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Date: 8 December 2014

Dear Member

SCRUTINY COMMITTEE - FRIDAY, 12 DECEMBER 2014 – UGENT BUSINESS

Following the meeting of the Committee on Friday 5 December 2014, the Chairman has decided that the following item of business is urgent and should be considered at the meeting on Friday 12 December 2014.

Agenda No Item **B - Any items called-in**

- a) URGENT BUSINESS
- b) Motion to exclude the press and public

That under Section 100A of the Local Government Act 1972 the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act.

EXEMPT ITEM

B2 Decision 14/00133 - Approval of Equity Investment from the TIGER Fund
(Pages 3 - 222)

The report of the external auditors requested at the meeting on 5 December will be available prior to the meeting. Copies of the published open and exempt report circulated with the papers for the meeting on 5 December 2014 are attached for Members' information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Sass', written in a cursive style.

Peter Sass
Head of Democratic Services

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By: Joel Cook – Scrutiny Research Officer
To: Scrutiny Committee – 5th December 2014
Subject: Call-in of Decision 14/00133 – Approval of Equity Investment from TIGER Fund

Summary: This report outlines the background of the decision, the reasons why this item has been called in to the Scrutiny Committee and details the supporting documentation provided, noting the presence of exempt materials.

1. Background

- 1.1 The call in relates to the 19th November decision taken by Mark Dance, Cabinet Member for Economic Development, to approve equity investment of £1.17million from the TIGER fund in a private company.
- 1.2 The purpose of the TIGER fund is to assist businesses in creating higher value employment through innovative projects. More information on the purpose of the TIGER programme is included in the Executive Decision covering report.
- 1.2 The decision to approve the equity investment was taken in accordance with statutory requirements for a key decision because the sum to be invested exceeded £1,000,000.
- 1.3 The proposed decision was published in the 6 October edition of the FED.
- 1.3 The proposed decision of the Cabinet Member for Economic Development to approve the investment was published on 3rd November 2014. The period for comments and questions was extended from 12th November to 19th
- 1.4 Prior to Mr Dance's decision, the application for TIGER funding was reviewed by the North Kent Approval Panel which received presentations from the applicant and a report from an independent assessor. The North Kent Approval Panel is an advisory group that makes formal recommendations to the Cabinet Member as per the Governance arrangements agreed by the Department for Business, Innovation and Skills. Details of the Panel's recommendation may be found in the exempt appendices.
- 1.5 The Cabinet Member's decision to approve the investment was taken on the 19th November and set for implementation on the 27th of November but the call-in has now placed the implementation on hold pending consideration by the Scrutiny Committee.

2. Scrutiny Interest

- 2.1 The Call-in request was submitted on the 25th November and accepted on the 26th after due consideration by the Head of Democratic Services.
- 2.2 The Key issues raised by members in the call-in request were;
- The adequacy and accuracy of documentation originally provided
 - The restricted access to supplementary documents
 - The influence of the TIGER panel and its links with applicants
 - The degree to which KCC has commissioned external opinions from qualified consultants
 - The degree to which the queries raised by the consultants have been addressed
 - The apparent discrepancy between the treatment of this award and future equity based awards proposals for Expansion East Kent (EEK) provided to the Governance and Audit Committee
- 2.3 The call-in relates to the recent approval of an investment from the fund and commercially sensitive information relevant to the company in question, which is exempt from publication. The call-in also references the general governance arrangements of the TIGER Fund. Information which relates to these concerns can be published. Examples that do not impinge on the exempt information of the recent applicant are;
- the membership of the TIGER Panels in light of their role in recommending decisions to the Cabinet Member,
 - how the North Kent Approval Panel considers Independent assessor risk assessments.
 - how the TIGER governance structure appears in comparison to other Regional Growth Fund models.
- 2.4 Provided for the Committee's consideration are an Executive Decision Covering Report recommending the approval of the equity investment, the formal Record of Decision and a number of detailed exempt appendices (commercially sensitive). Further information may be provided in the form of supplementary reports when they become available.
- 2.5 The committee should consider wider principles relating to the TIGER Fund and Regional growth Fund governance in relation to 14/00133 if it is necessary to determine whether it is satisfied that the decision has been properly taken.
- 2.5 Mark Dance, the Cabinet Member for Economic Development, has been invited to attend the Scrutiny Committee, supported by David Smith (Director of Economic Development) and Jacqui Ward (Regional Growth Fund Programme Manager)

3. Recommendation

3.1 The Committee must decide whether to;

- Make no comment
- Express comments but not require reconsideration of the decision
- Require implementation of the decision to be postponed pending reconsideration of the matter by the decision maker in the light of the Committee's comments
- Require implementation of the decision to be postponed pending reconsideration of the matter by the full Council (only if the decision is found to be contrary to the Policy Framework or Budget)

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Executive Decision

From: Director of Economic Development, David Smith
To: Cabinet Member for Economic Development, Mark Dance
Decision No: 14/00133
Subject: **Approval of Equity Investment from the TIGER Fund**

Key decision

Equity Investment value is over £1million

Classification: **Unrestricted with exempt appendices**
Appendices exempt from publication under paragraph 3 of schedule 12A of the Local Government Act 1972 "Information relating to the financial or business affairs of any particular person (including the authority holding that information)."

Past Pathway of Paper: North Kent Approval Panel

Electoral Division: North Kent

Summary: To seek endorsement of the recommendations of the North Kent Approval Panel, and formal agreement to approve an Equity Investment application to the TIGER this.

Recommendation(s):

It is recommended that the Cabinet Member agree to implement the recommendation of the North Kent Approval Panel and grant an equity investment to the Company set out in the exempt report, subject to the conditions also contained therein, of £1,174.072million from the TIGER Fund.

1. Introduction

1.1 The TIGER programme aims to provide financial support to businesses seeking to invest in projects that will create higher-value employment through the development of new products, services and processes. TIGER seeks to respond to the gap in economic outcomes between the Thames Gateway and the South East's other growth areas by providing targeted funding to companies where this will secure additional private sector finance and support the sustainable job creation. Should this application be successful it will have been deemed to meet the aims of the project.

Geographically, the programme focuses on North Kent (Dartford, Gravesham, Medway and Swale) with the addition of Thurrock.

2. Financial Implications

- 2.1 Although the decision involves the purchase of shares to the value of £1.174.072m, if agreed, there is no financial impact for Kent County Council as the TIGER Fund monies were allocated as the result of a successful bid to the Regional Growth Fund and ring-fenced for the TIGER project only.
- 2.2 Furthermore the award is in the form of equity investment and all monies will be recovered from the applicant and will be set out in the terms and conditions of the equity agreement.

3. Bold Steps for Kent and Policy Framework

- 3.1 TIGER helps to secure two of the main aims of the Council's medium term strategy, Bold Steps for Kent by tackling disadvantage and helping the Kent economy to grow.

4. The Report

- 4.1 An application from a business eligible to apply according to the criteria set out in the TIGER Fund has been received. The applicant is seeking to secure equity investment to the value of £1,174.072m.
- 4.2 The application has been subject to an independent appraisal from PWC and the consequent report has been considered by the North Kent Approval Panel in line with the governance of the TIGER Fund as agreed by the Department for Business, Innovation and Skills.
- 4.3 The Panel also received a presentation from the business owners, and had an opportunity to put questions and receive answers.
- 4.4 The Panel has recommended that the equity investment be approved.

5. Governance:

- 5.1 The Equity Investment application has been considered by the appropriate advisory body in line with the TIGER fund governance requirements, approved by the Department for Business, Innovation and skills and agreed by Cabinet member decision; the North Kent Approval Panel. The advisory body has recommended that the equity investment be accepted. Relevant documentation is attached; it is exempt from publication in accordance with Paragraph 3 of Part 1 Schedule 12a of the Local Government Act 1972.
- 5.2 All members have been given the opportunity to comment on the proposed decision before it was taken by the Cabinet Member. *Any comments received will be given due regard by the Cabinet Member when taking the decision and will be published as part of the Record of Decision or accompanying documentation.*
- 5.3 The Growth, Economic Development and Communities Cabinet Committee will receive, as part of its regular updates, information pertaining to this and other grants, loans and equity investment made and performance against targets.
- 5.4 The Executive Scheme of Delegation for Officers set out in Appendix 2 Part 4 of the Constitution (and the directorate schemes of sub-delegation made thereunder)

provides the governance pathway for the implementation of this decision by officers. In this instance, Director of Economic Development (on behalf of the Corporate Director of Growth, Environment and Transport) will be the lead officer seeking to ensure that all such steps as are necessary to implement the decision.

5. Conclusions

- 5.1 The North Kent Approval Panel has recommended that the proposal be fully funded, with the following conditions:
- All jobs to be maintained within the TIGER area
 - External advice to be taken on the valuation and proposed share allocation.
 - KCC officers to negotiate a share allocation of around 10% and the detail to be brought back to the panel.
 - All legal costs to be covered by the company
- 5.2 Officers consider that all the conditions have been met and evidence is attached.
- 5.3 The equity investment is considered to meet the criteria for approval and as such will support sustainable job creation in North Kent.

6. Recommendation(s):

The Cabinet Member is asked to: agree to implement the recommendation of the North Kent Approval Panel and grant an equity investment to the Company set out in the exempt report, subject to the conditions also contained therein, of £1,174.042million from the TIGER Fund.

Governance:

The Executive Scheme of Delegation for Officers set out in Appendix 2 Part 4 of the Constitution (and the directorate schemes of sub-delegation made thereunder) provides the governance pathway for the implementation of this decision by officers. In this instance, the Director of Economic Development (on behalf of the Corporate Director for Growth, Environment and Transport) will take all such steps as are necessary to implement the decision.

7. Background Documents

- 7.1 All documentation relevant to the decision maker is included as appendices to this report

Appendix - UNRESTRICTED – Proposed Record of Decision

Appendix 1 – EXEMPT - Independent Appraisal Report

Appendix 2 – EXEMPT – Company presentation

Appendix 3 – EXEMPT - Notes from the meeting of the NKAP (Advisory Panel)

Appendix 4 – EXEMPT - Signed form - acknowledgement of recommendations

Appendix 5 – EXEMPT – Condition satisfaction

Appendix 6 – EXEMPT – Condition Satisfaction

Appendix 7 – EXEMPT – Condition Satisfaction

Appendix 8 – EXEMPT – Condition Satisfaction

8. Contact details

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KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TAKEN BY
Mark Dance
Cabinet Member for Economic Development

DECISION NO.
14/00133

Unrestricted
Key decision – Financial criteria exceeded

Subject: TIGER Loan approval

Decision:

As Cabinet Member for Economic Development, I agree to implement the recommendation of the North Kent Approval Panel and grant a loan to the Company set out in the exempt report, subject to the conditions also contained therein, of £1,174,072 from the TIGER Fund.

Governance:

The Executive Scheme of Delegation for Officers set out in Appendix 2 Part 4 of the Constitution (and the directorate schemes of sub-delegation made thereunder) provides the governance pathway for the implementation of this decision by officers. In this instance, Director of Economic Development (on behalf of the Corporate Director Growth Environment & Transport) will be the lead officer seeking to ensure that all such steps as are necessary to implement the decision.

Reason(s) for decision

This equity investment will enable the company to whom it is granted to buy market share, which will in turn help to accelerate growth and traction for their products and services; employ additional highly experienced and specialised big data staff; aid in the deployment of their own tech hub and scale the business beyond the launch stage. Digital Contact is an emerging technology start-up focussed on big data. The company has developed an engine that captures and curates tweets, blogs and news within a specified sector, to produce predictions relevant to that market. This is a proposal for equity investment opportunity. Big data is a new area, and Digital Contact are very much first movers in their own target sector.

Cabinet Committee recommendations and other consultation

The Equity Investment application has been considered by the appropriate advisory body in line with the TIGER fund governance requirements, approved by the Department for Business, Innovation and skills and agreed by Cabinet member decision; the North Kent Approval Panel. The advisory body has recommended that the equity investment be accepted.

All members have been given the opportunity to comment on the proposed decision before it was taken by the Cabinet Member. As a result of this opportunity a meeting was held between officers and Mr Bird and Mr Clark and various correspondence followed including comments from Mrs Dean. Members who commented were concerned about the governance arrangements in place for the approval of grants and loans from the scheme and sought various assurances in relation to the soundness of the investment and mitigation of areas of risk highlighted in the independent appraisal report. One further document was provided, to which the Cabinet Member also had access and this is published as an exempt document titled 'Further due diligence'. All members have access to the exempt documents that accompany this decision.

The Growth, Economic Development and Communities Cabinet Committee will receive, as part of its regular updates, information pertaining to grants, loans and equity investment made and performance against targets.

Any alternatives considered:

Full consideration of the application was given. The Panel received a report from an independent consultant, prepared based on the original application of the Company. The Cabinet Member further considered this information and new information provided to satisfy conditions recommended by the approval panel, when taking the decision.

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:
None

.....
Signed

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Date

By: Jacqui Ward – Regional Growth Fund Programme Manager

To: Scrutiny Committee – 5 December 2014

Subject: Call-in of Decision 14/00133 – Approval of Equity Investment from TIGER Fund

Summary: This report provides responses to the questions raised by Members via the call-in.

1. Introduction

- 1.1 The Scrutiny Covering report introduces the topic and outlines the scope of the Call-in – see main agenda pack.
- 1.2 This report prefaces a supplementary information pack that includes the Register of Interests for the North Kent Advisory Panel and the Panel's Terms of Reference (Exempt Appendices 1 & 2). Additionally, an updated report from the independent assessor has been provided as part of the further due diligence process (Exempt Appendix 3).
- 1.3 This additional documentation should better explain the process and governance for the TIGER fund, evidencing their correct and proper nature.

2. Responses to Call-in questions:

- 2.1 The influence of the TIGER panel and links with applicants
 - a) As part of the governance arrangements fully agreed by Cabinet previously for the Expansion East Kent Programme in May 2012 the Tiger programme replicates those arrangements. The approval for members of the group are itemised within the Terms of the Reference - see attached
 - b) The nominations for the panel were generated by partners and final selection were approved by both the Tiger Strategic Board and the Tiger Partner Group.
 - c) Panel members are requested to declare any interest in relation to the agenda items at the start of all meetings. There is a record held within the minutes of any declaration of interest from members of the panel and additionally a summary document is compiled as recommended by KCC Internal Audit – see attached.

2.2 The degree to which KCC has commissioned external opinions from qualified consultants and how many consultants or other independent agencies scrutinise the applicants to advise the Panel?

- a) The level of further due diligence undertaken separate to the mandatory independent assessment carried out by PwC and the commissioning of additional external opinions from qualified consultants is at the direction of the Tiger Approval Panel. The degree to which KCC have commissioned any external opinions has varied. It is important to note the external opinion/ advice is always an additional cost to KCC as the Regional Growth Fund funded by the Department of Business, Innovation and Skills does not allow for infrastructure costs to be recovered.
- b) The Tiger Approval Panel have requested additional consultants or sector specific opinions previously from a variety of experts in the field of IT, Renewable Energy and Life Sciences.

2.3 The degree to which the queries raised by those consultants have been answered.

- a) Often the queries raised are partially addressed and by the nature of the scope of any due diligence report there are remaining issues but these will then be itemised as conditions or warranties of assurance within the contract. The funding documents have clauses written in the contract on drawback of funding if the condition or the achievement cannot be met and evidenced. The same applies to the warranties within a shareholder agreement.

2.4 The Panel respond appropriately to the risks / concerns highlighted by the independent assessors?

- a) The nature of the programme is to provide funding to companies who are often seen as a risk by the banks. PwC are a financial body and are by nature of the sector risk adverse and the rag ratings are often on the cautious side. The PwC reports are circulated to Panel members prior to the meeting and PwC provide a verbal headline summary at the meetings prior to each company presenting. Often the private sector panel members demonstrate to the panel the workings of a business and with their input and the presentation by the companies the issues are, in the main, addressed.

2.5 Is there a governance issue inherent in the different arrangements used for the various methods of dispersing RGF monies?

- a) The involvement of Narec Capital is an additional part of the due diligence process and this mirrors the current proposed governance for EEK.
- b) It is important to note Narec Capital will as part of the EEK Equity Investment Fund become the 'grandfather' for all KCC existing RGF Equity Investments.

2.6 Accuracy of documents

- a) All documentation supplied was accurate at the point it was requested. The due diligence process is ongoing until the point of signing contract documents therefore the updates are provided at the panel meetings and to the accountable person on an ongoing basis.

2.7 Adequacy of documents

- a) While a significant amount of financial, legal and technical information is used in the assessment of potential investment, the documents provided for the Approval Panel's use represent appropriate summaries of all relevant papers, presenting the vital information in an understandable and useful format upon which to base their recommendations.

3. Background Documents

- 3.1 Appendix 1 – TIGER Fund Terms of Reference
- 3.2 Appendix 2 – TIGER Approval Panel Register of Interests
- 3.3 Appendix 3 – Independent Assessor updated report

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