

South Ayrshire Council

Report by Executive Director – Resources, Governance and Organisation to Leadership Panel of 1 December 2015

Subject: Amendments to South West Hubco Agreement

1. Purpose

1.1 The purpose of this report is to:

- (1) seek approval to transfer delegated authority from the Head of Corporate Resources to the Head of Property and Risk as South Ayrshire Council's representative on the Territory Partnering Board; and
- (2) seek approval to grant delegated authority to the Executive Director - Resources, Governance and Organisation to sign amended Hub Initiative Territory Partnering and Shareholder agreements on behalf of Council as a result of changes required under the European System of Accounts 2010 rules (ESA10).

2. Recommendation

2.1 It is recommended that the Panel:

- (1) **approves transfer of the existing delegated authority from the Head of Corporate Resources to the Head of Property and Risk as South Ayrshire Council's representative on the Territory Partnering Board; and**
- (2) **approves the grant of delegated authority to the Executive Director - Resources, Governance and Organisation to sign amended Hub Initiative Territory Partnering and Shareholder agreements on behalf of the Council as a result of changes required under the European System of Accounts 2010 rules (ESA 10).**

3. Background

3.1 The Leadership Panel of 4 September 2012 approved the Council's participation in the Hub as a shareholder, nominated the Executive Director – Development and Environment as South Ayrshire Council's representative on the Territory Partnering Board, and delegated authority to this officer as required.

3.2 On 10 October 2013, South Ayrshire Council approved the recommendation that the delegated authority previously approved for the Executive Director – Environment and Development be granted to the Head of Corporate Resources. This authority designated the Head of Corporate Resources as the Council's representative on the Territory Partnering Board in terms of the Territory Partnering agreement. Since this time there has been a restructure of Chief Officers in the Council (report to Council of 15 May 2014 –

Organisational Structure Revisions) and as a result the post of 'Head of Corporate Resources' was deleted and responsibilities for Hub projects now sits with the Head of Property and Risk.

3.3 In June 2015, guidance was issued by Scottish Futures Trust (SFT) advising that amendments would be required to both the original Territory Partnering and Shareholders Agreements as a result of changes required under the European System of Accounts 2010 (ESA10) rules and the accompanying Manual of Government Deficit and Debt 2014 (MGDD) which were introduced from 1 September 2014.

3.4 The rules under which the national accounts are compiled are set in Europe by Eurostat. Under revised ESA10 rules and the supporting MGDD, changes have been made to the rules applicable to the classification of projects delivered under public private partnership structures such as the hub DBFM model used for the Ayr Academy Learning Campus project. As a result, concerns were raised that hub DBFM projects may require to be classified as public sector rather than private sector; which has significant implications in terms of the Scottish Government funding support.

4. **Proposals**

4.1 It is proposed to transfer delegated authority from the 'Head of Corporate Resources' to the Head of Property and Risk as Council's representative on the Territory Partnering Board. This also provides delegated authority to make decisions which require to be taken by the Territory Partnering Board, and to vote on the Council's behalf in respect of the Public Sector Director election process and take all actions and decisions on behalf of the Council as a shareholder in Hubco.

4.2 It is also proposed to delegate authority to the Executive Director - Resources, Governance and Organisation to sign amended Hub Initiative Territory Partnering and Shareholder agreements on behalf of Council as result of the changes required under the European System of Accounts 2010 rules.

4.3 The proposed amendments by SFT to both the Territory Partnering and Shareholder Agreements are designed to ensure that hub DBFM projects are given a private classification. The participants of all hub territories have therefore been requested by SFT to confirm their agreement and sign the amended Territory Partnering and Shareholders Agreements. It is also a requirement of SFT that the designated signatory of the amendment documents has evidence demonstrating they have the delegated authority of their organisation to sign on their behalf. The key amendments can be summarised as follows:

- **Formation of DBFM Co** - under the original agreement a special purpose company was to be formed called the Subhubco which would have been wholly owned by the hubco joint venture. However, due to the perceived control the public sector has over hubco resulting from shareholding arrangements, and consequently the Subhubco, this requires to be amended. The Council will therefore now contract with a company known as the DBFMCo that sits outside of the hubco corporate structure. The DBFMCo will be owned 60% by the private sector development partner (hub South West), 20% by a newly formed private sector charity, 10% by SFT and 10% by the Council.
- **Formation of a Hub Community Foundation** – A single HCF will be formed across the 5 hub territories 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. Initial funding for the HCF will come from a membership subscription paid for by each of the hub territory private sector development partners and SFT.

- **DBFM Co Directors** - under the original agreement the participants in the South West territory had the right to appoint a Public Sector Director (known as the B Shareholders Director). As a result of the new arrangements the participants in the South West territory will no longer be entitled to appoint a Director unilaterally and will not be able to block a nomination made by the HCF. They will still be entitled to vote along with the HCF to appoint a B Shareholders Director.

4.4 It should be noted that SFT have obtained independent legal opinion from Pinsent Masons LLP who have concluded that the proposed amendments do not materially change the original procurement scope. However, a notice known as a Voluntary Ex Ante Transparency Notices (VEAT) Notice highlighting the key changes proposed was published by SFT on 17 June 2015 on behalf of the participants to further mitigate any risk of procurement challenge. No challenge has been received following the publication of the notice.

4.5 Further clarification is being sought by SFT in conjunction with the UK Office of National Statistics (ONS) who are the final arbiters in the interpretation and application of ESA10. SFT have confirmed that they do not foresee the need for any further amendments to the Territory Partnering and Shareholder Agreements and have therefore requested each participant obtain the necessary authority to have the revised documents signed in readiness for a final decision regarding ESA10.

5. Resource Implications

5.1 *Financial*

None immediately arising from this report.

5.2 *Legal*

(1) None immediately arising from this report.

(2) Drafts of all the foregoing documents have been exhibited to and reviewed by SFT Legal Advisers to ensure that the proposed change in structure will have no additional adverse impact on the Council.

5.3 *Human Resources*

There are no HR issues arising from this report.

6. Risk

6.1 *Risk Implications of Adopting the Recommendations*

(1) There are no risks associated with accepting the recommendations.

6.2 *Risk Implications of Rejecting the Recommendations*

(1) Failure to approve the recommendations could delay the resolution of ESA10 matters which will have a significant impact on the delivery programme for the Council's DBFM project.

7. Equalities

7.1 The proposals in this report have been assessed through the Equalities Impact Assessment Scoping process, and there are no significant positive or negative equality impacts of agreeing the recommendations, therefore an Equalities Impact Assessment is not required. A copy of the Equalities Scoping Assessment is attached as Appendix 1.

8. Sustainable Development Implications

- 8.1 This Report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

9. Options Appraisal

- 9.1 An options appraisal has not been carried out in relation to the subject matter of this report.

10. Link to Council Plan

- 10.1 The proposals contained in this report link to the Council Plan strategic objective: 'Improve the way that we work as a Council'.

11. Results of Consultation

- (1) There has been no public consultation on the contents of this paper.
- (2) Consultation has taken place with Councillor Robin Reid, Portfolio Holder for Resources and Performance.

12. Next Steps for Decision Tracking Purposes

- 12.1 If the recommendations above are approved by Members, the Head of Property and Risk will ensure that the following steps are taken within the following timescales, with progress reported to the Leadership Panel in the 'Council and Leadership Panel Decision Log' at each of its meetings until such time as the steps are completed:

<i>Steps to be taken</i>	<i>By what date</i>	<i>Managed by</i>
Signature of revised Territory Partnering Agreement by Executive Director – Resources, Governance and Organisation	December 2015	Head of Property and Risk

Background Papers **Report to Leadership Panel of 4 September 2012 – [Scottish Futures Trust – South West Territory Hub](#)**

Report to South Ayrshire Council of 10 October 2013 – [Scottish Futures Trust – South West Territory Hub – Appointed Officer and Amendments to Standing Orders](#)

Person to Contact **Valerie Andrews, Executive Director – RGO**
County Buildings, Wellington Square, Ayr, KA7 1DR
Phone 01292 612466
E-mail valerie.andrews@south-ayrshire.gov.uk

Donald Gillies, Head of Property and Risk
County Buildings, Wellington Square, Ayr, KA7 1DR
Phone 01292 612839
E-mail donald.gillies@south-ayrshire.gov.uk

Date: 20 November 2015

1. Policy details

Policy Title: Amendments to South West Hubco Agreement	Lead Officer: Donald Gillies
--	------------------------------

2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this policy? Please indicate whether these would be positive or negative impacts

Community, Groups of People or Themes	Negative Impacts	Positive impacts
The whole community of South Ayrshire	No	No
People from different racial groups, ethnic or national origin.	No	No
Women and/or men (boys and girls)	No	No
People with disabilities	No	No
People from particular age groups for example Older people, children and young people	No	No
Lesbian, gay, bisexual and heterosexual people	No	No
People who are proposing to undergo, are undergoing or have undergone a process to change sex	No	No
Pregnant women and new mothers	No	No
People who are married or in a civil partnership	No	No
People who share a particular religion or belief	No	No
Thematic Groups: Health, Human Rights, Rurality and Deprivation.	No	No

3. Do you have evidence or reason to believe that the policy will support the Council to:

General Duty and other Equality Themes	Level of Negative and/or Positive Impact (high, medium or low)
Eliminate discrimination and harassment faced by particular communities or groups	Low
Promote equality of opportunity between particular communities or groups	Low
Foster good relations between particular communities or groups	Low
Promote positive attitudes towards different communities or groups	Low
Increase participation of particular communities or groups in public life	Low
Improve the health and wellbeing of particular communities or groups	Low
Promote the human rights of particular communities or groups	Low
Tackle deprivation faced by particular communities or groups	Low

4. Summary Assessment

Is a full Equality Impact Assessment required? (A full EIA must be carried out on all high and medium impact policies)		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Rationale for decision: An Equality Impact Assessment is not required on this occasion as this report is not seeking approval for works which will have an impact on community participation.			
Signed : Head of Service	
Date: 16/11/15		Copy to equalities@south-ayrshire.gov.uk	