

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

Tuesday, 1st December, 2009

2.00 pm

Swale 1, Sessions House, County Hall, Maidstone



AGENDA

GOVERNANCE AND AUDIT COMMITTEE TRADING ACTIVITIES SUB GROUP

Tuesday, 1 December 2009 at 2.00 pm
Swale 1, Sessions House, County Hall,
Maidstone

Ask for: Andrew Tait
Telephone: 01622 694342

Tea/Coffee will be available 15 minutes before the meeting

Membership (3)

Conservative (2): Mr R L H Long, TD and Mr C T Wells

Liberal Democrat (1): Mr T Prater

UNRESTRICTED ITEMS

(During these items the meeting is likely to be open to the public)

Item

1 Substitutes

2 Terms of Reference

To note the revision to the overarching Term of Reference agreed by the Governance and Audit Committee on 16 September 2009:-

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

3 Minutes - 1 September 2009 (Pages 1 - 4)

4 Review of Commercial Operations (Pages 5 - 10)

5 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 ITEMS

(During these items the meeting is likely NOT to be open to the press and public)

6 Business Case for limited company private hire operation (Pages 11 - 16)

7 Business case for Kent County Supplies Ltd (Pages 17 - 44)

- 8 Loan agreement Kent Top Temps Ltd (Pages 45 - 50)
- 9 Limited Company accounts 2008-09 (Pages 51 - 84)
- 10 Dividend Policy - private companies (Pages 85 - 88)
- 11 Return on investment - Kent Top Temps Ltd (Pages 89 - 92)

EXEMPT ITEMS

(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)

Peter Sass
Head of Democratic Services and Local Leadership
(01622) 694002

Wednesday, 25 November 2009

Please note that any background documents referred to in the accompanying papers maybe inspected by arrangement with the officer responsible for preparing the relevant report.

KENT COUNTY COUNCIL

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

MINUTES of a meeting of the Governance and Audit Committee Trading Activities Sub Group held in Swale 3, Sessions House, County Hall, Maidstone on Tuesday, 1 September 2009.

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

IN ATTENDANCE: Mr K Harlock (Commercial Services Director), Mr N Vickers (Head of Financial Services), Mr A Rotolo (Solicitor) and Mr A Tait (Democratic Services Officer)

ALSO PRESENT: Mr G Brown and Mr J Jacobs from the Audit Commission.

UNRESTRICTED ITEMS

1. Terms of Reference
(Item 1)

The Sub-Group noted its Terms of Reference as set out below: -

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

Specifically:

- 1. Monitor the financial performance and reporting of all trading accounts and all limited companies owned in whole or in part or controlled by KCC.*
- 2. Receive the annual business plans and annual financial accounts of any KCC limited companies.*
- 3. Oversee the establishment of new limited companies through examination of the business case before the company commences trading and make recommendations to the appropriate Cabinet Member.*
- 4. Monitor trading and commercial activities being undertaken by the Council to ensure that they have the right structure.*
- 5. Monitor adherence to the appropriate legal, regulatory and accounting frameworks governing local authority trading activities.”*

The Sub-Group discussed the overarching objective, particularly in respect of the meaning of the word “fairly.” The intention of the Committee had been to achieve what was reasonable within the market place, but it was considered that thought should be given as to whether there needed to be greater clarity in defining this particular word or indeed, whether the over-arching objective was needed at all.

The Chairman confirmed that it was open to members to raise this matter at the Governance and Audit Committee meeting on 16 September.

2. Audit Commission Review of Commercial Operations (Item 2)

The Sub-Group noted that the final recommendation set out in paragraph 2.1 of the Director of Finance's report should read:-

"The Council should evaluate opportunities to address the concerns expressed by some parts of the public about access to information in respect of its commercial operations, subject to the Council's consideration of commercial sensitivity."

The Audit Commission representatives introduced the report by saying that that the brief for this work had been agreed in December 2008 but that its conclusion had been delayed from the original target date of March/April 2009 to July. They confirmed that they had received full co-operation from KCC staff throughout the process.

Mr Wells referred to paragraph 11 of the main report and asked why Commercial Services paid interest on a nominal amount of £12 million to the Council annually. Mr Vickers replied that this was an arrangement that had been made many years earlier, before Mr Harlock had been in post. The Sub-Group requested a full explanation in time for its next meeting.

In response to a question from Mr Wells, the Audit Commission representatives said that although Commercial Services had to price its contracts in order to achieve a return, there was no requirement to achieve the same return as a private business. It was, though, essential that no cross-subsidisation took place which enabled Commercial Services aim for a lower return.

Mr Harlock said that Kent Top Temps' turnover figure of £14.4 million set out on page 3 of the Audit Commission's report should be understood as an all inclusive figure. Some fifty percent of the turnover was contracted to other agencies which attracted only a very small percentage from this brokerage.

Mr Harlock commented that Kent Top Temps' final profit of £0.26 million for the year 2008/09 was the figure that had arisen after *all* interest charges and expenses had been accounted for. This figure did not necessarily reflect the growth in value of the business itself.

The Chairman asked whether Commercial Services should be measured by return on capital rather than turnover. Mr Harlock agreed to bring this forward.

Mr Wells and Mr Prater both asked whether the proposed action (for Internal Audit to provide an independent review of Council contracts won by Commercial Services or its subsidiaries) was the best way to meet the Recommendation 3. Mr Brown said that the Audit Commission was satisfied that Internal Audit was independent within KCC. It was a matter for KCC to decide whether in individual cases it would be more suitable for a review to be carried out by an external body.

Mr Vickers said that if someone were minded to criticise the lack of independence of the reviewing body, they would always be able to find grounds to do so even in the event that an external organisation had carried it out. This was because this organisation would still be working to a KCC contract. He nevertheless understood the concern and would draw it to the Director of Finance's attention.

The Sub-Group discussed whether Recommendation 3 should be redrafted to clarify when it would be appropriate to appoint an external reviewer. It was agreed that if such a redraft were to happen, it would be necessary to ensure that it did not achieve the opposite effect to that intended: namely that an external reviewer was not appointed when there seemed to be a good reason to do so.

The Sub-Group agreed that the proposed actions for Recommendation 6 should be amended to read "...the Council will expand the level of disclosure/narrative up to the point where further information would compromise *proper* commercial sensitivity."

The Sub-Group also discussed whether to invite a representative from the business community to sit on a permanent basis. The Clerk advised that it was open to the Sub-Group to invite people to speak to it. However, making a permanent outside appointment would require a decision by the Governance and Audit Committee.

3. Existing Trading Activity (Item 3)

The Sub-Group noted that the heading on page 13 under "Trading Operations 2009" should read "Income" rather than "Turnover."

The Sub-Group decided that it would like to have a more detailed discussion at its next meeting on the basis of figures which separated out internal and external trading.

4. Proposed Annual Workplan (Item 4)

The Sub – Group agreed the proposed work plan as a basis from which its more detailed work would be identified.

5. Any Other Business (Item 5)

Mr Rotolo informed the Group that following a legal case involving the LB of Brent and the insurance mutual established by a Group of London Boroughs he was instructing external counsel to review all of KCC's trading activities.

6. Items for next agenda (Item 6)

The Sub-Committee agreed to the three items proposed:

- a) Draft protocol relating to companies in which KCC has an interest.
- b) Review of the legal status of KCC trading activities post L.A.M.L (*see 5 above*)
- c) Review of KCC's limited companies' financial accounts.

7. Date of next meeting

(Item 7)

Monday, 23 November 2009 at 2.00pm.

By: John Simmonds – Cabinet Member for Finance
Lynda McMullan – Director of Finance

To: Governance and Audit Committee Trading Activities Sub Group
1 December 2009

Subject: **REVIEW OF COMMERCIAL OPERATIONS**

Classification: Unrestricted

1. INTRODUCTION AND BACKGROUND

- 1.1 At the last Governance and Audit Committee on 16 September, it was agreed that the Council's response to the recommendations contained in the Audit Commission's report "Review of Commercial Operations" be amended.
- 1.2 In particular, the response to recommendation 3 (shown as appendix A) has been amended to allow the committee to commission specific reviews on commercial activity from suppliers other than Internal Audit. While the costs will need to be contained within overall budgets, this can be part of the committee's decision making process.

2. RECOMMENDATIONS

- 2.1 To NOTE the amendment to the Council's response on recommendation 3 of the Review of Commercial Operations report.

Lynda McMullan
Director of Finance
Ext: 7000 4550

APPENDIX A

Recommendations	Responsible Officer	Proposed Action	Agreed Completion Date
R1 The loan agreement with Kent Top Temps Limited should be re-drawn in the name of Kent County Council rather than Commercial Services.	Head of Financial Services / Head of Strategic Finance for Commercial Services	Review agreement prepared.	September 2009
R2 The Council should develop a dividends policy for its subsidiaries.	Head of Strategic Finance for Commercial Services	A dividend policy will be produced to formalise the decisions taken on dividends documented at each AGM.	December 2009
R3 Independent reviews of Council contracts won by Commercial Services or its subsidiaries should be introduced to ensure that tendering procedures are adhered to fully and that no subsidisation occurs or could be alleged.	Senior Audit Manager / Director of Finance	<p>Independent reviews of Council contracts won by Commercial Services (or its subsidiaries) will be reviewed by Internal Audit, and will be included in the Audit Plan, to ensure that tendering procedures are fully adhered to and that no subsidisation occurs or could be alleged. An audit will also be carried out annually to review basis for charging, e.g. oncosts etc.</p> <p><i>In addition specific reviews may be commissioned through other suppliers as deemed appropriate by the Governance and Audit Committee.</i></p>	With immediate effect and ongoing

Recommendations	Responsible Officer	Proposed Action	Agreed Completion Date
R4 A business case should be prepared for Kent Top Travel as a trading operation. If new business activities are undertaken in future, business cases should be prepared.	Commercial Services Director	A full business case will be produced to supplement the business plan.	December 2009
R5 The Council should pay invoices raised by its subsidiaries promptly.	Head of Financial Services / Head of Strategic Finance for Commercial Services	KTT's new on live system Bond is being implemented on a phased basis starting in the main problem area. Head of Financial Services and HoF Commercial Services will review level of outstanding invoices monthly.	September 2009
R6 The Council should seek to maximise disclosure of information in its commercial undertakings, subject to exercising proper commercial sensitivities, including expanding the disclosure of its commercial activities in its own annual financial statements.	Head of Financial Management	Subject to completed accounts on the commercial undertakings being available at an earlier date the Council will expand the level of disclosure/narrative up to the point where further information would compromise commercial sensitivity.	December 2009

Recommendations	Responsible Officer	Proposed Action	Agreed Completion Date
R7 Statutory accounts for the Council's subsidiary companies should be prepared in long-form.	Commercial Services Director / Head of Strategic Finance for Commercial Services	The accounts for 2008-09 will be available in medium form with a move to providing additional information in for 2009-10, subject to the continuing exercising of proper control over commercially sensitive information. The benefits of producing an annual report covering all aspects of Commercial Services activities including those of KCC's subsidiary companies will be evaluated.	January 2010
R8 The benefits of the production of an annual report covering all Commercial Services activities including those of its subsidiary companies should be evaluated as part of its engagement with the local business community and other interested parties.			

By: Robert Gough – Cabinet Member Corporate Support Services and
Performance Management
Geoff Wild – Director of Law and Governance

To: Governance and Audit Committee Trading Activities Sub Group
1 December 2009

Subject: **REVIEW OF COMMERCIAL OPERATIONS**

Classification: Unrestricted

Summary: To report on the legal status of KCC trading activities post L.A.M.L

FOR INFORMATION

1. INTRODUCTION AND BACKGROUND

- 1.1 After the June 2009 Appeal Court decision in the LAML case, Peter Gilroy sought reassurance that KCC's trading operations were *intra vires* and not at risk of challenge.
- 1.2 LAML cast doubts over councils' ability to enter into partnerships, adopt arrangements for shared services, form and procure from joint ventures and the extent to which they were entitled to rely on their powers to promote or improve the economic, social or environmental well-being of their area, all raising the worry that the fear of *ultra vires* would return to haunt local government and those doing business with them.
- 1.3 The uncertainty created by LAML is particularly unwelcome after the Lyons report which recommended more innovative use of wellbeing powers, and councils' (in particular KCC's) increasing appetite to use them.

2. GOVERNMENT ACTION

- 2.1 There is light at the end of the tunnel, however. The Communities and Local Government Department has confirmed that:

“Councils are to be given new legislative powers to establish mutual insurance companies in light of the recent London Authorities Mutual Limited (LAML) court judgement..... Urgent new amendments have been laid on the Local Democracy, Economic Development and Construction Bill that will give 'best value' authorities legislative power to join together to set up and participate in mutual insurance companies.....The Government is determined to support councils who are identifying new efficiencies and innovative ways to make taxpayers' money work harder than ever.”

3. KCC ACTION

- 3.1 KCC Legal Services instructed James Goudie QC to give an opinion on some of KCC's trading activities.
- 3.2 The Opinion compared s2 of the Local Government Act 2000 and s95 of the Local Government Act 2003 together with the Local Government Power to Trade Order 2004 with the activities carried on by Kent Top Temps Ltd and Kent County Facilities Ltd and did not refer to anything irregular or improper.
- 3.3 Mr Goudie has advised that KCC could review its trading activities on a company by company basis. This can be done, and a further Opinion sought from counsel, if required; however, there is nothing to suggest that, on the basis outlined by Mr Goudie, any of the council's current trading activities are operating unlawfully, improperly or *ultra vires*.

4. RECOMMENDATIONS

- 4.1 Members are asked to note the report and comment on any further action required.

Lucinda MacKenzie-Ingle
Solicitor
Ext: 7000 6106

Background Documents: None

By: Kevin Harlock, Director of Commercial Services
To: Trading Panel Sub Group – 1 December 2009
Subject: Retrospective Business Case for creation of Kent Top Travel
Classification: Unrestricted

Summary: This report contains a retrospective Business case for the creation of a separate Trading Division, Kent Top Travel, within Kent Top Temps Ltd. It is a response to the Audit Commission's recommendation in their report 'Review of Commercial Operations' dated August 2009. Although retrospective it has been written in the present tense.

Background

1. (1) Passenger Services has been operating as a division of Commercial Services for a number of years. This operation has two key objectives:

- a) Provide the County Council with the resilience of having its own "in house" bus and coach operation. This allows the authority to have a degree of security in always being able to ensure an element of transport provision can be delivered in cases of emergency or default.
- b) Provide a "Market Moderation" role in areas where there are generally only one or two tenders received, or where prices appear to be abnormally high compared to industry standards.

(2) Passenger Services directly employs staff, under the Kent Scheme of Terms and Conditions with some locally negotiated amendments. Passenger Services also utilises temporary agency staff to meet peak demands.

(3) The main work source for Passenger Services is from tendered contracts for both Home to School and Local Bus Services and this also includes specialist SEN Home to School contracts. This predominance of work related to the start and end of the school day means the assets are not utilised to their full potential.

(4) As Passenger Services is part of a public body it can only undertake work for the public sector, enabled by the Local Authorities (Goods and Services) Act 1970.

(5) In order to increase utilisation of its assets, Passenger Services has pursued marketing its services at the Kent schools market. This has been successful in increasing the revenue turnover of the business unit. In the financial year 2004/5, Passenger services achieved an additional income of £20,000 from non-contracted (Private Hire) work. In 2005/6 this increased to £100,000. This level of income is likely to increase to £150,000 + in the year 2006/7.

(6) However, the schools market, realistically, is very limited as it only exists Mon to Fri for 38 weeks of the year, which equates to only just over 50% of the days in a year.

(7) Whilst Kent County Council and other Public bodies have some demand during non-school time, this does not yield enough infill work to best utilise the assets effectively.

Option

2. (1) There is an opportunity to create a Trading division, Kent Top Travel, comprising a bus and coach operation within the existing Kent Top Temps Ltd company owned by KCC that would be beneficial to KCC in both providing the core values of Passenger Services as well as providing access to new markets and a greater freedom to trade within the private sector, under the Freedom to Trade power within the Local Government Act 2003.

(2) The benefits to KCC of this are:

- Greater utilisation of assets
- Reduced operating costs as staff could be employed on industry standard terms and conditions.
- More competitive in the tender market
- Wider marketability
- Retained resilience as still ultimately owned by KCC
- Retained Market moderator

(3) The creation of 'Kent Top Travel' and the phased reduction in activity of Passenger Services could result in a significant saving on staff costs. This reduction in man hour costs would also allow headline hourly rates which are competitive in the recruitment sector against the larger bus and coach operators.

Example

£ per hour	KCC Total Cost	KTT Total Cost	Saving
------------	----------------	----------------	--------

£7.39	£9.75	£8.2768	15% per hour
KTT Increase rate to £8/hr		£8.96	8% per hour

(4) KTT would be eligible to benefit from all existing subsidies such as Bus Service Operators Grant (BSOG) and would be able to undertake all of the types of work that Passenger Services is committed to with the exception of Section 19 (Not for Profit) work. In addition, whilst Passenger Services would be able to reduce its authorised number of vehicles on its operators license, the County Council retains the resilience of still having its own “O” License in reserve whilst the major trading / operating risks are carried by the KTT “O” license.

Proposal

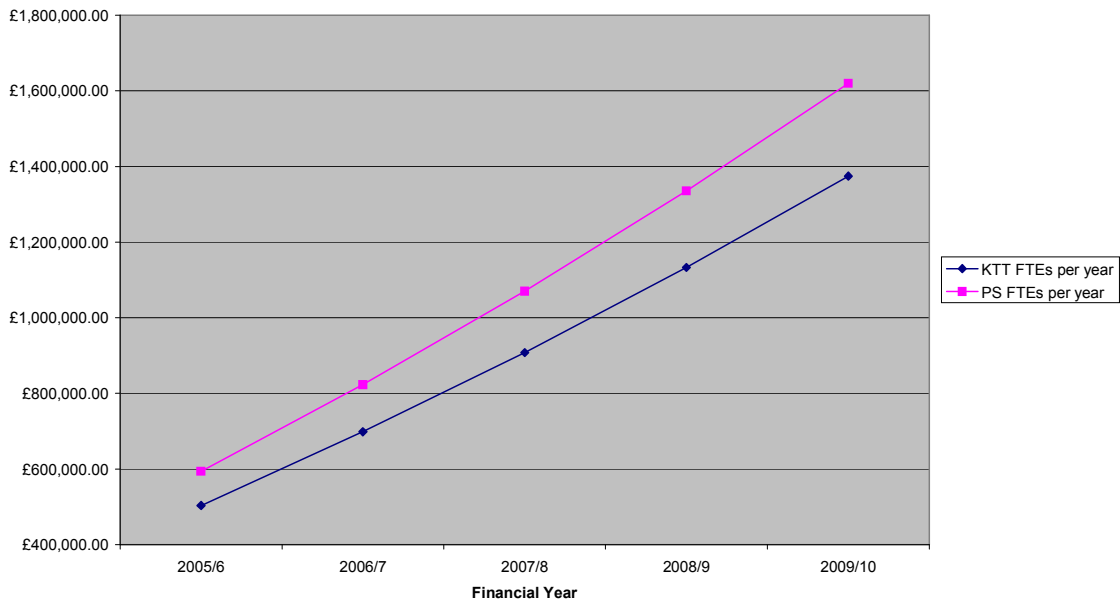
3.

- In the first instance, it is recommended that Kent Top Travel be set up with an International Operator License for Passenger Carrying Vehicles with an authorisation of 5 vehicles. In addition, 2 coaches should be dedicated to Private Hire work and liveried as Kent Top Travel. This gives us the ability to test the market and gauge potential success within the market sector.
- All recruitment as KCC Passenger Services ceases with immediate effect and all future staff are recruited in via Kent Top Temps Ltd on separate Terms and Conditions specifically excluding LGPS and contractual sick pay. It is recommended that KTT drivers be made eligible for joining the Top Temps Ltd Stakeholder Pension Scheme.
- Both Passenger Services and Kent Top Travel submit for future tenders over the next 12 months. This allows us to gauge the success of creating the private operation vs. the status quo. Should it be proven to be more competitive as KTT than PS, it is recommended that PS then cease to tender for work other than Section 19 or work that is directly awarded to PS from KCC to negate the tender process.
- Kent Top Travel is formed as a Trading Division within Kent Top Temps Ltd following advice from external auditors regarding the tax position of KCC’s wholly-owned companies.

Projections

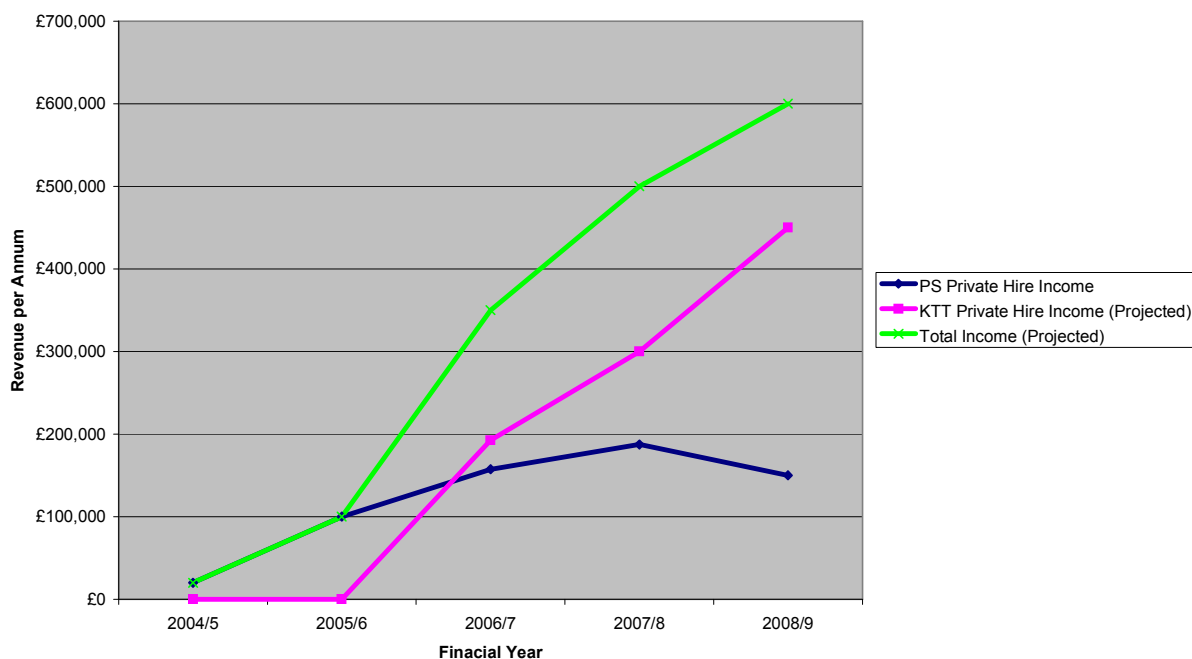
4. (1) The graph below is a projection of FTE costs for Passenger Services vs. Kent Top Travel. The graph allows for an increase in wages of 4% YoY and an increase due to growth of 10 FTE per year in both cases. It is clear to see how the use of KTT T & C’s restrains the overall cost of employment.

Total Wage Cost - PS vs KTT



(2) This further graph illustrates projected income via private hire work for the coming years. It is important to remember, the projected rate of growth is only achievable if it is possible to open up new routes to market. If the decision is taken to only trade as KCC Passenger Services, then private hire income is likely to level out at around £175 – 200k per annum.

Projection of Income Growth



(3) Full working capital, cash flow, growth and net profit projections have been undertaken which for the purposes of this report are commercially sensitive.

Recommendations

5. Members are asked to approve the retrospective business case in respect of Kent Top Travel.

Background Documents:	None
------------------------------	------

Author Contact Details

Kevin Harlock, Director of Commercial Services

✉ kevin.harlock@kent.gov.uk

☎ 01622 605352

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 7

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By: Kevin Harlock, Director of Commercial Services
To: Trading Panel Sub Group – 1 December 2009
Subject: Loan Agreement Kent Top Temps Ltd
Classification: Exempt under Para 3 of the Local Government Act 1972

Summary: This report is a response to the Audit Commission's recommendation in their report 'Review of Commercial Operations' dated August 2009 that a correction should be made in the text of the Loan Agreement between KCC and Kent Top Temps Ltd in that the parties are KCC and Kent Top Temps Ltd, not Commercial Services and Kent Top Temps Ltd

Recommendations

Members are invited to note the revision to the Loan Agreement between KCC and Kent Top Temps Ltd. The Loan Agreement is attached as Appendix 1.

<p>Background Documents: Audit Commission Report on the Review of Commercial Operations dated August 2009</p>
--

Author Contact Details

Les Coulson , Head of Strategic Finance – Commercial Services

✉ les.Coulson@kent.gov.uk

☎ 01622 605452

APPENDIX 1

Loan Agreement

This agreement is made on the 7th day of November Two Thousand and Eight

BETWEEN:

- (1) **THE KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ (“the Council”);
and
- (2) **KENT TOP TEMPS LTD** of Gibson Drive Kings Hill West Malling ME19 4QG
 (“The Company”)

WHEREAS:

The Council is pleased to offer the Company a loan facility (“the Loan”) on the following terms and conditions:

1. **Loan amount**

The loan amount is a maximum of £1,200,000 (one million two hundred thousand pounds only) (“the Loan”). The Company shall request in writing any amounts up to maximum and the Council shall pay them to the Company subject to the Company not being in breach of the Terms and Conditions of this Agreement.

2. **Purpose**

The Loan shall be used to facilitate cash flow for the Company.

3. **Term**

The loan shall be for a period of five years from the date above (“the Contract Period”). The Contract Period shall be capable of being extended at the annual review of the Loan Agreement to be held each January.

4. **Interest**

4.1 Interest shall be paid on the actual amount borrowed

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

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.

5. **Repayment**

- 5.1 The Loan or the actual amount borrowed (whichever is outstanding) shall be repaid by one repayment on demand by the Council or on expiry of the Contract Period, whichever is the sooner.
- 5.2 The Company may prepay the Loan or the actual amount borrowed at any time

6. **Security**

The repayment of all monies at any time owing in respect of the Loan or the actual amount borrowed (whether by way of principal, interest, fees or otherwise) will be secured by the security of an all monies legal charge (the "Legal Charge") on the Property. The company hereby covenants on demand to pay or discharge the actual amount borrowed to the Council. As security for the payment the Company hereby charges to the Council, with full title guarantee:

- 6.1.1 by way of legal mortgage, all freehold and leasehold property now vested in the company, together with all buildings, fixtures (including trade fixtures) and fixed plant and machinery from time to time on that property;
- 6.1.2 by way of fixed charge, all estates or interests in any freehold and leasehold property of the company (not being Property charged by clause 6.1.1) now and in the future vested in the Company, together with all buildings, fixtures (including trade fixtures) and fixed plant and machinery from time to time on that property;
- 6.1.3 by way of fixed charge, all the goodwill and uncalled capital for the time being of the company;
- 6.1.4 by the way of fixed charge, all book debts and other debts now and in the future due or owing the company;
- 6.1.5 by the way of fixed charge, all intellectual property rights;
- 6.1.6 by the way of floating charge, all the company's present and future undertaking and assets, whatever and wherever, including (without limitation) all other property and assets not subject to a fixed charge under this Agreement.

7. **Receiver**

- 7.1 At any time after the Council's demand for payment from the Company of any Indebtedness (or if so requested by the Company), the Council may

- appoint by writing any person or persons to be an administrative receiver or a receiver and manager of receivers and manager (“the Receiver”), which expression shall include any substituted receiver(s) and manager(s) of all or any part of the Assets or may appoint an administrator (“the Administrator”) of the Company in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986. Without limiting the Council’s rights under this clause 4.1 or at law, the council may, whether or not any demand has been made to payment of the Indebtedness, appoint a Receiver or an Administrator if the Council becomes aware of any of the matters referred to in clause 3.2.7 or if the security created by this Debenture shall be in jeopardy
- 7.2 The Council may from time to time determine the remuneration of the Receiver and may remove the Receiver and appoint another in their place.
- 7.3 The Receiver shall, subject to the terms of the Acts, be the Company’s agent and shall have all the powers conferred by the Acts. The Company alone shall be responsible for his acts and omissions and for his remuneration. In particular, but without limiting any general powers or the Council’s power of sale, the Receiver shall have power:
- 7.3.1 to take possession of collect and get in all or any part of the Assets and for that purpose to take any proceedings in the Company’s name or otherwise as he shall think fit;
- 7.3.2 to carry on or concur in carrying on the Company’s business and raise money from the Council or others on the security of all or any part of the Assets;
- 7.3.3 to sell, let and / or terminate or to accept surrenders of leases or tenancies of any part of the Company’s property, in such manner and of such terms as he thinks fit;
- 7.3.4 to take, continue or defend any proceedings and make any arrangement or compromise which the Receiver or Company shall think fit;
- 7.3.5 to make and effect all repairs, improvements and insurances;
- 7.3.6 to appoint managers, officers and agents for any of the above purposes, at such salaries as the Receiver may determine;
- 7.3.7 to call up any of the Company’s uncalled capital;
- 7.3.8 to promote the formation of a subsidiary company or companies of the Company, so that such subsidiary may purchase, lease, license or otherwise acquire interests in all or any part of the Assets; and

7.3.9 to do all other acts and things that they may consider to be incidental or conducive to any of the above powers.

7.4 By notice in writing to the Company, the Council may at any time convert the floating charge created by this Agreement into a specific charge over any assets specified in the notice which the Council considers to be in danger of being seized or sold under any form of distress, attachment or other legal process or to be otherwise in jeopardy. The Company at its expense shall at any time on the Council's request promptly execute and deliver to the Council any other or further mortgage, charge or other instrument conferring a fixed charge on any of its assets or such other charge as the Council may in its discretion think fit for securing the indebtedness.

8. **Severance**

If at any time any provision in this Agreement is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired.

9. **Payments**

9.1 All payments to be made by the Company under this Agreement shall be made in full without any set off or counterclaim whatsoever and (save as required by law) free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any description

9.2 If any payment would otherwise be due on a day that is not a day on which banks are generally open for business in London ("a business day"), the following business day shall be substituted and interest shall be adjusted accordingly.

10 **Expenses**

10.1 The Company shall pay to the Council on demand all expenses (including legal and out-of-pocket expenses and together with Value Added Tax if any thereon) on a full indemnity basis \ reasonably and properly incurred by the Council in connection with any amendment or extension of and the granting of any waiver or consent under and the discharge of the Agreement and / or the Legal Charge and / or in contemplation of or otherwise in connection with the enforcement of or preservation or any rights under this Agreement and / or the Legal Charge or otherwise in respect of any monies owing under or in respect of the Facility

10.2 The Company shall pay a £40.00 Land Registry fee for the registration of the Legal Charge at the Land Registry, which will be added to the Loan upon return of the signed Legal Charge to the Council

11 **Assignment**

The Company may not assign or transfer all or any of its rights or obligations under this Agreement. The council may at any time(s) assign or transfer all or any of its rights and obligations under this Agreement

12 **Law**

This Agreement shall be governed by and construed in accordance with English Law

IN WITNESS of which this Agreement has been duly executed as a deed and delivered on the date first before written

THE COMMON SEAL of)
THE KENT COUNTY COUNCIL)
Was hereunto affixed in the presence of:)

Authorised Signatory

THE COMMON SEAL of)
KENT TOP TEMPS LTD)
Was hereunto affixed in the presence of:)

Director

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 9

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 10

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 11

Document is Restricted

This page is intentionally left blank