

## **Urgent Item**

**Special General Meeting of the Council: 23 December 2021.**

**Orkney Harbours Masterplan Phase 1.**

**Proposed Governance Arrangements.**

**Report by Interim Executive Director of Finance, Regulatory, Marine and Transportation Services.**

### **1. Purpose of Report**

To consider specific governance arrangements with regard to progressing elements of the Orkney Harbours Masterplan Phase 1.

### **2. Recommendations**

The Council is invited to note:

#### **2.1.**

That, on 21 December 2021, when considering specific governance arrangements with regard to progressing elements of the Orkney Harbours Masterplan Phase 1, the Policy and Resources Committee recommended that consideration of establishing a negotiating team and the delegation of powers to authorise and conclude agreements associated with the proposed developments in the Orkney Harbours Masterplan Phase 1, and the Crown Estate Scotland's ScotWind sea-bed leasing rounds, be referred to the Special General Meeting of the Council to be held on 23 December 2021.

#### **2.2.**

The proposal that the delegation to the Chief Executive, in consultation with elected members and officers, should not include authority to award construction contracts for capital projects associated with the Orkney Harbours Masterplan Phase 1, or any developments associated with Crown Estate Scotland's ScotWind sea-bed leasing rounds.

#### **2.3.**

That the proposed delegation will necessarily include authority to conclude agreements with Crown Estate Scotland and other parties regarding land acquisitions or options to purchase land necessary to deliver the Orkney Harbours Masterplan Phase 1.

## **2.4.**

That, as the delegation is proposed to cover the period 1 January to 31 December 2022, it may not be possible to consult with elected members for the period covering the pre-election period for the Local Government Election to be held on 5 May 2022, which commences on 15 March 2022, until the appointment of committee office bearers, which concludes in early June 2022.

## **2.5.**

That the proposed Scapa Deep Water Quay and the proposed extension and seabed reclamation at Hatston Pier will continue to be progressed through the Capital Project Appraisal process in order to obtain formal approval to proceed with those capital projects.

**It is recommended:**

## **2.6.**

That a negotiating team, comprising the undernoted officers, be established to negotiate Heads of Terms and/or other commercial agreements that may result from the preferred developer contacts and/or negotiations arising from the announcement of Crown Estate Scotland's ScotWind seabed leasing due in January 2022:

- Interim Chief Executive.
- Interim Executive Director of Finance, Regulatory, Marine and Transportation Services.
- Head of Legal Services.
- Interim Head of Finance.
- Head of Marine Services, Transportation and Harbour Master.
- Any other officers that the negotiating team nominate.

## **2.7.**

That powers be delegated to the Chief Executive, in consultation with the undernoted Members, when available, and officers, to authorise and conclude Heads of Terms, commercial or other agreements associated with the proposed developments contained within the Orkney Harbours Masterplan Phase 1, as well as any developments associated with Crown Estate Scotland's ScotWind sea-bed leasing rounds, for the period 1 January to 31 December 2022 inclusive:

- Leader.
- Depute Leader.
- Chair, Development and Infrastructure Committee.
- Vice Chair, Development and Infrastructure Committee.
- Interim Executive Director of Finance, Regulatory, Marine and Transportation Services.
- Head of Legal Services.

- Head of Marine Services, Transportation and Harbour Master.

## **2.8.**

That the delegation referred to at paragraph 2.7 above should not include the award of any construction contracts for capital projects associated with the Orkney Harbours Masterplan Phase 1, or any developments associated with Crown Estate Scotland's ScotWind sea-bed leasing rounds.

## **2.9.**

That the delegation referred to at paragraph 2.7 above, should include authority to conclude agreements with Crown Estate Scotland and other parties regarding land acquisitions or options to purchase land necessary to deliver the Orkney Harbours Masterplan Phase 1.

## **2.10.**

That, where an agreement requires the commitment of the Council to a potential liability in excess of £5 million, prior approval be sought either through routine Council governance structures or, if time limited, by calling special meetings of the relevant Committee and/or the Council.

# **3. Background**

## **3.1.**

The Orkney Harbours Masterplan Phase 1, which was approved by the Council in April 2020, includes proposed developments and/or works at Scapa Deep Water Quay, Hatston, Kirkwall Pier, Stromness and Lyness.

## **3.2.**

In June 2020, reports were submitted to the Harbour Authority Sub-committee, the Development and Infrastructure Committee and the Policy and Resources Committee regarding the proposed Scapa Deep Water Quay and the proposed extension and seabed reclamation at Hatston Pier. This resulted in the proposed projects progressing through Stage 1 of the Capital Project Appraisal process, with funding allocated in respect of carrying out further studies, investigations and preparing all the necessary documentation required to produce the Stage 2 Capital Project Appraisals.

## **3.3.**

On 23 November 2021, the Policy and Resources Committee recommended approval of the Stage 2 Capital Project Appraisal in respect of Phase 1 of the seabed reclamation at Hatston Pier.

### **3.4.**

There have been a number of seminars throughout 2020 and 2021 to inform and update Members with regard to commercial interest being shown in the Scapa Flow Deep Water Quay and Hatston projects in particular, by potential developers for the ScotWind off-shore wind sea-bed leasing round being led by Crown Estate Scotland (CES). By default this leads to interest in using the anchorage areas in Scapa Flow, Lyness and Stromness.

### **3.5.**

Sea-bed lease applications by potential developers were submitted to CES by July 2021, at which time the Council had a relatively large number of Memorandum of Understandings with potential developers. The interest in Scapa Flow, Scapa Deep Water Quay, Lyness, Stromness and Hatston has remained high since July 2021, with a number of visits and meetings with a number of these potential developers.

### **3.6.**

CES is due to announce preferred developers for the ScotWind sea-bed leasing exercise in mid to late January 2022.

### **3.7.**

On 21 December 2021, when considering specific governance arrangements with regard to progressing elements of the Orkney Harbours Masterplan Phase 1, the Policy and Resources Committee recommended that consideration of establishing a negotiating team and the delegation of powers to authorise and conclude any Heads of Terms, commercial or other agreements associated with the proposed developments contained within the Orkney Harbours Masterplan Phase 1, as well as any developments associated with Crown Estate Scotland's ScotWind sea-bed leasing rounds, for the period 1 January to 31 December 2022, be referred to the Special General Meeting of the Council to be held on 23 December 2021.

#### **3.7.1.**

Concern was expressed that the recommendations of the report by the Interim Executive Director of Finance, Regulatory, Marine and Transportation Services read as though the Council was being asked to delegate the negotiation and conclusion of any agreements and related obligations in respect of the harbours developments and ScotWind projects to Officers, without limit, and without reference to the Council other than consultation with four Elected Members.

## **4. Proposed Delegated Authority**

### **4.1.**

As a result of the announcement by CES due in January 2022, and as a result of further and strong interest from a number of the applicants for seabed leases - the Harbour Authority is expecting a number of approaches in order to start discussions and negotiations for the use of the facilities at the proposed Scapa Deep Water Quay, Hatston Pier and existing facilities at Lyness.

#### **4.1.1.**

The approaches anticipated include for leases of laydown areas and exclusivity of access to lengths of quayside and for wet storage of constructed wind turbines.

#### **4.2.**

On 3 November 2021, the Senior Management Team (SMT) considered a report regarding the formation of a negotiating team in order that the Council and the wider Orkney community do not miss out on opportunities that will arise from the preferred developer/s announcement due by CES in January 2022. Due to the complexity and possible number of preferred developer contacts and negotiations likely to be received, it is proposed that a negotiating team is set up specifically for this purpose, comprising the following officers:

- Interim Chief Executive.
- Interim Executive Director of Finance, Regulatory, Marine and Transportation Services.
- Head of Legal Services.
- Interim Head of Finance.
- Head of Marine Services, Transportation and Harbour Master.
- Any other officials that the negotiating team nominate.

#### **4.3.**

The negotiating team would negotiate any Heads of Terms or other commercial agreements that may result from the preferred developer contacts and/or negotiations, for a fixed period from 1 January to 31 December 2022 inclusive.

#### **4.4.**

In order to maintain scrutiny and allow decisions to be made in a timely manner, it is proposed that powers be delegated to the Chief Executive, in consultation with the undernoted Members and officers, to authorise and conclude any Heads of Terms, commercial or other agreements associated with the proposed developments contained within the Orkney Harbours Masterplan Phase 1, and in relation to any developments associated with ScotWind and Crown Estate Scotland sea-bed leasing rounds for the period 1 January to 31 December 2022 inclusive:

- Leader.
- Depute Leader.
- Chair, Development and Infrastructure Committee.
- Vice Chair, Development and Infrastructure Committee.
- Interim Executive Director of Finance, Regulatory, Marine and Transportation Services.
- Head of Legal Services.
- Head of Marine Services, Transportation and Harbour Master.

#### **4.4.1.**

As the delegation above is proposed for the period 1 January to 31 December 2022, it should be noted that it may not be possible to consult with the elected members for the period covering the pre-election period for the Local Government Election to be held on 5 May 2022, which commences on 15 March 2022, until the appointment of committee office bearers, which concludes in early June 2022.

#### **4.5.**

It is not proposed that the delegations would extend to the awarding of construction contracts and all capital project commitments will continue to be subject to normal Council governance arrangements with approvals having to be obtained through reporting of capital project appraisals to the Policy and Resources Committee. The delegations are largely being sought in relation to progressing agreements which will yield benefit or income for the Council and to give Legal Services the assurance that there are approvals in place that permit them to act on specific pieces of work.

#### **4.6.**

The delegation sought will necessarily include authority to conclude agreements with Crown Estate Scotland and other parties regarding land acquisitions or options to purchase land necessary to deliver the Orkney Harbours Masterplan Phase 1.

#### **4.7.**

Any agreements which commit the Council to expenditure should be limited in financial value such that, for any agreement requiring the Council to commit to a financial liability in excess of £5 million, prior approval will be sought either through routine Council governance structures or, if time limited, by calling special meetings of the relevant Committee and/or Council.

### **5. Corporate Governance**

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

### **6. Financial Implications**

#### **6.1.**

There are no direct financial implications contained within this report.

#### **6.2.**

The exercise of powers delegated to the Chief Executive is likely to have financial implications for the Council. This has not been quantified in this report, but it is considered that establishment of the negotiating team will assist the Chief Executive in discharging his duties with regard to best value.

## **7. Legal Aspects**

### **7.1.**

The Council has a statutory duty to achieve best value. Implementing the recommendations in this report will assist the Council in discharging this duty by enabling the Council to maximise the opportunities arising from the Orkney Harbours Masterplan and the ScotWind and Crown Estate Scotland seabed leasing rounds.

### **7.2.**

The Council must act within its delegated powers. The recommendations in this report ensure that appropriate governance is in place for the Council to enter into commercial agreements in relation to the proposed developments contained within the Orkney Harbours Masterplan and any developments associated with the ScotWind and Crown Estate Scotland seabed leasing rounds.

## **8. Contact Officers**

Gareth Waterson, Interim Executive Director of Finance, Regulatory, Marine and Transportation Services, Email: [gareth.waterson@orkney.gov.uk](mailto:gareth.waterson@orkney.gov.uk)

James Buck, Head of Marine Services, Transportation and Harbour Master, Email: [james.buck@orkney.gov.uk](mailto:james.buck@orkney.gov.uk)

David Sawkins, Deputy Harbour Master: Strategy and Support, Email: [david.sawkins@orkney.gov.uk](mailto:david.sawkins@orkney.gov.uk)