

## Transition Board – Shetland Merger Project

<b>Committee</b>	Transition Board – Shetland Merger Project
<b>Subject</b>	Update on next steps to merger
<b>Action requested</b>	<input type="checkbox"/> For information only <input checked="" type="checkbox"/> For discussion <input type="checkbox"/> For recommendation <input type="checkbox"/> For approval
<b>Brief summary of the paper</b>	Click here to enter text.
<b>Resource implications</b> [if yes, please provide detail]	No Click here to enter text.
<b>Risk implications</b> [if yes, please provide detail]	No
<b>Date paper prepared</b>	08-Dec-20
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<b>Equality and diversity</b>	No
<b>Status</b>	Non-confidential
<b>Freedom of Information</b> Can this paper be included in 'open' business?*	Yes
<b>Status following the meeting</b>	

**Context**

This paper follows on from papers PB2020-18 (15<sup>th</sup> July), TB2020-10 (9<sup>th</sup> September), TB2020-19 (21<sup>st</sup> October) and TB2020-23 (18<sup>th</sup> November) looking at next steps and the practical ways in which we are taking forward the merger of the Shetland Colleges and Train Shetland into the new College, Shetland UHI.

This paper seeks to set out the progress made so far and the future activities we are working to.

**Discussions and communications**

As indicated to the last Transition Board further discussions on the revised approach (TB2020-19; TB2020-23) were ongoing and have taken place in the Merger working group (06/10; 20/10; 3/11; 17/11; 01/12); with the SFTCT (04/11; 11/11), Shetland College SMG (27/10; 10/11; 24/11), Shetland College Academic Board (09/11), Shetland College Board (11/11), NAFC Research and Development committee (28/10) and NAFC SMT (04/11; 20/11) and have been reported to staff in Colleges News (23/10; 06/11), informal communications meetings (28/10; 11/11; 25/11; 09/12) and updates at various staff team meetings (05/11; 20/11; 25/11; 26/11; 08/12).

The following correspondence was received from the Chair of the NAFC board prior to the last Transition Board and was reported verbally to the Transition Board by the Chair as 'ongoing discussions' and is included here for completeness.

*'The private meeting between Prof. Lewis and the Board of Trustees on 4 November 2020 at which Prof. Lewis spoke to her most recent proposal was noted, and some Trustees indicated that there were still areas of concern that would benefit from further consideration. Trustees agreed that they wanted to move forward with merger subject to ensuring that they were doing so in line with legal advice. They also agreed that the success of a joint committee structure required staff support but at this stage there had been insufficient consultation with staff to evidence this. "*

*Trustees want to hear the views of their Senior Management Team (SMT) following which there will be a response to Shetland UHI for their next meeting. This will provide a view from the collective leadership of NAFC taking in the Board, Principal and SMT which we hope Shetland UHI will find helpful.*

*We note that these are outline proposals, at this stage which will be refined as we progress, but it is important that the foundations for joint working start from a sound base.'*

**Update from SFTCT**

Shetland UHI has received a letter from SFTCT (attached as Appendices 1,2,3) setting out their approach to the merger and the latest proposals.

The letter includes an Appendix (Appendix 2) of bullet points, based on previous activity lists for steps to merger. For clarity these are included in Table 1 below along with expected activity needed to achieve them.

The present direction of travel has been challenged by SFTCT and in particular the need for leadership to ensure a successful merger:

*'One of the concerns that has been expressed both by Trustees and staff is the absence of a senior management team/structure for staff when they move into the new college; we understand that all of the previous college mergers did have the second tier management, at least, in place prior to merger and in this case the strong message that has been made repeatedly at both board and staff levels is for a bespoke management structure to ensure that the new college is fit for purpose when staff transfer to Shetland UHL.'*

### **Leadership**

Leadership for the new college comes from the Principal Designate, the Transition Board and the Senior Management groups of the merging organisations. In the proposed model this is strengthened when these groups merge and operate as one and whatever journey we eventually take this will be a key step in development of the new college.

### **HR considerations**

The challenge in this case is the uniqueness of the merger plans in Shetland. Particularly:

1. The new Shetland College has no existing staff or structure
2. The phased merger proposal whereby NAFC staff would TUPE across ahead of Shetland College (and Train Shetland) staff is unusual, and means additional care must be taken in terms of equity

Consequently, it is not possible or appropriate to establish a senior management team ahead of the TUPE because:

1. The needs and structure of the new college cannot be fully realised until the phased merger process is complete
2. To ensure fairness and equity, persons from both outgoing employers should be considered within this structure and it is not possible to undertake a ring-fenced recruitment exercise whilst the individuals are employed by three separate organisations

The New College has factored in that there is a chance that, within any reorganisation/restructuring process post TUPE / merging, the headcount required for the senior management team may be less than the headcount we anticipate having post TUPE with management from both organisations coming in to the new college. However, any restructuring must be undertaken post vesting and will have a business case built around the needs of the new college. To link any potential redundancy or headcount reduction business case developed by the New College, to the TUPE / merger itself would likely render any dismissal by reason of redundancy as automatically unfair.

It is possible to develop a bespoke working / draft management structure ahead of TUPE. This can be done in partnership with the outgoing employers, through a joint senior management group, but it should not be populated at this time for the risk factors outlined above.

In respect of the Audit Scotland report there is much reference to the need to recruit the principal and to develop the Board and to work in partnership with the relevant boards of the outgoing employers – all of these recommendations have been followed thus far, though greater partnership working is critical and an area currently in development. There is no reference to the need to have a total senior management structure populated ahead of merging.

Finally, if the intention is to develop and confirm a senior management structure ahead of vesting (and this is not the approach recommended), then the outgoing employers would need to assess

their own positions in relation to making any redundancies, but it would be the outgoing employers that would undertake this activity, and not the new college. It would be their responsibility to assess the appropriateness, legitimacy and risks of such an approach.

### Conclusion

We are moving forward with the activities identified in Table 1 and we are also developing the joint committees as described for Phase 2 of TB2020-23. We continue to discuss and explore the routes to merger and for the moment are following the path described in Annex 1.

**The board is invited to review these activities and note the present direction of travel.**

**Table 1.** Activities to Merger

Activity	NAFC Marine Centre	Shetland College/SIC	Shetland UHI
Confirmation of Shetland UHI's Charitable Status			Application submitted 20 <sup>th</sup> November outcome awaited
Assurances on Shetland UHI's future funding and sustainability			MMBC submitted outcome awaited (expected in February) Transformational funding application submitted outcome expected in February; virement of existing funds agreed.
Confirmation that Shetland UHI has suitable banking facilities in place			Application made
Confirmation that Shetland UHI is an assigned partner of UHI			Approval received for partner status within UHI when a transfer is made into the new College. Assigned status will not be achieved until after vesting but all requirements being addressed in formation of Shetland UHI
Assurance that all necessary systems, processes, policies and procedures necessary for the effective operation of Shetland UHI and support of staff are in place	Contribution of staff to development of shared systems (finance, HR, academic admin etc.) and ways of working	Contribution of staff to development of shared systems (finance, HR, academic admin etc.) and ways of working	Facilitation of workstreams to develop shared systems (finance, HR, academic admin etc.) and ways of working

Updated Due Diligence information	Updated information to be provided	Updated information being provided	Review of information and taking action as required
Details of assets and liabilities transferring to Shetland UHI	Lists to be provided	Lists to be provided	Review of information and taking action as required
Merger Agreement/Asset Transfer Agreement	Requirements to be provided	Requirements to be provided	Review of and approval of agreements
Timescale for TUPE process	To be informed	Timescales identified TB2020-19	To support timescales identified by joining organisations

## Annex 1

### College Merger Timeline – A Staged Approach V3

#### Introduction

The latest timeline received from Scottish Funding Council (SFC) would see final approval by Scottish Parliament on 28<sup>th</sup> June 2021. It has been assumed that if that is achieved, Vesting would be for the start of the academic year 2021/22 and the staged approach phases identified below are based on that assumption.

However, this is by no means certain with interruptions to Scottish Parliament due to the election scheduled for May 2021. There is also a high level of uncertainty due to the Covid 19 pandemic.

#### The Stages:

1. **Establish the Chair and Board of Shetland UHI** – initially to function as a “Transition Board” with authority to act for the new college through the remaining stages of the transition process. This would include creation of the new board; appointment of an interim chair; and approval of the Memorandum and Articles of Association **(completed)**
2. **Principal Designate and immediate support staff move to Shetland UHI** – second staff from SIC and NAFC to Shetland UHI to establish the executive function of Shetland UHI with staff retaining security of employment through their own organisations until their date of transfer **(in progress)**
3. **Shetland UHI to achieve charitable status and be able to receive charitable funding** – approval of the application to OSCR need to be received as well as banking facilities available – **(both have been applied for)**
4. **Merger agreement/Asset transfer agreement in place between SFTC and Shetland UHI**
5. **Wind up NAFC transferring all staff and activities under TUPE to Shetland UHI**
6. **Joint management arrangements established between SIC and Shetland UHI**
7. **SIC transfer Shetland College and Train Shetland staff and activities under TUPE to Shetland UHI on the Vesting date of the merged college**
8. **New commercial and partnership relationships between SIC and Shetland UHI established**
9. **Shetland UHI undertake any restructuring including 2<sup>nd</sup> Tier Management after Vesting**