

The Highland Council

Resources Committee - 23 November 2016

Agenda Item	21
Report No	RES/91/16

Changes to the Structure of delivering Hub Design, Build, Finance and Maintain (DBFM) Projects and amendments to the Wick Community Campus Project Structure and DBFM Agreement

Report by Director of Finance

Summary

This report outlines changes to the structure of the Wick Community Campus hub delivery structure and to the Wick DBFM Project Agreement that are required to reinforce the classification of the project as private under ESA10 rules. The Committee is recommended to consent to the re-structuring and to the entering into of the Amendment Agreement to the Wick DBFM Project Agreement and other documents to allow the Wick Community Campus project to comply with ESA10 requirements.

1. Background

- 1.1 As previously reported to Committee at its meeting on 25 November 2015, changes need to be made to the structure for delivering hub Design, Build, Finance and Maintain (DBFM) projects in order to reinforce the classification of those projects to the private sector for national accounts purposes under European System of Accounts 2010 ('ESA 10') rules and the accompanying Manual of Government Deficit and Debt 2014 ('MGDD'). A new hub DBFM delivery structure has been approved by Scottish Ministers and must be applied to all DBFM projects signed since the introduction of ESA 10 on 1st September 2014.
- 1.2 These changes require to be retrospectively applied to the Council's DBFM contract with Hub North Scotland (Wick) Ltd for the delivery of the Wick Community Campus which was signed on 19th December 2014. These structural changes are being applied to all hub projects and have not affected the building programme, project costs or financing arrangements for the Wick Community Campus project.
- 1.3 Due to further updated ESA10 Guidance being due for publication on 29 September 2016, the Scottish Futures Trust required that the structural changes be applied to all projects in advance of that date. The Committee is, therefore, requested to retrospectively approve the entering into of the Amendment Agreement (see paragraph 3.2.1 of this Report) and the subscription for shares in HoldCo (see paragraph 3.1.2 of this Report).

2. Reasons for the Changes

- 2.1 Private classification of DBFM projects for national accounts purposes is required for the Scottish Government to support projects from long term revenue budgets rather than from capital budgets as they are constructed.
- 2.2 The rules under which the national accounts are compiled are set in Europe and under ESA 10, and supporting MGDD, changes have been made to the rules applicable to the classification of projects delivered under public private partnership structures such as hub DBFM.
- 2.3 In order to reinforce the required private classification under the revised rules, Scottish Futures Trust (SFT) has identified that:
 - a) Any perception of public sector control over the delivery company (the sub hubco under the existing structure) must be avoided. This is achieved through the restructuring of that company or its holding company as a stand-alone DBFM Co.
 - b) Public sector financing of projects whether through subordinated debt or through capital contributions to projects must be limited in order to maintain clarity of risk transfer to the private sector delivery partner.
- 2.4 Due to these ESA 10 issues, the Territory Partnering Agreement and Shareholders' Agreement relating to Hub North Scotland Limited ("Hubco") have been amended to permit companies undertaking projects to be subsidiaries of ACP:North Hub Limited ("ACP"), the private sector development partner in Hubco, rather than wholly owned subsidiaries of Hubco. These changes were approved by the Resources Committee at its meeting on 25 November 2015.

3. Details of the Changes

3.1 Changes to the structure of the Wick Community Campus Project

- 3.1.1 The existing structure has the project delivery company, Hub North Scotland (Wick) Limited (DBFM Co) as a fully owned subsidiary of Hubco. To be ESA10 compliant DBFM Co cannot be a wholly owned subsidiary of Hubco. Under the revised structure, a new holding company has been incorporated, Hub North Scotland (Wick) Holdings Limited ("HoldCo"). The shares in DBFM Co held by Hubco have been transferred to HoldCo. New articles of association have been adopted for DBFM Co and HoldCo.

3.1.2 Holdco is owned 60% by ACP, the private sector development partner, 20% by a newly formed private sector charity, Hub Community Foundation (“HCF”), 10% by Scottish Futures Trust Investments Limited (“SFTI”) and 10% by the Council. As part of this process the Council submitted an application for allocation of 10% of the shares in HoldCo. A Shareholders Agreement for Holdco has been entered into amongst ACP, SFTI, HCF, the Council, HoldCo and DBFMCo. A majority of the Holdco and DBFM Co directors will be appointed by the private sector developer partner and so the board of the DBFM Co will be under private sector control.

3.2 Changes to the Wick DBFM Project Agreement

3.2.1 An Amendment Agreement has been entered into between ACP, Hubco, DBFM Co, HoldCo, Galliford Try Building Limited (as Construction Contractor and Service Provider), the Council, GT (North Hub) Investments Limited, Sweett Equitix Limited, SFTI, HCF and Aviva Public Private Finance Limited (as Lender and Security Trustee) to record the restructuring and to make consequential amendments to the Project Agreement, the Project Documents and the Funding Agreements required to reflect the restructuring.

3.2.2 As a consequence of the re-structuring, the provisions in the Project Agreement on equity return sharing and capping have been deleted. The Council will now have input by holding equity in the new Holdco which has been set up as part of the restructuring process.

4. Implications

4.1 Resource Implications

Scottish Futures Trust have provided grant funding of £25,000 to meet the Council’s own and Hubco’s costs in dealing with the re-structuring and documentation.

4.2 Risk

The risk to the Council of not approving the entering into of the restructuring documentation is that the Project will breach ESA10 requirements and become an on balance sheet transaction for the Public Sector.

4.3 Legal

4.3.1 The Council’s external legal advisers have provided advice on and have reviewed the documentation for the restructuring process.

4.4 Climate Change/Carbon Clever, Equalities, Gaelic, Rural Implications

4.4.1 There are no relevant implications to highlight in this report.

Recommendations

The Committee is asked to:

- I. Note the Changes that have been made to the Wick Community Campus DBFM structure and project documentation; and
- II. Retrospectively
 - (i) Approve the entering into and delivery of the Amendment Agreement and other documentation required in connection with the restructuring of the project to ensure compliance with ESA10;
 - (ii) Consent to the transfer by Hub North Scotland Limited of its entire shareholding in Hub North Scotland (Wick) Limited to Hub North Scotland (Wick) Holdings Limited;
 - (iii) Approve the application made by the Council for allocation of 10% of the shareholding in Hub North Scotland (Wick) Holdings Limited;
 - (iv) Approve the entering into of the Shareholders Agreement for Hub North Scotland (Wick) Holdings Limited; and
 - (v) Agree that the DBFM Amendment Agreement is a certified contract within the meaning of Section 2 of the Local Government (Contracts) Act 1997 (the "1997 Act") and meets the certification requirements within Section 3 of the 1997 Act and that the proper Officer is duly authorised to sign and issue the certificates in terms of the 1997 Act.

Designation: Director of Finance

Date: 11 November 2016

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Background Papers: (i) Guidance and Information received from the Scottish Futures Trust and Hubco

(ii) Report to Resources Committee 25 November 2015