

23 May 2016

Agenda Item: 8a

REPORT OF SERVICE DIRECTOR ENVIRONMENT, TRANSPORT & PROPERTY

PROPERTY JOINT VENTURE – PROGRESS AND IMPLEMENTATION

Purpose of the Report

1. To apprise the Committee of the progress made in the establishment of the Property Joint Venture (JV): (Design & Operations).
2. To seek approval to the appointment of County Council Directors to the JV and County Council Shareholder Representative.

Information and Advice

3. The Committee will recall that approval was given to the establishment of the Property JV with Scape Group at its meeting on 9 November 2015. Members are aware that Scape Group is controlled by local authorities. The local authorities who control Scape Group are D2N2 local authorities, Gateshead and Warwickshire County Council.
4. Lead Councillors (Cllrs Kirkham, Langton, Adair and Rigby) have been regularly kept abreast of the progress and issues leading up to the establishment of the JV throughout the process.
5. It is pleasing to report to the Committee that good progress has been made on all key aspects of the arrangements to the mutual satisfaction of both the County Council and Scape Group.
6. Final agreement has been reached on all essential matters (subject to final legal drafting), which are subject to approval both by the County Council and Scape Board this month. If approved it paves the way for signing off all the legal agreements that will support the JV.
7. The Committee should note that the company will be known as Arc Partnership (registered as Arc Property Services Partnership Ltd).
8. The set-up, governance and operation of the JV are set out in 3 key documents which include the following:
 - Shareholders Agreement (between Scape Group and the County Council)
 - Arc Service Contract (between JV and the County Council)
 - Business Plan (2016-19)

9. The 3 documents described above are briefly explained below:

(i) Shareholders Agreement

The Shareholders Agreement identifies the responsibilities of Scape Group and the County Council in the ownership, operation and governance of Arc, together with the share of costs, benefits, liabilities and assets for each party. The Agreement sets out that:

- Scape Group will have 80 shares, and the County Council 20; the County Council's shares will be of a different class which will entitle the County Council 50% of the profits of the Company;
- governance of Arc will be via quarterly meetings of a Board of Directors;
- there will be parity of voting rights with the County Council and Scape Group each appointing 2 directors; Scape Group appointing the Chair who will have the casting vote.

The Shareholders Agreement requires the production of an annual Business Plan to be approved by the Arc Board of Directors and setting out the key intentions for Arc over the following three year period.

Arc will be financed by a combination of capital (contributed as vehicles and tools in the County Council's case) and a loan from each shareholder of £200,000 at 4% above PWB, repayable within 2 years.

There are a list of "Reserved Matters" in respect of which both shareholders need to be in full agreement. These cover key issues including:

- major indebtedness;
- changes to the approved Business Plan;
- buying and selling a property;
- entering into certain types of contracts;
- specific employment matters.

(ii) Service Agreement

If approved, the Service Agreement will be entered into between the County Council and Arc, and defines the services to be provided by Arc to the County Council. Under the Service Agreement, Arc is required:

- to ensure that it remains as a "Teckal" company, ie a company with sufficient control and at least 80% of turnover deriving from the County Council that the Council is not required to go through a procurement process to work with it;
- to provide the Services for a period of 10 years subject to extension or earlier termination;
- to provide services in accordance with the County Council's service plan, project briefs, legal requirements, consents, good practice, required standards, key performance indicators, agreed policies and CDM regulations. Arc is only required to achieve key performance indicators formally 12 months after commencement in order to allow for a "bedding-in" process;
- to both manage pre-existing Construction Contracts on behalf of the Council but also, from "go live" date to enter into all new Construction Contracts in its own name on behalf of the Council;

- to deliver projects within budget, on time and to a high level of customer satisfaction, failure to meet KPIs can lead to a range of sanctions, including loss of exclusivity or, ultimately, contract termination.

Under the Service Agreement, the County Council has the following key obligations:

- to grant exclusivity to Arc for the provision of services to the County Council for a 10 year contract period, with a potential for a five-year extension.
- to indemnify Arc for redundancies (up to an agreed threshold and within a timeframe).

(iii) The Arc Business Plan (2016-2019)

The key objectives for Arc Partnership are to:

- deliver a successful transfer of services and staff from the County Council to Arc by 1st of June 2016, and maintain and develop a professional workforce;
- deliver the 10-year Service Delivery Agreement with the County Council;
- grow new business, sharing the benefits of this activity between the shareholders;
- secure external income growth;

Arc Partnership:

- offers built environment design and project management services, with expertise in local government, education and the wider public sector;
- has an education sector focus but intends to offer services to a range of public sector clients in Nottinghamshire and the East Midlands;
- is a Public Contracting Authority, managing the County Council's construction programme and able to procure construction services for its clients and its own supply chain requirements.

Arc is resourced to deliver with:

- a transferring workforce of around 70 staff, including a professional (design and project management) workforce and an internal contracting arm;
- access to the Scape Procure construction and consultancy frameworks;
- access to a supply chain of local sub-contractors and materials suppliers;
- support services, provided mainly via Scape Group, but with pension/payroll provided by the County Council.

Arc is projected to deliver the following financial performance, noting:

- financial controls and a risk register are in place;
- the impacts of changes to income, costs and staffing levels, have all been considered;
- projections are prepared based on estimates and information provided by the County Council and Scape Group.

10. The Scape Board is due to meet on 13 May to consider giving approval to the establishment of the JV with the County Council. The decision of the Scape Board will be reported to the Committee at its meeting.

Local Partnership Assurance

11. As a part of due diligence, the Chief Executive instigated a review of key aspects of establishing the JV and give an independent external view of the state of readiness to go-live and sign the deal with JV after taking views of the service, Legal, Finance and HR advisors involved in the setting up of the JV.
12. Local Partnership Assurance work has been completed and reported back to the County Council. A copy of their report is available as a Background Paper to the report.
13. In summary, the Local Partnership Assurance Review concludes that excellent progress has been made towards the 'go-live' date of 1 June 2016 for the JV. It goes on to give great credit to all involved with the County Council and Scape Group as there appears to be no major obstacles to prevent a successful transition to the new operating model.
14. To achieve the above, focus now needs to be on building Arc into a strong new player in the market.

County Council Directors and Shareholders Representatives on Arc JV

15. The County Council is entitled to appoint two Directors to the Arc JV. It is important to appoint those individuals to this role who have proven track records and bring experience and expertise to make Arc into a successful and thriving company and bring added value to the workings of the Board.
16. The Education sector and academy markets are critical to the success of the JV. It is therefore recommended that Derek Highton (Service Director Youth Families & Cultural Services) and Jon Hawketts (Group Manager Quality & Improvement) are County Council representatives on the Arc Board.
17. The Shareholder Representative role is different from the Board of Director roles, as it is about responsibilities to the County Council rather than the Board of Directors whose ultimate responsibilities are to the company under company law.
18. It is therefore recommended that the County Council Shareholder Representative role is vested in Corporate Director (Place) or his/her nominee.

Statutory and Policy Implications

19. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

It is recommended that Committee:

- 1) Note the report;
- 2) Approve appointment of Derek Higton (Service Director Youth, Families & Cultural Services) and Jon Hawketts (Group Manager Quality & Improvement) as Directors of Arc.
- 3) Approve the appointment of the Corporate Director (Place) or his/her nominee as the County Council's Shareholder Representative to Arc.

Jas Hundal
Service Director
Environment, Transport & Property

For any enquiries about this report please contact: Andrew Stevens, Group Manager, Property - 0115 9772085

Constitutional Comments (SMG 11/5/2016)

20. The Committee has responsibility for property design and construction and related consultancy services. The proposals set out in this report fall within the remit of this Committee.

Financial Comments (TMR 10/05/2016)

21. There are no direct financial implications arising from this report.

Background Papers and Published Documents

Local Partnership Assurance Report.

Electoral Division(s) and Member(s) Affected

All