

EAST RENFREWSHIRE COUNCIL14 September 2016Report by Chief ExecutiveREVISIONS TO HUB PROCUREMENT ARRANGEMENTS FOR CAPITAL PROJECTS**PURPOSE OF REPORT**

1. The purpose of this report is to update Council on the impact on local projects of changes to the structure for procuring and delivering capital projects through the hub Design, Build, Finance and Maintain (“DBFM”) model as a result of the introduction of new European System of Accounts 2010 (“ESA10”) rules, and to seek approval for the required amendments to the agreements relating to Eastwood Health and Care Centre.

RECOMMENDATIONS

2. It is recommended that Council:

- (a) Authorises the Chief Solicitor to agree the required amendments to the documentation associated with the Eastwood Health and Care Centre scheme;
- (b) Notes that the Council’s sub debt investment in the scheme will be unaffected by the changes; and.
- (c) Notes that there are no further changes required to the Barrhead High School scheme.

BACKGROUND

3. In February 2012 the Council agreed to participate as a shareholder in the West hub Territory, a procurement vehicle supporting a long term programme of investment in community infrastructure for local authorities, NHS Boards and other public sector bodies, with these public bodies joining together to deliver assets more effectively through a single partner to offer continuous improvement and better value for money.

4. New European System of Accounts 2010 (“ESA10”) regulations came into force in September 2014, reinforcing the rules for classifying Design, Build, Finance and Maintain (“DBFM”) projects to the private sector for national accounting purposes. As a result, the Scottish Ministers proposed a new delivery structure for all hub DBFM projects signed since 1 September 2014. These proposals required all hub participants to approve changes to their local Territory Partnering Agreements and Shareholder Agreements. Further details on the reasons for these changes are set out in Appendix 1.

5. The Council is a participant and shareholder in hub West Scotland, a joint venture owned 60% by a private sector development partner (Wellspring), 30% by public sector participants and 10% by the Scottish Futures Trust. These arrangements were not affected by the ESA10 changes.

6. Shareholdings in hub subsidiary special purpose companies (SPVs) set up to manage individual projects, however, had to be amended to comply with the new requirements. These required the shareholdings to be amended to 60% private sector development partner, 10% public sector participants, 10% SFT and 20% held by a new national charity. The Council approved the required changes to the hub West Scotland Territory Partnering Agreement and Shareholders Agreement to permit this on 28 October 2015.

7. The Council currently has two projects procured via hub: Eastwood Health & Care Centre, which is now open, and Barrhead High School which reached financial close on 21 March 2016 and is now under construction. In October 2015 the impact of the changes on these schemes was still unclear and the Council agreed that a further report should be considered once matters had been clarified.

IMPACT ON EAST RENFREWSHIRE COUNCIL

8. All local participants in the West Scotland area approved the required changes to the local hub Territory Partnering Agreement and Shareholder Agreement late in 2015. As such, it was possible to reach financial close on the Barrhead High School scheme on 21 March 2016 under the new arrangements. No further action is now required in this regard.

9. The contract agreement for Eastwood Health & Care Centre, however, was signed in October 2014 and therefore has to be revised to comply with the new arrangements. As such, the SPV shareholdings must be restructured as in paragraph 6 above.

10. Further, under the new arrangements only the main contracting public sector participant has the right to take up the 10% shareholding in a scheme. For the Eastwood Health & Care Centre project the Health Board is the main public sector participant so East Renfrewshire Council will no longer have the option to hold shares and receive associated dividends in the scheme. The Council's investment of £97,113.45 sub debt in the scheme is, however, unaffected by these changes.

FINANCE AND EFFICIENCY

11. The new rules impacting on DBFM projects have no further financial impact on the Council's Barrhead High School scheme however the Council, as a minor participant in the Eastwood Health & Care Centre scheme, will no longer be able to have a shareholding in that project and benefit from a share of any future dividends. The Council's sub debt investments in both hub schemes are unaffected by the changes. The Council will also continue to be a shareholder in West Scotland hub and thus have the potential for future dividends in this respect.

CONSULTATION

12. Consultation has taken place with hub West Scotland, West hub Territory Partnership, SFT, Legal Services and Property & Related Services in recent months.

PARTNERSHIP WORKING

13. The Council's involvement in hub West Scotland entails close partnership working with local Councils and other public sector participants, together with hub West Scotland and the local private sector development partner, WellSpring.

IMPLICATIONS OF REPORT

14. The report highlights the legal and financial impacts of the new arrangements. There are no other implications for the Council in terms of staffing, IT, equalities or sustainability.

CONCLUSION

15. This report sets out the requirement for revised arrangements to be agreed for the Council's Eastwood Health & Care Centre hub DBFM scheme and advises of the implications for the Council's two current hub DBFM projects.

RECOMMENDATIONS

21. It is recommended that Council:

- (a) Authorises the Chief Solicitor to agree the required amendments to the documentation associated with the Eastwood Health and Care Centre scheme;
- (b) Notes that the Council's sub debt investment in the scheme will be unaffected by the changes; and
- (c) Notes that there are no further changes required to the Barrhead High School scheme.

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BACKGROUND PAPERS: Reports to Council on 27 June 2012 & 11 September 2013 by Director of Finance on West hub Territory Partnering Board and on Opportunity to Invest in Hub Schemes. Report to Council on 28 October 2015 on Revisions to Procurement Arrangements for Capital Projects.

KEY WORDS

A report advising on revised arrangements for hub DBFM schemes

Key words: DBFM, ESA10, hub West Scotland, shareholder, subordinate lender, Scottish Futures Trust.

REASONING FOR CHANGES TO HUB DBFM ARRANGEMENTS

The classification of DBFM projects as private sector projects for national accounts purposes is required to allow the Scottish Government to support projects from long-term revenue budgets rather than capital budgets as they are constructed. The projects are then reported on the private sector's balance sheet rather than on the Government's balance sheet.

The rules under which the national accounts are compiled are set in Europe by Eurostat. Under their revised ESA10 rules and supporting Manual for Government Deficit and Debt (MGDD), changes have been made to the rules applicable to the classification of projects delivered under public private partnership structures such as hub DBFM.

In order to reinforce the required private sector classification under the revised rules, Scottish Futures Trust has identified that:-

- a) any perception of public sector control over the delivery company (the special purpose vehicle or SPV) must be avoided. This is achieved through the restructuring of that company as a stand-alone DBFM company separate from the local Hub territory companies.
- b) public sector financing of projects whether through capital contributions or investment of sub debt must be limited in order to maintain clarity of risk-transfer to the private sector delivery partner. To implement this:-
 - i. public sector bodies should no longer make any capital contribution to these projects;
 - ii. public sector participants and SFT will have the option to invest a maximum of only 20% of sub debt into such projects. The private sector development partner may invest 60% of sub debt and a new national charity will have the option to invest the remaining 20%.

The revised arrangements have been approved by the Office for National Statistics.