

PERTH AND KINROSS COUNCIL

Strategic Policy & Resources Committee

2 December 2015

East Central Hubco – Changes to Governance Documents

Report by Director (Environment)

The purpose of this report is to seek approval for amendments to the contractual documents governing the Council's interest in the East Central Hub Initiative, participation in which was approved by the Committee on 30 November 2011.

These amendments are necessary as a result of changes imposed by the framework for the European System of National and Regional Accounts, commonly referred to as ESA10.

1. BACKGROUND / MAIN ISSUES

- 1.1 At its meeting of 30 November 2011 (Report No 11/606 refers), the Committee approved the Council's participation in the Scottish Futures Trust Hub Initiative. Following on from this approval, the Council entered into the contract documents to establish the legal and governance framework to deliver this initiative.
- 1.2 As a result of changes to the European System of National and Regional Accounts (ESA10), the current hubco structure would result in all future revenue funded projects (referred to as DBFM projects) being classified as public sector debt.
- 1.3 The Scottish Futures Trust are of the view that in order to ensure that any future DBFM projects are not classified as public sector debt for the purposes of national accounts purposes, changes are required to be made to both the Territory Partnering Agreement and the Shareholders' Agreement.
- 1.4 The purpose of this report is to seek approval of the proposed changes to the governance documents as set out in this report.

2. PROPOSALS

- 2.1 Since approval of the Council's participation in the Hub Initiative, the Council has utilised East Central Hubco to deliver a number of infrastructure projects, including the completion of the new build primary schools at Crieff and Oakbank. In addition, the Council is currently following the contractual process to deliver the refurbishment of Alyth Primary School and Perth Theatre.

- 2.2 The Committee has previously approved the use of East Central Hubco to deliver the proposed replacement of Kinross and Tulloch Primary Schools and a new build secondary school at the proposed Bertha Park development. This project is in part financed by funds from the latest round of Scottish Schools for the Future funding by means of payment of a revenue support charge. As a consequence of ESA10, it has been necessary to remove Kinross and Tulloch Primary Schools from this programme, as capital contributions are no longer permitted. As such, the two schools will be delivered through capital expenditure on the same terms as Crieff and Oakbank Primary Schools.
- 2.3 A further consequence has been that the new build secondary school at Bertha Park has become a standalone project. The contract will be entered into on a fully revenue funded basis as a DBFM project. In order to deliver the DBFM project, the Council is required to agree to the changes proposed to the East Central Hubco governance documents. In order to avoid any DBFM project being categorised as public sector borrowing, changes are required to be made to the Shareholders Agreement and the Territory Partnering Agreement. The splitting of Kinross and Tulloch primaries from the DBFM agreement and the 100% funding for Bertha Park through DBFM was approved by Strategic Policy and Resources Committee on 23 September 2015 (Report No. 15/396 refers).
- 2.4 There are 5 key changes to the above agreements, which are summarised below:
- (a) Formation of DBFM Co: Under the current arrangement, the special purpose delivery company formed in a revenue financed project is Sub-hubCo, which is wholly owned by hubCo. Perceived public sector control of the delivery company must be avoided and therefore Sub-hubCo will be replaced with a company known as DBFM Co which will not be wholly owned by hubCo.
 - (b) Participant Sub-debt now limited to 10%: Under the current arrangements East Central Participants could invest up to 30% sub-debt in each revenue funded project. Under the new arrangement, this will be limited to 10%.
 - (c) Formation of a Hub Charitable Foundation (HCF): A HCF will be formed to hold 20% of the shares in the DBFM Co and to potentially provide the 20% sub-debt shortfall created as a result of Participant sub-debt being reduced from 30% to 10%. A single HCF will be formed across the 5 hubs in Scotland and membership will include a trustee appointed by SFT, a representative appointed jointly by the Private Sector Development Partners and a maximum of 3 independent trustees.

- (d) DBFM Co Directors: Under the current arrangements, the Participants have a right to appoint a public sector director (i.e. the B Shareholders' Director). However, under the new arrangement for DBFM Co, the Participants (as holders of one-third of the B Shares) will not be entitled to exercise a right to appoint a Director unilaterally. In addition, the participants will not be able to block a nomination made by the holder of the remaining two thirds of the B Shares (i.e. the Hub Charitable Foundation). They will, however be entitled to vote along with the holder of the remaining two thirds of B shares to appoint a B Director.
 - (e) Capital Contributions: Currently Participants are able to make a capital contribution toward the costs of a project at Financial Close. However, under the new arrangement 100% revenue funding is required and no capital contributions are allowed.
- 2.5 The effect of the above five key changes is to contractually reduce the level of control available to Participants in a DBFM project. However, it should be noted by the Committee that the level of control available to the Participant under the amended documents is much more enhanced than if any revenue funded project was undertaken under the previous standard PPP contract. Furthermore, the Scottish Futures Trust have committed that, for the Bertha Park project, the Council are to be in "no worse" a position had the project been fully funded by Council borrowing.
- 2.6 In the event that the Committee do not approve the changes, the Council will be unable to proceed with the Bertha Park project. This will also delay the implementation of other public sector projects, which in turn may jeopardise the Council's participation in the Hub Initiative.
- 2.7 In order to comply with Procurement Regulations, a voluntary ex ante transparency notice was published by the Scottish Futures Trust (on behalf of all participants) on 17 June 2015, to which no challenge has been received. It is anticipated that the Council would execute the amended contract documents as soon as reasonably practicable after approval by the Committee.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 The proposed changes to the East Central Hubco documents are necessary in order to ensure that DBFM projects are not categorised as public sector debt, and as such ensures that the funding for the Berth Park project would remain available to the Council.

3.2 It is recommended that the Committee:

- (a) approve Amended Territory Partnering Agreement; and
- (b) approve Amended Shareholder Agreement
- (c) authorise the Head of Legal Services to execute the above documents and any other ancillary documents required to implement the changes to the governance documents of East Central Hubco as required as a result of ESA10.

Authors

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Approved

Name	Designation	Date
Barbara Renton	Director (Environment)	18 November 2015

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	None
Corporate Plan	None
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	None
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	Yes
Risk	None
Consultation	
Internal	Yes
External	None
Communication	
Communications Plan	None

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 The proposals relate to the delivery of the Perth and Kinross Community Plan/ Single Outcome Agreement in terms of the following priorities:

(iii) Promoting a prosperous, inclusive and sustainable economy.

Corporate Plan

- 1.2 The Council's Corporate Plan 2013-2018 lays out five outcome focussed strategic objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resource allocation. These are as follows:

- i. Giving every child the best start in life;
- ii. Developing educated, responsible and informed citizens;
- iii. Promoting a prosperous, inclusive and sustainable economy;
- iv. Supporting people to lead independent, health and active lives; and
- v. Creating a safe and sustainable place for future generations.

- 1.3 This report contributes to objective (iii).

2. Resource Implications

Financial

- 2.1 There are no current financial implications. The funds required to set up the HUBCO (£100/partner) and the working capital £300,000 are funded from existing SFT hub enabling funds.
- 2.2 The East Central Territory has revenue funds of £1.4m (forecast to last until mid 2017/18).
- 2.3. Participants will incur costs in relation to their individual development projects.

Workforce

- 2.4 There are no workforce implications relating to this report.

Asset Management (land, property, IT)

- 2.5 The proposals in this report have no asset management implications.

3. Assessments

Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.
- 3.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome. Assessed as not relevant for the purposes of EqIA.

Strategic Environmental Assessment

- 3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.
- 3.4 However, no action is required as the Act does not apply to the matters presented in this report. This is because the Committee are requested to note the contents of the report only and the Committee are not being requested to approve, adopt or agree to an action or to set the framework for future decisions.
- 3.5 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

- 3.6 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.
- 3.7 The information contained within this report has been considered under the Act. However, no action is required as the Act does not apply to the matters presented in this report.

Legal and Governance

- 3.8 The Head of Legal Services has been consulted and has no issues or concerns with the proposed changes to the hubco governance documents.
- 3.9 The legal basis for the proposals are set out within the content of the report. As the Committee had approved the participation in the Hub Initiative, it is required to approve the amendments to the Territory Partnering Agreement and Shareholders Agreement.

Risk

- 3.10 The risks associated with this report are detailed in section 2.4 (f).

4. Consultation

Internal

- 4.1 Legal Services and Property Services have prepared the report and consulted with Education and Children's Services in the preparation of this report.

External

- 4.2 The subject of this report has been discussed with other Territory Partners.

5. Communication

- 5.1 Not applicable to this report.

2. BACKGROUND PAPERS

Report to the SP&R Committee on 30 November 2011, entitled Hub East Central Territory (HUBCO) – Appointment of a Development Partner - Report Reference: 11/606.

3. APPENDICES

There are no appendices in relation to this report.

