



Cunninghame House,  
Irvine.

10 December 2015

## **Cabinet**

You are requested to attend a Special Meeting of the Cabinet of North Ayrshire Council to be held in the Council Chambers, Ground Floor, Cunninghame House, Irvine on **TUESDAY 15 DECEMBER 2015** at **2.30 p.m.** to consider the undernoted business.

Yours faithfully

Elma Murray

Chief Executive

### **1. Declarations of Interest**

Members are requested to give notice of any declaration of interest in respect of items of business on the agenda.

## **GENERAL BUSINESS FOR DECISION**

### **Reports by the Chief Executive**

#### **2. Amendments to South West HUBCO Agreement (Page 5)**

Submit report by the Chief Executive to delegate authority to the Executive Director (Finance and Corporate Support), or any Proper Officer appointed by the Council in terms of section 193 of the Local Government (Scotland) Act 1973, to sign (a) the amended hub South West Territory Partnering and Shareholder Agreements on behalf of Council, required as result of changes under the European System of Accounts 2010 rules; and (b) any future Hub or Hubco related documentation (copy enclosed).

**3. Urgent Items**

Any other items which the Chair considers to be urgent.

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## Cabinet

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Sederunt: **Elected Members**

Willie Gibson (Chair)  
Alan Hill (Vice-Chair)  
John Bruce  
Marie Burns  
Anthea Dickson  
Tony Gurney  
Ruth Maguire

Chair:

Attending:

Apologies:

Meeting Ended:



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## **NORTH AYRSHIRE COUNCIL**

### **Agenda Item 2**

**15 December 2015**

#### **Cabinet**

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**Title:** **Amendments to South West HUBCO Agreement**

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**Purpose:** The purpose of this report is to seek Cabinet approval to grant delegated authority to the Executive Director (Finance and Corporate Support), or any Proper Officer appointed by the Council in terms of section 193 of the Local Government (Scotland) Act 1973, to sign (a) the amended hub South West Territory Partnering and Shareholder Agreements on behalf of Council, required as result of changes under the European System of Accounts 2010 rules; and (b) any future Hub or Hubco related documentation.

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**Recommendation:** Agree to (a) approve the changes to the South West Hubco detailed in section 2 of this report, and (b) authorise the Executive Director (Finance and Corporate Support), or any Proper Officer appointed by the Council in terms of section 193 of the Local Government (Scotland) Act 1973 to sign both the amended Hub South West Territory Partnering and Shareholder Agreements on behalf of Council, and any future Hub or Hubco related documentation.

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#### **1. Executive Summary**

- 1.1 This report seeks authority to allow the Executive Director (Finance and Corporate Support), or any of the Council's Proper Officers to sign (a) the amended Hub South West Territory Partnering and Shareholder Agreements which are required as a result of changes under the European System of Accounts 2010 rules and (b) any future Hub or Hubco related documentation.

## **2. Background**

2.1 Cabinet on 2 October 2012 agreed to the Council's participation in South West Scotland Hubco. This involved the investment of equity and working capital to that company, with the Council becoming a shareholder and entering into Territory Partnering and Shareholder Agreements. That report also delegated authority to Ian Mackay, Solicitor to the Council to sign the required agreements, including the Territory Partnering, Shareholder and Participant agreements as prescribed by the Scottish Future Trust (SFT). The South West Hub agreements form a partnership with the following public sector participants.

- Ayrshire & Arran Health Board
- Lanarkshire Health Board
- Dumfries & Galloway Health Board
- East Ayrshire Council
- North Ayrshire Council
- South Ayrshire Council
- North Lanarkshire Council
- South Lanarkshire Council
- Dumfries & Galloway Council
- Scottish Ambulance Service
- Strathclyde Police
- Strathclyde Fire & Rescue
- Dumfries & Galloway Police
- Dumfries & Galloway Fire & Rescue

2.2 In June 2015, guidance was issued by 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.

- 2.3 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 Design Build Finance Maintain (DBFM) model. 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. Cabinet was previously advised as to the developing implications of this in the context of the funding model for the Garnock and Largs campuses.
- 2.4 The UK Office of National Statistics (ONS) who are the final arbiters in the interpretation and application of ESA10 have now confirmed that changes are required to the Hubco's core documentation.
- 2.5 The proposed amendments to 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 other participants, including the Council.
  - **Participant Subdebt is now limited to 10%** - under the original agreement the Council would have been able to invest 30% subdebt in each revenue funded project (limited to the previous shareholding arrangements). As a result of the amendments, the Council subdebt investment will now be limited to 10%. North Ayrshire had not planned to exercise this investment option.

- **Formation of a Hub Community Foundation** – as noted above a private sector charity known as the Hub Community Foundation (HCF) will be now formed to provide the 20% subdebt shortfall created as a result of the participating bodies' subdebt being reduced from 30% to 10%. 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.
- **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.
- **Capital Contributions** – previously the Council was able to make a capital contribution at Financial Close towards the cost of the project. As a result of the new arrangements the Council will no longer be able to make capital contributions and would instead have to make an increased contribution to the revenue unitary charge payments if it wished to exercise this option. North Ayrshire had not planned to exercise this option. However, it should be noted that SFT have confirmed that all participant will be financially “no better, no worse off” as a result of proposed changes.

2.6 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 (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.



- 2.7 The Council appoints 'Proper Officers' under section 193 of the Local Government (Scotland) Act 1973. This entitles those officers to sign deeds and other documents on behalf of the Council. Currently the Chief Executive, Elma Murray, the Head of Democratic Services, Andrew Fraser and the Senior Manager Legal Services, Christine Andrew, are Proper Officers. In the case of Hubco documentation, evidence was sought by way of a minuted decision, both in 2012 and currently, to prove the authority of an officer to sign the Hubco documentation. To ensure future clarity it is recommended that authority is granted to the Executive Director (Finance and Corporate Support), or any Proper Officer appointed by the Council in terms of section 193 of the Local Government (Scotland) Act 1973 to sign both (a) the amended Hub South West Territory Partnering and Shareholder Agreements detailed in this report and (b) any future Hub or Hubco related documentation. In relation to the latter, such officers would still require to have authority for the specific change, whether by virtue of a Committee decision or under delegated powers. This would however give clarity as to which officers are entitled to sign.

### **3. Proposals**

- 3.1 It is recommended that Cabinet agree to the changes to the South West Hubco detailed in section 2 of this report, and authorise the Executive Director (Finance and Corporate Support), or any Proper Officer appointed by the Council in terms of section 193 of the Local Government (Scotland) Act 1973 to sign (a) the amended Hub South West Territory Partnering and Shareholder Agreements on behalf of Council, and (b) any future Hub or Hubco related documentation whatsoever.


#### 4. Implications

<b>Financial:</b>	There are no direct financial implications as a result of this change.
<b>Human Resources:</b>	There are no human resource implications of this report.
<b>Legal:</b>	<p>The following matters should be noted: -</p> <p>(i) Although the DBFM Co Articles of Association are based upon the Hubco Articles of Association, the participating bodies, of which the Council is one, as a 10% shareholder therein, will not have any element of control over this entity, even when their shareholding is combined with SFT's shareholding. The right of veto previously contained in the Hubco Articles of Association has not been replicated in the DBFM Co Articles.</p> <p>(ii) The Council will require to rely on the general provisions and protections of Company law, which protections are less extensive than that previously provided under the Hubco Articles of Association.</p> <p>(iii) The consent of the holders of a majority of the issued shares will be sufficient to pass resolutions in relation to a wide range of matters affecting DBFM Co. However special resolutions will require the consent of the holders of 75% of the issued shares.</p> <p>(iv) The Hub Community Foundation formed to provide the 20% sub debt shortfall will take the form of a Scottish Charitable Incorporated Organisation and will require to comply with and account to OSCR.</p> <p>(v) To comprise a charity in Scotland, the Hub Community Foundation requires to demonstrate charitable purposes. The proposed purposes of this organisation are listed as the relief/prevention of poverty through relieving unemployment (with a particular focus on apprenticeships, training and work experience), the advancement of education , the advancement of health and the relief of those in need.</p> <p>(vi) The Hub Community Foundation intend to achieve the charitable purposes aforementioned through the provision of financial and other support, and through the provision of schools, libraries , health centres and other facilities.</p>

	<p>(vii) The current proposals for membership of the Board of Trustees however does not include representation from the Council.</p> <p>(viii) The formation of the DBFM Co and the Hub Community Foundation has been necessary to achieve the private accounts classification required to comply with ESA 10. The Council will require to rely on the provisions of the Companies Acts in its relationship with the new Co whereas the actings of the Hub Community Foundations will be governed by OSCR. It is understood that the costs associated with the formation of these new entities will be borne by Scottish Futures Trust, the Council having no liability therefor.</p>
<b>Equality:</b>	There are no equality implications of this report.
<b>Environmental &amp; Sustainability:</b>	There are no environmental and sustainability implications of this report.
<b>Key Priorities:</b>	The changes detailed in this report are required to enable the capital investment which is necessary for all of our Key Priorities.
<b>Community Benefits:</b>	There are no community benefit implications of this report, although failure to approve this report would seriously impact on funding for major capital projects and the community benefit which comes through procurement and construction.

## 5. Consultation

- 5.1 There has been consultation with SFT, South-West Hubco and the Executive Director (Finance and Corporate Support).



ELMA MURRAY  
Chief Executive

Reference : AF/cf

For further information please contact Andrew Fraser, Head of Democratic Services on 01294 324125

### Background Papers

None