AGENDA ITEM NO 12
REPORT NO 618/11

ANGUS COUNCIL - 15 SEPTEMBER 2011

EAST CENTRAL TERRITORY HUB

JOINT REPORT BY THE DIRECTOR OF CORPORATE SERVICES
AND THE DIRECTOR OF EDUCATION

ABSTRACT:
This Report updates members on the current position regarding the establishment of the East Central Territory Hub and the implications for the replacement Brechin High School and the new primary school in Arbroath.

1. RECOMMENDATION
1.1 It is recommended that Council:-

(i) note the progress that has been made in the procurement of a private sector development partner to join the East Central Territory Hub;

(ii) note that a further Report will be brought to Angus Council on 3 November 2011 seeking authority to enter into the various East Central Territory agreements;

(iii) note the position regarding the procurement through hub of the replacement Brechin High School and the potential for using hub to procure the proposed new primary school in Arbroath.

2. BACKGROUND
2.1 Reference is made to Report No 352/10 approved by Angus Council on 13 May 2010 which outlined the basis of the hub initiative being taken forward by the Scottish Government through Scottish Futures Trust (“SFT”). In terms of this Report, the Council granted approval to participate in developing the East Central Territory Hub and delegated authority to the Chief Executive to sign the Memorandum of Understanding and appoint appropriate Council Officers to the Hub Territory Board. The public sector participants in the East Central Territory Hub are set out in Appendix 1 to this Report.

2.2 All local authorities, health boards and other public agencies in Scotland have been asked by the Scottish Government to participate in hub, an initiative which is intended to improve the planning, procurement and delivery of infrastructure assets that support community services such as health, social care and education.

2.3 The purpose of hub is to act as a procurement vehicle for delivering the infrastructure with the various public sector organisations in partnership with a private sector development partner.

2.4 The hub structure can support new build projects and also refurbishment and asset management services of existing infrastructure. The hub structure can encompass both the privately financed and traditionally funded developments.
2.5 The key objectives that have been set for hub are:-

(a) to provide enhanced local services by increasing the scale of joint service working and integration between Community Planning Partnerships across Scotland;

(b) to deliver a sustained programme of investment into community based facilities and developments so that more and more services are provided locally in communities through multi-disciplinary teams working (wherever possible and appropriate) from single sites;

(c) to establish a more efficient and sustainable procurement methodology for public sector bodies that:

(i) reinforces joint strategic planning and delivery;

(ii) is stable and long-term;

(iii) delivers better value for money than current procurement arrangements;

(iv) is flexible in its ability to respond to evolving service strategies and in being able to deliver through different contractual/funding routes; and

(v) is able to generate sufficient project size, volume and deal flow to attract private finance into the delivery and long-term management of the service;

(d) to share learning and improve the procurement process;

(e) to deliver facilities for Community Services that meet public sector policy objectives for design quality and sustainability; and

(f) to facilitate and improve the level of stakeholder engagement in the planning of services and development of facilities for Community Services.

2.6 With regard to performance monitoring and benefits realisation to ensure hub objectives are delivered, a schedule of Key Performance Indicators delivering minimum areas of performance and minimum performance requirements will be developed for the East Central Territory.

3. PROCUREMENT PROGRAMME

3.1 The establishment of Hubco, which is a public/private sector joint venture company, requires the East Central Territory Hub participants to procure a suitable private sector development partner.

3.2 The programme for procuring a private sector development partner commenced with the issue of the East Central Territory advertisement in the Official Journal of the European Union on 30 September 2009 and nine pre-qualification questionnaires were returned by the deadline for their submission on 19 November 2010.

3.3 Following an evaluation of the pre-qualification questionnaires, the East Central Territory Board approved a shortlist of three bidders who were invited to participate in a competitive dialogue process which will ultimately lead to the appointment of the private sector development partner. The competitive dialogue process is a process which allows the contracting authority the opportunity to discuss the detail of various bids with more than one bidder prior to final bids being submitted. This gives the public sector the flexibility to explore and develop potential solutions in detail prior to the final bid stage. It is an exceptional procedure and is not permitted for normal procurement transactions. However, due to the complexity of the appointment of a private sector bidder for Hubco, it is considered that the competitive dialogue procedure was the most appropriate to use for this project.
3.4 The shortlist of bidders comprises Amber Blue (a consortium of Robertson Group Limited, International Public Partnerships Limited and Forth Holdings Limited); Alba (a consortium of Cyril Sweet Group PLC and Millar Corporate Holding Limited) and InspiredSpaces (Carillion PLC).

3.5 The competitive dialogue process comprises a series of structured meetings with the individual bidders which are each followed up by interim submissions from the bidders. These submissions have been evaluated and feedback provided to bidders during the dialogue phase. The intention is to ensure that when final tenders are submitted they are comprehensive and robust and that the bidders fully understand the East Central Territory Hub Board’s requirements and priorities.

3.6 The competitive dialogue commenced with the three bidders in early March 2011 and closed in early August 2011. Invitations to submit final tenders were then issued to all three bidders with a return date of 30 August 2011. It is intended that following evaluation of the final tendered submissions, the preferred bidder will be approved by the East Central Territory Programme Board on 10 October 2011 and thereafter ratified by the Hub National Programme Board on 13 October 2011. Prior to financial close, which is currently scheduled for 8 December 2011, each individual participant authority will require the approval of its own authority to the appointment of the preferred bidder as a private sector development partner and to the establishment to Hubco. It is the intention that a report will be brought to the meeting of the Council on 3 November 2011 on the outcome of the final bids and the appointment of a preferred bidder.

3.7 Key areas that bidders are required to address in connection with the competitive dialogue process include:-

• choice of local contractors to carry out construction and maintenance works;

• scope of using in-house design teams on hub projects; and

• robust methodology for evidencing value for money on individual projects.

4. HUBCO

4.1 Once the private sector partner has been appointed, a company will be formed involving the private sector partner, the various public sector bodies detailed in Appendix 1 and Scottish Futures Trust (SFT). The company name is not known at present and is currently referred to as “Hubco”. The equity and working capital of Hubco will be split amongst the private sector development partner (60%), the public sector participant authorities (30%) (shared between all of the authorities) and SFT (10%). Three different classes of shares will be issued, A Shares, B Shares and C Shares to the private sector development partner, public sector participant authorities and SFT respectively with each class of shares carrying the same voting and distribution rights. The subscription price of each share will be a nominal sum expected to be around £100 in total.

4.2 The initial working capital of Hubco will amount to approximately £300,000. This will be made up of £180,000 from the private sector development partner, £30,000 from SFT and £90,000 jointly between the participant public sector bodies. The cost of the participant public sector bodies investments will be met from enabling funds made available by SFT. In addition, all shareholders in Hubco will have the opportunity (but no obligation) to provide loans to Hubco for additional capital requirements.

4.3 The rights and obligations of the Hubco shareholders will be detailed in a shareholders agreement which will require to be entered into by all of the participating parties.

4.4 The public sector participants will also enter into a participants agreement which details the decision making processes of the public sector participants acting together as 30% shareholders of Hubco.
4.5 Further, all participating parties including SFT and the private sector partner will require to enter into a Territory Partnering Agreement which governs the partnering agreement between the public and private sector participants in Hubco. The territory partnering agreement will be for an initial term of 20 years with the option to extend for a further five years.

4.6 NHS Boards are required to procure all primary and community health facilities with a capital value exceeding £750,000 through hub. In addition, any joint NHS/Local Authority project exceeding £750,000 in capital value where the lead participant is the NHS must also be procured through hub.

4.7 Local Authorities and other public sector agencies have been asked by the Scottish Government to participate in hub. However, the procurement of capital projects through hub is not currently obligatory. However, SFT have advised that schools projects financially supported by the Scottish Government under Scotland’s Schools for the Future Programme should be procured through hub unless the Local Authority can demonstrate that better value could be achieved using an alternative procurement route. The implications for the Council’s proposed new build schools are detailed in section 7 of this Report.

5. LEGAL ISSUES

5.1 The Head of Law and Administration is currently working with SFT, the Director of Education and Head of Finance in reviewing the terms of the various project documents and any legal issues surrounding them. Any issues will be highlighted to Committee in the report to be presented on 3 November 2011.

6. CORPORATE GOVERNANCE

6.1 A detailed governance process has been set up to manage the various parties involved in this process and the formation of Hubco. A summary of the roles and responsibilities of the Territory Partnering Board and the various parties involved in the East Central Territory Hub are set out in Appendix 2 to this Report.

7. ANGUS COUNCIL PROJECTS

7.1 Brechin High School

7.1.1 Reference is made to the funding arrangements for the project to replace Brechin High School, which is part of the Scottish Government School Improvement Programme (Reports 748/09, 750/10, 50/11 and 294/11 refer). Members may recall that the Scottish Government changed their funding support for this project from capital to revenue following the spending review process in November last year.

7.1.2 While it was anticipated from the outset of this project that the procurement would most likely be through the East Central Territory Hubco, the funding change from capital to revenue has now confirmed this as a definite requirement.

7.1.3 The Scottish Futures Trust have recently confirmed that Angus Council will be required to use the Design, Build, Finance and Maintain (“DBFM”) contract, an option which uses revenue funding to finance projects and which will be available as part of the East Central Territory Hubco arrangements that are currently being procured.

7.1.4 The alternative Not-for-Profit Distributing (“NPD”) approach, referred to in Reports 50/10 and 294/11, is not considered to be a viable option for a stand-alone project like Brechin High School with a development value of £24m.

7.1.5 In summary, the Brechin High School project will require to be procured using the East Central Territory Hubco and further Reports will be prepared on the specifics of that project in due course.
7.2 Arbroath Schools Project (Phase 1)

7.2.1 While arrangements to procure a contractor for the proposed new primary school in the West of Arbroath have not yet been progressed, the East Central Territory Board have identified this project as one of a number of potential front runner projects for procurement using Hubco, albeit that approach would be at the full discretion of Angus Council.

7.2.2 As part of the establishment of the East Central Territory Hubco, the Scottish Government has committed Capital Enabling Funding (“CEF”) of £5.36m to be allocated across the identified front runner projects to support a range of activities including land acquisition, enabling works and other defined aspects. This CEF is being provided by the Scottish Government to be targeted at the delivery of early projects to ensure that Hubco is delivering facilities as quickly as possible following its formation.

7.2.3 Since the new primary school project in Arbroath was identified as a potential front runner project, Council officers submitted a bid for a portion of the CEF. That bid has subsequently been successful. If progressed, the project would attract an award of £661,500 (the national SFT Board has now been confirmed this position). Such funding would only be available if the project was procured through Hubco.

7.2.4 This opportunity would need to be fully considered against other procurement options available for a project of this nature, including the adoption of a traditional tendering approach.

7.2.5 Progress in relation to the Arbroath Schools Project is dependent upon Ministerial consideration of the decision, made by the Council on 22 June 2011 (Report No 466/11 refers), to close Muirfield Primary School and Timmergreens Primary School. As members will be aware, the decision was called in on 28 July 2011. Scottish Ministers have yet to notify the Council of the outcome of their determination of the closures proposal. Accordingly, no recommendation regarding procurement will be made until the Scottish Ministers make a determination on the closures.

8. FINANCIAL IMPLICATIONS

8.1 There are no direct financial implications resulting from the recommendations in this Report. The creation of Hubco and the potential delivery of capital projects through this route will however represent a significant change in approach to the procurement of such projects. Further analysis will be required on individual projects to confirm that procurement through Hubco represents best value for the Council.

9. HUMAN RIGHTS IMPLICATIONS

9.1 There are no human rights implications arising from this Report.

10. EQUALITIES IMPLICATIONS

10.1 The issues dealt with in this Report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.

11. ANGUS COMMUNITY PLAN AND SINGLE OUTCOME AGREEMENT

11.1 This Report contributes to the following local outcomes contained in the Angus Community Plan and Single Outcome Agreement 2011-2014.

- Angus Council is a good place to live in, work and visit;
- Individuals are supported in their own communities with good quality services;
- Our communities are developed in a sustainable manner.
12. CONSULTATION

12.1 The Chief Executive, Head of Finance, Head of Law and Administration and Head of Property have been consulted in the preparation of this Report.

13. CONCLUSION

13.1 Following the East Central Territory Programme Board’s approval and the Hub National Programme Board’s approval of a preferred bidder on 10 October and 13 October 2011 respectively, the approval of the individual participant authority of the appointment of the preferred bidder as private sector development partner in the establishment of Hubco will be sought, including the entering into the Shareholders Agreement, the Participants Agreement and the Territory Partnering Agreement.

COLIN McMAHON
DIRECTOR OF CORPORATE SERVICES

NEIL LOGUE
DIRECTOR OF EDUCATION

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above Report are:

- Report No 352/10 The Scottish Futures Trust, Implementing the Hub Initiative – Angus Council on 13 May 2010
- Report No 750/10 Brechin High School: Update - Education Committee on 20 October 2010
- Report No 50/11 Brechin High School: Funding Position – Education Committee on 20 January 2011
- Report No 466/11 Arbroath Schools Project (Phase 1)

CS/L&A/LJR
East Central Hub Participant Authorities

Angus Council
Clackmannanshire Council
Dundee City Council
Falkirk Council
Fife Council
Perth & Kinross Council
Stirling Council

Fife Health Board
Forth Valley Health Board
Tayside Health Board

Central Scotland Police
Central Scotland Fire and Rescue
Fife Constabulary
Fife Fire and Rescue
Tayside Police
Tayside Fire and Rescue
Scottish Ambulance Service
Corporate Governance

In terms of Corporate Governance of the Hubco, the East Central Territory Programme Board have agreed the following:

- a detailed proposal for establishment of the Territory Partnering Board
- the resources and organisation structure required to manage the Client organisation for Hubco including the management and capacity support resources required by the public sector to interface with Hubco

The following issues will require to be resolved prior to the establishment of Hubco:

- the arrangements for ensuring the accountability and probity of Hubco to the Territory Partnering Board.
- Appointment of a Territory Director to the Hubco Board - technically the director does not represent the interests of his/her appointing organisations, but instead has to act in the best interests of Hubco
- Appointment of a B Shareholders’ Representative to represent the local public sector participant’s interests as shareholders.

Territory Partnering Board

Pursuant to the Territory Partnering Agreement (“TPA”) a Territory Partnering Board (“TPB”) will be established to provide strategic input into the long-term running of the hub project. In particular, the TPB will meet regularly (at least once every three months) to review performance and financial aspects, to approve each new edition of the Territory Delivery Plan (TDP) (annually), to give guidance and approval in respect of new project proposals, and to generally manage the provision of Partnering Services by Hubco to the Participants. Unless a project is a “Qualifying Project” and therefore subject to exclusivity a new project will not be included within the TDP without the express written consent of the Participant whose project it is.

Each Participant is required to appoint a Participant’s Representative on to the TPB who should be appropriately empowered to agree matters on behalf of the particular Participant. In addition, each Participant’s Representative will act as the effective point of contact between Hubco and the particular Participant.

In addition to the Participant’s Representatives, the TPB will include a member appointed by the Board of Hubco and may also include representatives of other stakeholders (however Stakeholder voters will be non-voting).

Decisions of the TPB will be taken by majority vote subject to an affected Participant not being bound by a majority decision that its own Representative has not supported by voting in favour.

A non-executive, non-voting, chairman will be appointed on an annual basis form amongst the Participants Representatives and the intention is that the Chairman will rotate annually among the different Participants Representatives.

Hubco Board

Hubco will be a private limited company governed by the Companies Act 2006. The shares will be allocated 60% to the private sector partner, 30% to the Participants and 10% to Scottish Futures Trust.

The Board of Directors will be made up of three directors appointed by the private sector partner, one director appointed by Scottish Futures Trust and one director by the local public sector investors (as a group). Each director will have one vote and except in respect of shareholder consent matters, decisions will be made by majority vote. Additionally, the directors will be required to appoint an independent, non-voting chair.
A number of matters are reserved for shareholder consent including revision to the Hubco business plan, restructuring of Hubco’s debt and tendering for any additional business outside the scope of the Territory Delivery Plan. The matters reserved for shareholder consent require a majority of each class of shareholder to vote in favour i.e. the private sector shareholder(s), SFT and a majority of the local public sector shareholders must all vote in favour for any such resolution to be carried. The process for voting among the public sector participants will be set out in the Participants’ Agreement.

The duties of a director within a private limited company are primarily to the company and to its members as a whole. The duties are derived from common law and statute.

The Tenderers will be asked to include provision for payment of fees to each of the five board directors and to the chair with deferred payment of Directors fees until after year three of operation of Hubco.

The documents provide for a Shareholders’ Forum to be established (comprising all of the shareholders, plus the Chair of Hubco), to meet twice a year. The role of the Shareholders’ Forum will be to review:

- the effectiveness of Hubco in fulfilling its objects
- the past & present business activities of Hubco
- the performance by all parties of their obligations
- the Hubco board’s response to any queries previously raised.

The Shareholders’ Forum does not have any power to issue directions or instructions to the board, but the board must “carefully consider the conclusions of the Shareholders’ Forum in formulating their plans for the Company”.

**Participant/Client Organisation**

The key challenge for the Participants in a Hubco environment remains that of client capacity building – ensuring that the right mix of skills and resources is available to translate the increased public investment into high quality service provision.

Due consideration therefore requires to be given to the resourcing of a client side organisation which will effectively manage the day-to-day performance of the Hubco. In doing so, it is very important that the client side organisation does not duplicate the skills, expertise, knowledge and experience that the private sector partner brings to the venture, however it must have the appropriate skills and experience to manage the activities and outputs of Hubco and provide assurance to the TPB that the strategic requirements of the TDP are being achieved.

It is also very important that the internal resources of the Participants are aligned in order to provide an effective and efficient input to the strategic development of the Hubco’s business plan.

Activities to be managed by client side organisation on behalf of TPB and in the capacity as shareholder are set out as follows:

1. Transfer knowledge and current plan status of existing projects and ensure new 'ways of working' are established with no risk to existing project momentum.

2. The client side organisation will require to provide assurance to the TPB that all strategic partnering costs and Stage 1/2 business cases for new projects are robust and demonstrate vfm.

3. Coordinate legal review of all schemes prior to financial close.

4. Provide assurance to the TPB that all programme/project plans proposed by Hubco are robust, realistic, appropriately resourced with risks clearly identified and plans in place to mitigate such risks.

5. Conduct regular reviews of the Territory Delivery Plan, the five local delivery plans and project and partnering services to assure performance and identify recovery actions where appropriate.
6. Conduct regular programme, project and partnering service reviews to assure performance and identify recovery actions where appropriate.

7. Manage continuous improvement and contractual KPIs with Hubco to ensure that obligations are being met.

8. Manage overall relationship and provide regular updates to TPB and Hubco public sector Director and the public sector partners representative. In recommending a preferred solution an overarching objective will be to provide a long term sustainable organisation which can operate effectively without reliance on external consultants. However, both continuity from the existing programme structure, and knowledge transfer are key success factors and it is important to recognise the significance of this.