedure called judicial review .

If the claim for judicial review is successful, the court may grant a quashing order, mandatory order, prohibiting order, declaration or injunction; it may also award damages in certain circumstances.

The three broad grounds of review for judicial review may be summarised as follows :

#### **(a) Illegality**

- (i) Doing an act with no legal authority (simple illegality).
- (ii) Misinterpreting the law governing the decision.
- (iii) Failure to retain a discretion by:
  - (1) Improper delegation.
  - (2) Fettering of discretion by adoption of over-rigid policy.
- (iv) Abuse of discretion:

(1) Using a power for an improper purpose.

(2) Taking into account irrelevant considerations or failing to take into account relevant considerations.

**(b) Irrationality.**

**(c) Procedural Impropriety.**

The focus of this report is on the ground of review relating to a failure to retain a discretion by the fettering of discretion by adoption of an over-rigid policy.

Although a statute or subordinate legislation may provide that a public body can make a decision as it thinks fit, the courts have adopted the approach that this does not mean that the public body can make literally *any* decision it thinks fit. Instead, the courts will imply certain limitations, as they do not accept the notion of an absolute or complete discretion. If the use of the discretion is not controlled, it amounts to an arbitrary power.

If a public decision –maker has been conferred with a public law discretion, it should consider whether to exercise it.

Public law decision makers therefore abuse their discretion if they unnecessarily restrict the circumstances in which they will use it (eg they adopt an overly-rigid or blanket policy which affects an applicant or individual). In this way the decision-maker is fettering his discretion by refusing to exercise it when new or exceptional circumstances arise. Essentially the matter is not considered on its merits.

#### **5.4 THE LEGAL IMPLICATIONS OF THE MOTION ON NOTICE**

Members will be aware of the importance of maintaining a clear and strong public perception of the Authority's objectivity in determining any matters associated with fracking related development or responding to consultation on fracking .

Much guidance that officers give Members on probity in decision making is intended to ensure that decisions are lawfully made and are not subject to legal challenge by judicial review.

Members know it is important that planning decisions in particular are made:-

- on their merits;
- on planning grounds;
- by Members with an open mind and after considering all the evidence;
- in the public interest and not as a result of any private interest.

Anything said or done which indicates that the above standards of decision making have not been met by Members or appear not to have been met could be used as a basis for challenging a decision related to fracking development in the High Court by anyone wishing to do so .



The proposed motion on notice, would if passed by Council, amount to the adoption of a blanket policy of opposition to any matter related to fracking before hearing the facts of the case.

The blanket policy could be applied to the following three areas of decision making:

(i) **Statutory Consultee Responsibilities.**

As the Mineral Planning Authority, North Yorkshire County Council and the North York Moors National Park Authority must consult Ryedale District Council under Article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2010. Such consultation will include contributions from the District Council in its capacity as a local planning authority for District matters and environmental health.

(ii) **As a Local Planning Authority for any fracking related or ancillary development which is not a County matter.**

Section 70 of the Town and Country Planning Act 1990, provides that Members have a statutory duty when determining planning applications, to have regard to the provisions of the development plan where material to the application, and to any other material consideration. The starting point for decisions on planning applications is the development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says that planning decisions shall be made in accordance with the development plan, unless material considerations indicate otherwise.

(iii) **Local Authority Land**

If any local authority land were needed for the proposed fracking development then a decision would need to be made by the Council in its capacity as a landowner.

The blanket policy of opposition to the above matters before considering the matter on its merits would amount to an unlawful fettering of discretion by the adoption of an over rigid policy.

It is appreciated that anti-fracking campaign groups wish local authorities to adopt a blanket policy of opposition to fracking. Members are advised that it is not in the gift of local authorities to adopt such a blanket policy for the reasons contained in this report.

In Summary the ground of unlawfulness, enabling a decision to be held void on judicial review, include ultra vires, unreasonableness, improper purpose, actual or apparent bias or predetermination, breach of procedural requirement

and breach of other statutory provision, such as failure to comply with HRA, etc..

Against this background the proposed motion would be unlawful for two reasons-

- a. It commits the Council to a rigid policy in areas where the Council is required to take into account a number of factors, of which policy may be one but cannot dictate the result to the exclusion of all other factors, before coming to a decision. Most notable is that of planning both in its role as statutory consultee on County and Park applications for minerals and waste, and as local planning authority where it has to determine applications itself. In all such cases, it must take its decision having had regard to all material considerations, and cannot decide them simply on the basis of policy.
- b. It is so absolute that it unreasonably fetters the Council's discretion when it comes to deal with any matter related to fracking.

The proposed motion if passed would therefore lay the Council open to judicial review. It would have the very real potential to gift a claimant with a "JR on a plate" for any promoter of fracking development.

There may well be very real concerns about the possible adverse impact of fracking and the inadequacy of the community benefit provisions. Those concerns relate to specific issues such as ground water pollution, ground instability, disturbance to wildlife and to households, road traffic, spoil disposal, and visual intrusion in areas of high landscape value. It would be entirely reasonable for the Council to list those concerns and say that it would in principle oppose fracking unless it was satisfied that these issues had been resolved. But fracking can potentially make a substantial contribution to the country's energy needs and can provide valuable local employment. So it would be unreasonable for the Council to commit itself to oppose a fracking proposal if all potential grounds of objection had been satisfactorily resolved.

## **5.5 POTENTIAL PERSONAL LIABILITY OF MEMBERS'**

This part of the report considers what potential personal liability a Councillor will have for his/her actions in the circumstances of this case. Normally, a Councillor takes a decision not as a private individual but as a Councillor on behalf of the Council. Accordingly, it is the Council rather than the individual Councillor who incurs the liability resulting from what is in law a decision of the Council to enter a contract, buy land or grant planning permission. But the statutory immunity from personal liability, which the Councillor enjoys under Section 265 of the Public Health Act 1875, does not apply where the Councillor goes outside his/her powers as a Councillor (so acting as a private individual) or acts in bad faith, for personal gain or out of malice.

A Councillor is treated as a trustee of Council assets, with a fiduciary duty to apply those assets in the public interest. Where a Councillor abuses that trust, by causing a loss he/she can be held personally liable for the resulting loss.

The route of legal challenge, either to the overall anti-fracking policy or to any decision which has been taken on the basis of that policy rather than on proper consideration of all material considerations, would be by way of judicial

review. Judicial review is expensive. If the Council were to be challenged and lose a judicial review it might expect that its own legal costs would amount to a minimum of £50,000, and that it would be liable for the applicant's legal costs which might amount to as much as £200,000. In addition, where the Council had acted unlawfully, it could expect to be liable to the applicant for damages in respect of any business loss which the applicant has suffered as a result of the unlawful action by the Council, including delay to a profitable development.

In addition, where members act outside their powers or in bad faith, they can have personal liability for any loss which they cause. So a frustrated applicant could seek damages from individual members involved in an unlawful decision, and the Council could seek to recover any losses which it had suffered from individual members who were involved in taking the decision.

The key point is that Councillors only have a statutory immunity under Section 265 of the Public Health Act 1875, as extended by Section 39 of the Local Government (Miscellaneous Provisions) Act 1976, if they act lawfully and in good faith. Passing an unlawful resolution would be itself unlawful, and if a member has been warned by the Monitoring Officer, he or she cannot say that they were acting in good faith. Accordingly, such a Councillor can be liable in misfeasance in public office to the authority or to any person suffering loss as a consequence.

It is my duty to warn Members that an applicant could also seek damages from individual Councillors where they have acted unlawfully, as set out above, or in bad faith, and caused loss to the applicant. Such an action would probably be in the tort of misfeasance in public office.

**5.6 IS THERE LIKELY TO BE ANY ILLEGALITY OR MALADMINISTRATION FOR THE PURPOSE OF SECTION 5 OF THE LOCAL GOVERNMENT & HOUSING ACT 1989?**

The proposed resolution as set out in the motion on notice, would be unlawful as unreasonably fettering the Council's discretion and would render any later resolution to object to a particular fracking planning application or other fracking related matter to be open to judicial review.

It is more than possible that an unsuccessful applicant for planning permission would seek to judicially review the decisions of both the County Council as the minerals planning authority and the District Council as local planning authority and consultee, which again would be likely to result in substantial loss to the authority in terms of legal costs and possibly an award of damages.

Although this is my view as the Monitoring Officer for the District Council only the Courts can give a definitive interpretation.

Members are also advised that such an unreasonable decision to adopt this policy, or a subsequent decision taken on the basis of the policy without proper consideration of all other material factors, would almost certainly amount to maladministration. In such circumstances, the Ombudsman can make a public report identifying the maladministration and recommending the

Council to make a compensation payment to anyone suffering injustice as a consequence of the maladministration.

## **5.7 THE RECOMMENDED WAY FORWARD**

Council is not bound to comply with the above recommendation, but Members should be aware of the risks which they are taking both personally and for the authority should they ignore this advice.

Against this background, Council is recommended to consider and vote on the motion on notice to bring finality to it having due regard to the contents of this report.

## **6.0 FINANCIAL IMPLICATIONS**

The financial implications of passing a resolution to adopt a blanket policy of opposition to all fracking in Ryedale are significant and are as follows :

- (i) the expense of any judicial review challenge in the High Court by a person with locus standi or the External Auditor ;
- (ii) the potential for a local government ombudsman complaint with the consequent cost of Officer time in responding to any investigation;
- (iii) the cost implications of refusing any fracking related planning applications on the basis of an unlawful blanket policy. The District Council would be at risk of a full award of costs being made against it in any appeal.

## **7.0 LEGAL IMPLICATIONS**

The legal implications of passing a resolution to adopt a blanket policy of opposition to all fracking in Ryedale are as follows :

- (i) a potential High Court challenge by a person with locus standi or the External Auditor ;
- (ii) Personal liability of Members for knowingly passing an unlawful resolution causing loss to the District Council.

## **8.0 RISK ASSESSMENT**

The passing of a resolution to adopt a blanket policy of opposition to all fracking in Ryedale is a high-risk strategy.

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**Background Papers:**  
None