
Report To: Policy & Resources Committee

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Report By: Corporate Director Environment,
Regeneration and Resources

Report No:
PR085/13/AF/AG

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Subject: Hub West Scotland

1.0 PURPOSE

- 1.1 To seek approval from the Committee for the Council to sign up to Hub West Scotland

2.0 SUMMARY

- 2.1 The Hub Initiative was set up by the Scottish Government to promote improved procurement of construction projects. It has been some years in development but is now at the stage where projects are being placed by participants. The Hub initiative is territory based and Inverclyde is in the West Area Hub. This covers the areas of Glasgow City, Renfrewshire, East Renfrewshire, East Dunbartonshire, West Dunbartonshire and Inverclyde. Participants are Local Authorities, Health Boards, Housing Associations Fire and Police Services and other public sector bodies.
- 2.2 Inverclyde Council has yet to sign up as either a participant or a shareholder in the Hub. A decision is required by the end of March 2013. Currently West Hub has 14 participants, 7 of whom have taken up shareholdings. Inverclyde Council and Glasgow City are the only Local authorities in Scotland not yet signed up to their Hub. Glasgow City are in the process of signing up.
- 2.3 The Council can sign up as a Participant only or an Investor Participant and become a shareholder. There is no real disadvantage to signing up as a shareholder and the majority but not all of the Councils participating in Hub West Scotland have signed up as shareholders. Details on the benefits of Shareholding are given in Paragraph 4.7

3.0 RECOMMENDATIONS

- 3.1 That the Committee agree that Inverclyde Council should sign up as a Participant to West Hub Scotland.
- 3.2 That the Committee agree that the Council should decline the offer to take up its allocated shareholding in Hub West Scotland.

4.0 BACKGROUND

- 4.1 All NHS Boards and local authorities in Scotland were invited by the Scottish Government (via the Scottish Futures Trust (SFT)) to participate in *hub*, an initiative which is intended to improve the planning, procurement and delivery of infrastructure that supports community services.

The SFT were appointed by the Scottish Government to oversee the roll-out of the hub initiative across 5 territories in Scotland

The hub initiative involves a strategic long-term approach to the procurement of community-based infrastructure projects through public/private joint venture arrangements in 5 local hub Territories across Scotland

- 4.2 The key objectives of hub are:

- Providing enhanced local services through increasing joint service working and integration between Community Planning Partnerships;
- Delivering a sustained programme of joint asset management and investment into community-based facilities so that more services are provided locally in communities through multi-disciplinary teams working from single sites
- Establishing a more efficient and sustainable procurement methodology for public sector bodies, principally NHS Boards and Local Authorities;
- Delivering facilities that meet public sector policy objectives for design quality and sustainability; and facilitating and improving the level of stakeholder engagement in the planning of services and development of community-based premises.

- 4.3 The key outcomes for hub are:

- Improving the efficiency of delivery of community-based facilities;
- Delivering economies of scale through shared facilities;
- Making the best use of public resources; and
 - Providing continuous improvement in both cost and quality in public procurement.

- 4.4 The hub objectives and outcomes are to be achieved through the establishment of joint venture arrangements amongst the local public sectors within a hub Territory and a private sector development partner.

Inverclyde Council falls into the West *hub* area.

The Policy and Resources Committee at its meeting on 30th March 2010 agreed that the Council would engage with the Hub in a non participatory capacity. However in order to be able to become a participant at a future date the Council agreed to its inclusion in the OJEU Notice inviting expressions of interest in the West Territory Hub's Development Partner from the private sector.

If the Council now decides to become a participant in Hub West Scotland (hWS) this would be on the basis that it would become a **potential** procurement vehicle in the future. Any future procurement of buildings and accommodation would be considered on its own merits and if appropriate, delivery through hWS could be considered as a procurement option. There would be no obligation placed on the Council to use hWS as a procurement route.

- 4.5 In terms of Participation, the 5 hubcos have been signed up to by all local authorities, in Scotland, except Glasgow City, who are in the process of signing up and Inverclyde. All Health boards are signed up as well as all Fire and Police Services and a variety of colleges, Regeneration Companies and Housing associations.

The **West** Territory *hubco* was established in April 2012 and the Wellspring Partnership Ltd. was appointed as the Private Sector Delivery Partner. The Public Authorities who have signed the Agreements to date are:-

- Clydebank Re-built
- East Dunbartonshire Council
- West Dunbartonshire Council
- East Renfrewshire
- Renfrewshire Council
- Strathclyde Fire and Rescue
- Strathclyde Police
- Glasgow Housing Association
- NHS GG&C
- Glasgow School of Art
- City of Glasgow Colleges
- Clyde Gateway
- Elderspark Housing Association
- Scottish Ambulance Service

- 4.6 It should be noted that the Council is under no obligation to use hWS for any projects. Only Health Board projects in excess of £3.5m must be procured via the hub. The Council would be able to make as much or as little use of hWS as it wished and in such a form as it wished i.e. design services only, full D&B package or construction only. The Council would also have the right to select from the panel of consultants and contractors on hWS' supply chain to tender for work. While the Council has only limited opportunities to utilise the Hub in the immediate future as the Agreement runs for 20 years with an option to extend for a further 5 this should be looked at in the longer term as an option for construction procurement.

As Inverclyde Council was named on the OJEU advert during the procurement process to identify a private sector partner in the West area, the ability to become a Participant in hWS remains an option for the Council.

If the Council wishes to participate in the hWS, it will be necessary for the Council to sign up to both the Territory Partnering Agreement (TPA) and the Participants Agreement. A summary of the key details contained within each of these documents relative to the hWS is included as Appendix B (i) and B (iii) to this report.

- 4.7 In addition to hWS providing the Council with an alternative procurement vehicle, there is the option for the Council to become a shareholder in hWS. The benefits associated with becoming a shareholder in hub are:-

- A financial return in the form of dividends
- Input into decisions which can be taken by shareholders only
- The possibility of realising capital value from shares

It should be noted that that the ability to procure using hWS is not dependant upon taking up the option of a shareholding. If the Council wishes to take up the option of a shareholding in the hWS, it will be necessary to sign the Shareholders Agreement, a summary of the Agreement's principal details is included as Appendix B (ii) to this report. The equity and working capital of hWS is split between the Private Sector Delivery Partner,

the Participants and the SFT in the proportions of 60%, 30% and 10% respectively. The SFT set up the capital funding for the purposes of establishing hWS and there is no financial contribution required from the Council in respect of the working capital to allow participation

Although the Council had opted to adopt non Participant status when originally invited to sign up to hWS, SFT retained the shareholding which would have been taken up by the Council had they elected to become shareholders. SFT have confirmed that the option to sign the Shareholders' Agreement remains open to the Council and that the funding to support the purchase of the shareholding remains available to the Council.

At present, SFT are holding the shareholding which would have been allocated to the Council had they previously signed the Agreement. As noted at 4.7, SFT continue to retain the funding required to allocate the Shareholding to the Authority which amounts to a value of approximately £300,000 of working capital and equity of £30 in hWS shared equally amongst the Participants who take shares. This funding is only available from SFT until 31st March 2013 after which it will be distributed amongst the Participants currently signed up to the Shareholder Agreements.

Currently 7 Participants have opted to take up their shareholdings, including East Renfrewshire and East and West Dunbartonshire Councils. The other Participants, including Renfrewshire Council have not taken up their allocation. It is not known if Glasgow City Council will take up their allocation

The Territory Partnering Agreement contains provision for exclusivity in providing the Partnering Services and the ongoing Development Partnering Services for the first ten years of hWS. Reference is made to this provision in Appendix B paragraph three and Annex A to this report. This exclusivity seeks to ensure that the hWS has the sole right to deliver any proposed project during the first ten years.

It should be noted that **no** projects have currently been proposed on behalf of the Council for inclusion in the Territory Delivery Plan and that until such time as a project is included in that plan, there is absolutely no exclusive obligation on the Authority to use hWS as the procurement vehicle. Until a Project is included as a Qualifying Project, no exclusivity is in force. This clause is included to cater for the disparate funding nature of some of the other participant organisations.

Because Health Boards are obliged to use hubcos to procure projects greater than £3.5m in value, if the Council was in the future proposing a joint procurement with Greater Glasgow and Clyde of a project in excess of that value and the Health Board is the Lead Participant it would be necessary to use hWS and it would be advantageous for the Council to be a Participant in hWS.

If the Council signs up to hWS it is recommended that the Corporate Director of Regeneration & Resources or his appointed deputy is nominated to represent the interests of Inverclyde Council at Territory Partnering Board and the hub West Programme Director is appointed as the Lead Participants' Representative and the "B" Shareholders Representative under and in terms of the Participants' Agreement with delegated authority to take any action, grant any approval or consent or sign any notice required in terms of the Shareholders Agreement if entered into by the Council and Territory Partnering Agreement.

- 4.8 There are no significant disadvantages in becoming a shareholder however neither are there any significant advantages. Given that the Council has taken little part in the development of the hub to date and sees it only as a potential procurement option which may be of use in the future it would seem appropriate to decline the offer to take up the offer of a shareholding.

5.0 FINANCIAL IMPLICATIONS

- 5.1 It is anticipated that using hWS could potentially offer a cost effective method of procuring buildings in the future. The most cost effective procurement route will be considered as part of the Option Appraisal process for future projects and the financial suitability of using the hWS would be tested for each individual project as part of that process. In addition, the hWS provides the opportunity to access professional and technical services at highly competitive rates.
- 5.2 Participation in hWS also provides the opportunity to access funding via the Hub. It is not however felt that this would be on terms as good as the Council would be able to achieve from its own borrowing and it is not likely that this opportunity would be taken up.

6.0 LEGAL IMPLICATIONS

Legal Advisors (Shepherd and Wedderburn) were appointed in May 2011 to act on behalf of the Participants to support the hub Programme. As part of that appointment they have produced for the benefit and information of Participants and their in house advisors (i) a summary of the main terms of the Territory Partnering Agreement (which covers exclusivity and the legal implications of approving Identified Projects and designating projects as “Qualifying Projects” and the services to be provided by hWS), Shareholders Agreement and Participants’ Agreement, a note of value for money and a flowchart detailing the project approval process and (ii) a commentary on key legal issues covering EU procurement and state aid. Copies of the summary and commentary are available if required

Shepherd and Wedderburn and the other specialist advisors (technical and financial) have provided each of the Participants with “duty of care” letters which in effect creates an advisor/client relationship and allows the Participant to rely upon that advice in the same way as if the advisor had been a direct appointee.

To use hWS as a possible vehicle for the delivery of future projects requires certain further documentation to be signed on behalf of the Council namely the Territory Partnering Agreement, the Participants Agreement and should the Council agree to become shareholders, the Shareholders Agreement. Those documents have all been prepared by the specialist advisors and it is understood that they are based on standard documentation used in other Scottish hub initiative areas. Signing the documentation provides the Council with the option (not the requirement) to use hWS for future projects. To date no Council project has been identified for delivery by hWS Whilst not binding the Council to use hWS signing the documents will bind the Council to act in accordance with their terms in relation to the Council’s dealings with other Participants and with hWS.

As previously indicated, hubcos are operating in various areas throughout Scotland without challenge to the legality of their use as a vehicle for public sector bodies to procure works and services .Similar schemes have also operated south of the border without challenge under EU procurement law. However, as procurement is an area of law which develops as much through case law as statutory provision or EU Directive it is important that an integral part of any future procurement decision using hubco would be a review of the applicable legal issues at that time.

7.0 CONSULTATIONS

- 7.1 The Chief Financial Officer has been consulted on this report and is in agreement with the recommendations
- 7.2 The Head of Legal and Democratic Services has been consulted on this report and is in agreement with the recommendations
- 7.3 There are no direct staffing implications in respect of the report and as such the Head of

8.0 EQUALITIES ISSUES

8.1 There are no Equalities Issues

9.0 BACKGROUND PAPERS

9.1 Various Briefing papers produced by the Scottish Government, the Scottish Futures Trust and West Hub Scotland 2007-2013