

## **GOVERNANCE AND AUDIT COMMITTEE TRADING ACTIVITIES SUB GROUP**

MINUTES of a meeting of the Governance and Audit Committee Trading Activities Sub Group held in the Swale 1, Sessions House, County Hall, Maidstone on Tuesday, 1 December 2009.

PRESENT: Mr R L H Long, TD, Mr T Prater and Mr C T Wells

IN ATTENDANCE: Ms L McMullan (Director of Finance), Mr K Harlock (Commercial Services Director), Mr G Wild (Director of Law and Governance), Mr L Coulson (Head Of Strategic Finance), Mr D Shipton (Finance Strategy Manager), Mr G Mills (Democratic Services Manager (Executive)) and Mr A Tait (Democratic Services Officer)

### **UNRESTRICTED ITEMS**

#### **8. Terms of Reference**

*(Item 2)*

The Sub-Group noted that the Governance and Audit Committee had amended its overarching Term of Reference to read:-

“To ensure that the trading activities of the Council are run properly and transparently.”

#### **9. Minutes - 1 September 2009**

*(Item 3)*

RESOLVED that the Minutes of the meeting held on 1 September 2009 are correctly recorded and that they be signed by the Chairman.

#### **10. Review of Commercial Operations**

*(Item 4)*

(1) An appended report considering the legal status of KCC trading activities post the court judgement on the recent London Authorities Mutual Limited (LAML) case had been published prior to the meeting. The Sub-Group agreed to note this report. It also decided to request a further report on this matter, outlining costed options for further review.

(2) RESOLVED that:-

(a) the amendment to the Council's response to recommendation 3 of the Review of Commercial Operations report be noted;

(b) the appended report set out in (1) above be noted; and

- (c) a further report, setting out costed options for further review be brought to the next meeting of the Sub-Group.

## **11. Date of next meeting and future agenda items**

*(Item )*

The Sub-Group agreed that its next meeting would be on Monday, 17 May 2010 at 2.00pm. It requested a report on the trading activities of the East Kent Local Liabilities Partnership (LLP).

### **EXEMPT ITEMS**

(1) The Chairman reported that all Members of the Sub-Group had expressed concern at the quantity of items listed as exempt and had asked the Director of Law and Governance to give an opinion on whether they were indeed properly exempt under the relevant legislation.

(2) The Director of Law and Governance advised the Sub-Group that he had reviewed the reports and found that the exemptions were all quite proper. However, the Members of the Sub-Group did have discretion, to be used with care, to waive the exemption. Following this advice, the Sub-Group agreed to consider the question of exemption in relation to each report, but not prior to their consideration in the meeting.

In the light of (2) above, the Sub-Group agreed by 2 votes to 1 (with Mr T Prater voting in opposition) that under Section 100A of the Local Government Act 1972, the press and public be excluded from the meeting on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act.

## **12. Business Case for limited company private hire operation**

*(Item 6)*

(1) The Director of Commercial Services explained that he had written a retrospective business case in the light of the recommendations in the Audit Commission's report "Review of Commercial Operations." This had recommended that such a case should be produced for the creation of a separate Trading Division, "Kent Top Travel" within "Kent Top Temps Ltd." This document had been written in the present tense.

(2) The Director of Commercial Services explained that the reason Kent Top Travel had been formed as a Trading Division within Kent Top Temps Ltd had been the advice from external auditors regarding the tax position of KCC's wholly-owned companies.

(3) The Sub-Group decided that as commercially sensitive information had been withheld from this report, it would make it available to the public, subject to the inclusion of an additional paragraph explaining the tax-related reasons for forming Kent Top Travel as a Trading Division within Kent Top Temps Ltd.

(4) RESOLVED that:-

- (a) the retrospective business case for Kent Top Travel be endorsed; and
- (b) the report be published by the Director of Commercial Services, subject to (3) above.

### **13. Business case for Kent County Supplies Ltd**

*(Item 7)*

(1) The Director of Commercial Services introduced a Business Case for activating Kent County Supplies Ltd and to create a Trading Division specifically to service an identified demand in the Care sector. He added that subject to further work, another division to supply Furniture, Fittings and Equipment to the private sector might be activated. Kent County Supplies Ltd was currently a dormant, wholly-owned incorporated entity which could be activated for this purpose.

(2) The Director of Commercial Services explained that the Local Government Act 2003 enabled Local Authorities to establish and sell goods and services to private companies, who could then sell on to the private sector. Under the terms of the Supply of Goods Act 1970, Local Authorities could not sell directly.

(3) The Sub-Group agreed by 2 votes to 1 (with Mr T Prater recording his opposition) that this item should not be published due to the commercially sensitive nature of the data in the report.

(4) RESOLVED that approval be given to the report in order that it can be passed by the Director of Commercial Services to the Cabinet Member for Corporate Support Services and Performance Management for a Decision.

### **14. Loan agreement Kent Top Temps Ltd**

*(Item 8)*

(1) The Director of Commercial Services explained that this report had been written in response to a report by the Audit Commission in its report "Review of Commercial Operations." This had recommended that a correction should be made in the text of the Loan Agreement between KCC and Kent Top Temps Ltd in that the parties to this agreement should be KCC and Kent Top Temps Ltd, rather than Commercial Services and Kent Top Temps Ltd.

(2) The Sub-Group noted that the Interest figures in Paragraph 4 of the report should be as follows:-

Para 4.2: The actual borrowed amount will be subject to a daily rate of interest of  $1/365^{\text{th}}$  of 5% above the Bank of England base rate.

Para 4.3: In the event of default the Company will be liable to pay interest on the total amount outstanding at the time of default at the rate of 6% per annum above Bank of England base rate.

(3) RESOLVED that:-

- (a) the revision to the Loan Agreement between KCC and Kent Top Temps Ltd be noted and endorsed, subject to (2) above; and
- (b) the report be published by the Director of Commercial Services and made publicly available.

## **15. Limited Company accounts 2008-09**

*(Item 9)*

(1) The Director of Commercial Services introduced the accounts for Kent Top Temps Ltd and Kent County Facilities Ltd.

(2) The Sub-Group agreed unanimously that these accounts could not be published as they were not yet disclosed and it was not in the Sub-Group's remit to do so.

(3) RESOLVED that the draft and final accounts for Kent Top Temps Ltd and Kent County Facilities Ltd respectively be noted.

## **16. Dividend Policy - private companies**

*(Item 10)*

(1) The Director of Commercial Services reported a response to the Audit Commission's recommendation in its report "Review of Commercial Operations" that a Dividend Policy should be produced for the wholly owned KCC companies. A draft Policy was made available for the Sub-Group's consideration.

(2) RESOLVED that the draft Dividend Policy (appended to these Minutes) be recommended for approval to the next meeting of the Governance and Audit Committee.

## **17. Return on investment - Kent Top Temps Ltd**

*(Item 11)*

(1) The Director of Commercial Services had prepared this report in response to a request from the previous meeting of the Sub-Group.

(2) The Sub-Group concluded that the figures set out in the report provided no evidence of commercial advantage. It agreed that it could not publish the report owing to its commercially sensitive nature.

(3) RESOLVED that the report be noted.

MINUTES APPENDIX

**DIVIDEND POLICY FOR KCC LIMITED COMPANIES**

**FOR KENT TOP TEMPS LTD**

Kent Top Temps Limited Company (The Company) has been set up as a profitable organization which will trade with the expectation of operating profitably and remitting dividends to the Shareholders (Kent County Council).

The return to KCC on the investment made is threefold:

providing a dividend on profits generated  
providing interest on any loans  
reducing overall costs to KCC by delivering lower costs of providing Temporary [and permanent] Staff and Bus Services directly to KCC.

The amount and timing of the dividends will be proposed to and approved by the Board of Directors and will take into account the following:

1. The policy should be reviewed each year and any dividend declared and approved at the Annual General Meeting, or any properly convened meeting called through the year to declare an interim dividend.
2. No dividends will be expected for the first few years (re-investment phase) whilst the Company establishes itself as a profitable Company, builds a strong balance sheet to support creditor confidence, and determines the requirements to generate its own working capital demands, after meeting loan interest and repayment demands.
3. How long The Company will be in this re-investment phase will depend upon profitability and cashflow, the amount of working capital and direct investment required, and other factors such as Capital Investment requirements, R & D etc..
4. If any such investment is made by way of loans, the interest rate will be set at such a differential rate over the prevailing KCC bank rate that a return is made on the loan until it is repaid. The differential rate to be reviewed each year.
5. It is expected that any legal restrictions or tax considerations will be taken into account at each annual review of the policy.
6. When dividends are payable, they will be paid relating to the preceding year's profits, at a date which does not cause cashflow difficulties to the business, and before the end of the following financial year which is 31<sup>st</sup> March.

7. The dividends proposed will take into account the corporation and other taxes due to be paid by The Company.
8. Dividends may continue to be paid even where this increases the loans required by The Company, if in the opinion of the Directors, the ongoing profitability of The Company and ability to service the loans is adequate.
9. As a guide, the initial expectation is that when The Company is well established and without significant other cash calls, up to 20% of post-tax profits of any year will be paid as a dividend, with the balance after taxes being retained as working capital and to enable loans to be repaid. This will allow for a dividend cover of approx 5x and help stabilize dividends which could be temporarily maintained over periods of difficult trading at a higher percentage of current profits.