GOVERNANCE AND AUDIT COMMITTEE TRADING ACTIVITIES SUB - COMMITTEE

Thursday, 20th November, 2014

1.00 pm

Darent Room, Sessions House, County Hall, Maidstone

AGENDA

GOVERNANCE AND AUDIT COMMITTEE TRADING ACTIVITIES SUB - COMMITTEE

Thursday, 20 November 2014 at 1.00 pm	Ask for:	**Andrew Tait**
Darent Room, Sessions House, County Hall, Maidstone	Telephone:	**01622 694342**

Tea/Coffee will be available 15 minutes before the meeting

Membership (3)

Conservative (2): Mr R L H Long, TD (Chairman) and Mr R J Parry (Vice-Chairman)

UKIP (1): Mr H Birkby

UNRESTRICTED ITEMS

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

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Item

1 Substitutes

2 Declarations of Interest by Members for items on the agenda

3 Minutes - 3 March 2014 (Pages 5 - 8)

4 The creation of an East Kent Equity Investment Fund via a Limited Liability Partnership (Pages 9 - 20)

5 Establishment of a Transport Related Local Authority Trading Company (Pages 21 - 46)

6 Other items which the Chairman decides are Urgent

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
(01622) 694002

Wednesday, 12 November 2014

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 - COMMITTEE

MINUTES of a meeting of the Governance and Audit Committee Trading Activities Sub - Committee held in the Darent Room, Sessions House, County Hall, Maidstone on Monday, 3 March 2014.

PRESENT: Mr R L H Long, TD (Chairman), Mr H Birkby and Mr J A Davies (Substitute for Mr R J Parry)

ALSO PRESENT: Mr R H Bird, Mr P J Homewood, Mr T L Shonk, Mr D Smyth and Mr M E Whybrow

IN ATTENDANCE: Mr A Wood (Corporate Director of Finance and Procurement), Miss E Feakins (Chief Accountant), Ms B Gibbs (Accountant), Mr G Record (Finance and Procurement Officer), Ms N Major (Head of Internal Audit), Mrs T Bruton (Head of Regeneration Projects) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS

1. Minutes - 1 March 2013
(Item 3)

(1) The Finance and Procurement Officer advised the Committee in respect of Minute 2 (4) that HMRC had not replied to two requests for information on its grounds for objecting to the dissolution of Invicta Services Ltd. The company had been dissolved in July 2013.

(2) The Finance and Procurement Officer advised in respect of Minute 2 (7) that The North Kent Architecture Centre Ltd was a not-for-profit organisation which received funding from KCC for the purposes of supporting the improvement of the quality of the built environment in the South East.

(3) RESOLVED that the Minutes of the meeting held on 1 March 2013 are correctly recorded and that they be signed by the Chairman.

2. Statutory Accounts for those companies in which KCC has an interest
(Item 4)

(1) The Chairman informed the Sub-Committee that he had been the Chairman of Produced in Kent between the years 2006 and 2009.

(2) The Sub-Committee considered the latest available Statutory Accounts for those companies in which KCC had an interest

(3) In response to a question from Mr Birkby, the Chief Accountant said that the reason that income and deficit details were not available for some of the companies set out in Appendix A of the report was because Companies House would only provide the balance sheets for small companies which traded in small sums.

(4) The Sub-Committee agreed by 2 votes to 1 that it did not wish to see basic income and deficit details for the small companies in future as their full accounts would have been examined by their external auditors and no reputational risk to KCC had been identified.

(5) The Chairman noted the large number of Directors at Trading Standards South East Ltd and asked for a report to a future meeting on the effectiveness of its operations.

(6) The Sub-Committee asked for future reports on the statutory accounts to include an explanation in each instance of the payments made by KCC to the company, the purpose of the company and the nature and degree of interest that KCC had in that company.

(7) RESOLVED that, subject to (5) and (6) above, the content of the report be noted for assurance.

3. Update on Commercial Services' governance arrangements
(Item 5)

(1) The Head of Internal Audit gave a report updating the Sub-Committee on Commercial Services' governance arrangements. She explained that she was doing so from the perspective of KCC as its shareholder rather than from that of Commercial Services itself.

(2) The Sub-Committee discussed the question of whether there should be representation by a Cabinet Member or a Senior Officer on the joint Company Board, and expressed concern that the Shareholder Board (meeting quarterly) might not in itself provide the County Council with sufficient assurance.

(3) The Sub-Committee agreed to request advice from KCC Legal Services on whether the advice from Eversheds in 2011 had been fully implemented and generally whether corporate governance arrangements were adequate from a legal perspective. This advice would also encompass the governance questions of whether the Shareholder Board should be the holding board; whether it should receive both sets of Minutes from the joint Company Board; how often the Shareholder Board should meet; and whether there should be KCC representation (either by a Cabinet Member or Senior Officer) on the joint Company Board. Advice would also be sought on whether there should be a greater level of independent representation on the Remuneration Committee.

(4) RESOLVED that:-

(a) the content of the report be noted for assurance; and

(b) the Director of Governance and Law be requested to give advice to Governance and Audit Committee on the questions set out in (3) above.

4. East Kent Opportunities LLP

(Item 6)

(1) The Head of Regeneration Projects introduced her report by explaining that East Kent Opportunities LLP had been established as a joint arrangement company in 2008 by KCC and Thanet DC to pump prime the economic development and regeneration of the Manston Business Park and Eurokent sites.

(2) The Head of Regeneration Projects replied to a question from Mr Shonk that a planning application had been submitted by the company and Rosefarm Estates Ltd to Thanet DC in 2011 for a joint mixed use development. Permission had been refused in 2013 and the applicants were now pursuing an appeal and the application had been called in by the Secretary of State for his determination.

(3) The Chairman advised that the concerns raised by Mr Shonk would be most appropriately considered by the Economic Development Cabinet Committee as the Trading Activities Sub-Committee's remit did not extend to the actual merits of the company's business case.

(4) Mr Whybrow questioned whether reputational damage could occur as a result of the company's focus shifting from economic regeneration to residential development. He then asked whether the legal and professional fees of over £200k for the years 2012 and 2013 (set out in the schedule to the detailed accounts for year ended 31 March 2013) had been costs accrued in challenging the decision of Thanet DC to refuse planning permission.

(5) The Head of Regeneration Projects replied to Mr Whybrow by saying that the legal and professional fees mainly covered advice on land ownership transfers relating to sales as well as professional/technical advice to the company and might not be advice relating to the planning appeal. The residential element of the company's work represented an essential component of its economic development remit rather than a departure from its original focus.

(6) The Sub-Committee noted that the company had lost money in the previous two years as it had not yet been able to carry out its intended developments. It also noted the advice from the Corporate Director of Finance and Procurement that no individual received financial remuneration. The "members" who were remunerated from the profits of the LLP were in fact KCC and Thanet DC as corporate bodies, which were described in this manner for accounting purposes.

(7) RESOLVED that:-

(a) the contents of the report be noted for assurance; and

(b) East Kent Opportunities LLP's Annual Report and Financial Statements for 2012/13 be noted as set out in the Appendix to the report.

5. Protocol for companies in which KCC has an interest

(Item 7)

(1) A version of Appendix 1 containing tracked changes had previously been circulated to the Sub-Committee.

(2) The Finance and Procurement Officer briefly presented proposed amendments to the *Protocol relating to companies in which KCC has an interest (the Protocol)*.

(3) RESOLVED that Governance and Audit be requested to:-

(a) approve the proposed amendments to the Protocol as set out in paragraphs 3,4,5 and 7 of the report; and

(b) note and endorse the proposed amendment set out in paragraph 6 of the report.

By:	Mark Dance Cabinet Member for Regeneration and Economic Development David Smith Director of Economic Development
To:	Governance and Audit Committee Trading Activities Sub Group 20th November 2014
Subject:	The creation of an East Kent Equity Investment Fund via a Limited Partnership
Classification:	Unrestricted

Summary

This report sets out the governance arrangements for the establishment of a Limited Partnership (LP) to make equity investments in small and medium enterprises where these have the potential to expand and create employment in East Kent. It is proposed that the activities of the LP will be financed by the Regional Growth Fund (RGF) and will complement existing RGF-funded loan schemes administered by KCC.

The Committee is recommended to approve the governance arrangements.

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1. Background

1.1. Kent County Council currently administers £55 million from the Government's Regional Growth Fund for products offering direct access to finance for businesses seeking to expand and create jobs. This is delivered through three programmes:-

a) Expansion East Kent, worth £35 million operating in Ashford, Canterbury, Dover, Shepway and Thanet.
b) TIGER (Thames Gateway Innovation, Growth and Enterprise), worth £14.5 million and operating in Dartford, Gravesham, Medway, Swale and Thurrock.
c) Escalate (worth £5.5 million) (operating in Rother, Wealden, Hastings, Sevenoaks, Tunbridge Wells, Maidstone, Tonbridge & Malling).

1.2. Although Expansion East Kent, Tiger and Escalate are separate programmes with separate governance arrangements, they are all marketed as 'repayable finance' schemes. This means that they offer interest-free, normally unsecured, loans to eligible businesses on grant conditions which link the funding to a specific project and require employment and other outputs to be met. All repayments are reinvested in the programme to be recycled to future beneficiaries.

1.3. Expansion East Kent was launched in April 2012 and has, so far, issued loan agreements worth over £31 million, which will create over 1,800 jobs. Tiger and Escalate were launched in 2013 and have committed funds of over £19 million and will create 1,570 jobs.

1.4. While Expansion East Kent, Tiger and Escalate in the main offer debt finance, a number of business proposals have come forward seeking equity investment. In addition, the Expansion East Kent Investment Advisory Board[1] has considered a number of loan applications which could be better suited to equity investment. These equity investments may give a better return to the fund than the standard repayable finance model. In the case of three companies applying to Expansion East Kent, the Board has recommended equity investment as preferable.

1.5 Based on this, approval has been given to offer RGF-financed equity investment through the establishment of the 'East Kent Equity Investment Fund and the forming of a Discovery Park Technology LP for the Expansion East Kent Programme only

2. The case for offering RGF-financed equity investment

2.1. Expansion East Kent aims to address a general market failure, as banks remain reluctant to lend despite the range of Government initiatives designed to increase general lending. It also aims to provide direct support to those businesses with the potential and appetite for growth and job creation.

2.2. Successive national surveys have demonstrated that there is a gap in the supply of limited amounts of equity finance to SMEs with high growth potential. This is because the cost of assessing the likely risk and return on smaller investments encourages private investors to focus on more established, lower risk businesses at the expense of early stage venture capital, especially in a more risk-averse general economic environment. This means that potentially high growth businesses lack access to investment, with the gap commonly thought to be in market provision of investments between £250,000 and £2 million[2]. Although there are no specific local surveys of the equity gap, anecdotal evidence from High Growth Kent suggests that it is as prevalent as in the rest of the country and is likely to be especially challenging in East Kent. Limited supply of equity investment also has a circular effect in limiting demand, with many businesses lacking information on equity finance[3].

3. State aid considerations

3.1. Within the Government grant agreements for Expansion East Kent, Kent County Council is permitted to make equity investment with RGF funds where this is offered as 'aid in the form of risk capital'. This enables public

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[1] The Investment Advisory Board is the body established to consider applications to the Expansion East Kent fund and to make recommendations to KCC as the accountable body for the fund. It includes private sector representatives with a range of business experience and is chaired by the Leader of KCC.

[2] BIS/ SQW Consulting (2009), The supply of equity finance to SMEs: Revisiting the equity gap

[3] BIS (2012) Economics Paper 16, SME Access to External Finance

funding to be invested in a company provided the investment is made on commercial terms. To provide assurance that that the investment is commercial, equity from the public sector fund may only be made available on an equal basis with finance from a private investor (i.e. the size of the investment made by the private investor should be at least equal to the public sector investment, and the terms of the investment should be identical). All public sector equity funds operate on this basis.

4. Legal Advice

4.1. Legal advice has been sought from KCC's Legal Team, Geldards (acting as a sub-contractor to KCC) and Hogan and Lovells (specialist in corporate law) regarding the vehicle which would be required to enable KCC to make equity investments using RGF funding. The advice received states that the type of vehicle required depends on the purpose for which the equity investment is being made.

4.2. Firstly, if company shares are being acquired for a non-commercial purpose (for example, to improve general well-being), KCC could rely on Section 12(a) of the Local Government Act 2003, permitting the Council to invest directly without the need for a company to be established.

4.3. However, if shares are being acquired for a commercial purpose (i.e. if KCC intended to subsequently sell the shares at a commercial rate of return), Section 4(2) of the Localism Act 2011 states that a company would need to be established for that purpose.

4.4. Based on this legal advice, officers have considered that KCC's power to purchase shares should derive from **Section 4(2) of the Localism Act**, and that an LP should be established, for two reasons:-

4.5. Firstly, the state aid rules state that public sector equity investment should be made on the **'market economy investor principle'**. This states that KCC should invest in the expectation that it will receive a return in due course at the same level as that which would be acceptable to a private investor. The state aid basis of equity investment is therefore different from the interest-free loan products currently offered by Expansion East Kent, since while the latter are explicitly non-commercial forms of state aid. Consequently, it is considered that KCC's investment should be considered commercial, even though the reasons for establishing the fund are to support wider economic growth, rather than KCC's financial gain.

4.6. Secondly, analysis of existing schemes in the UK shows that where local equity investment funds have been established with public funding, they have usually been set up via separate company vehicles, investing alongside a private sector investor. This includes cases (such as Finance Birmingham) where the fund capital derives from the local authority[4].

4.7. Given that KCC's investment should be considered commercial to ensure compliance with state aid regulations, and based on experience elsewhere,

[4] It should be noted that we have not undertaken an analysis of the legal basis for the establishment of the various publicly-backed equity schemes around the UK. However, in practice, these schemes conventionally operate through company structures.

establishing an LP as provided for in the Localism Act therefore appears preferable.

4.8. KCC has issued a Commitment Letter to Narec Capital ('NC') dated October 15, 2014 whereby it agrees in principle to commit £5 million into an Equity Investment fund ('Fund'), in which it will be the initial sole partner and of which Narec Capital will be manager. The Fund is to be established in accordance with the submissions and documents provided to KCC and prepared by the legal firm Hogan Lovells.

Notes

1. Narec Capital East Kent Incubator LP (the "Fund") should be established as a limited partnership. This is a tax transparent vehicle that PE and VC investors are familiar with (thereby facilitating raising third party capital in due course). The LP will also facilitate the grant of carried interest as this is in accordance with the BVCA and HMRC MoU on carried interest.

2. The General Partner and the Special Limited Partner (which receives the carried interest) will be established as wholly owned subsidiaries of KCC, so that all of the participants in the Fund are in the same corporate group. This ensures that the Fund is not a collective investment scheme for UK regulatory purposes during Phase 1.

3. ExEK Investment Advisory Board (IAB) will be the committee of the General Partner and will be responsible for the investment activities of the Fund during Phase 1. The Board will have the benefit of advice provided by Narec Capital in its capacity as an authorised representative of its FCA regulated parent company.

4. The Special Limited Partner will assign carried interest to the intended recipients on establishment of the Fund.

5. Principles of the LP for the East Kent Investment Fund

5.1. The proposed governance arrangements for an East Kent Investment Fund would operate according to the following principles:-

Principle 1: Source of investment

5.2. The company would only be able to invest Regional Growth Fund monies made available to it for the purposes of equity investment (i.e. it would not be able to invest KCC core funds or funding from other sources).

5.3. Because the Expansion East Kent RGF scheme is subject to separate grant agreements and governance arrangements, the company would operate separate funds for each, with the decision to make RGF funds available made by KCC as the accountable body for each scheme in accordance with the scheme investment strategy. This would mean that the LP would manage an Expansion East Kent Equity Fund in accordance with the grant agreements and investment strategy but could offer additional Equity Fund programmes if required at a future date.

Principle 2: Co-financing

5.4. All equity investments will need to be made on a commercial basis, with the same anticipated return as that sought by a private investor. Therefore, at least 50% of the proposed total equity funding must be secured through private sector investment.

5.5. There are various options available for ensuring the public sector equity funds are co-financed. Based on a preliminary assessment, it is proposed that private sector co-financing will be secured by Narec Capital prior to its application for funding[5]. Private investment sources may include business angels and angel syndicates, venture capitalists and potentially investment by the owners of the business.

Principle 3: Return and sustainability

5.6. The company will seek to make a commercial return on its investments, with an expectation that most shareholdings will be sold after 5 years.

5.7. All returns on investment will remain within the Expansion East Kent Investment LP and made available for future rounds of investment. The equity funds managed by the LP must therefore be *sustainable*, but they are not *perpetual*, as the decision on when and whether to close the funds rests with KCC but would be based on recommendations from the Sub-Committee.

5.8. In order to guarantee the sustainability of each fund, and to ensure that no illegal state aid is provided to business through the operation of the company, it will be necessary to charge an arrangement fee to cover management and administration costs. Typically, arrangement fees in public sector-backed equity schemes are between 2% and 5% of the investment amount; some schemes also charge annual monitoring fees. These charges will be at the cost of the fund and not KCC.

Principle 4: Transparency

5.9. The creation of an East Kent Equity Investment LP will mean that additional finance products can be offered by Expansion East Kent. It is proposed that the process for applying to the LP for equity investment will be marketed in the same way as the existing loan schemes, with criteria and application details published openly.

[5] The proposed arrangement is used by a number of public-sector backed equity funds, including Finance Birmingham and the Scottish Seed Fund (managed by Scottish Enterprise). Alternative arrangements include the creation of a 100% co-financed fund with a private sector investor, or the designation of a limited number of 'approved' private investment partners. The merits of these options need to be considered in further detail, although the flexibility of the proposed option appears (on an early assessment) to be preferable.

5.10. <u>Principle 5 : Mandate for Investments</u>

The mandate for investments is as follows and will form the basis of all investments:-

Fund Structure	English (regulated by English Law) Limited Partnership. Initially contained within a captive investment vehicle for Expansion East Kent, before converting to an AIFMD approved CIS scheme.
Investment Objective	To invest in high growth sustainable energy and lifescience / medical technology SME's, focused around the East Kent area.
Location	SMEs will locate at Discovery Park or the surrounding East Kent area.
Economic Impact	The fund will seek to maximise economic impact within East Kent (inward investment, tax returns, local employment). The initial tranche of £5m from ExEK will leverage £45m of private capital into the fund (on transformation to CIS status) and £150m of captive co-investment. The investment plan will generate 500+ high value jobs on exit, within the East Kent area.
Commercialisation	SMEs will be subject to a robust commercialisation process led by Narec Capital and agreed upfront with each company
Target Fund Size	Up to £50 million (£5m initial tranche from ExEK)
Minimum Fund Size	£5 million
Minimum Commitment	Minimum investment for any future Limited Partner is £500,000 (50 Participations)
Participations	Participations will be of £10,000 each consisting of £1 of partnership capital and £9,999 of partnership loan. Commitments to the Fund are legally committed on admission to the Partnership
Carried Interest	The Founder Partner is entitled to carried interest of 20% of net profits from the Fund after amounts contributed have been returned to investors. There is no hurdle
Term	10 Years
Investment Criteria	The Fund will invest in companies producing sustainable energy and life science / medical related technologies and products. The Investment Policy will be set out in accordance with the rules of the relevant RGF fund parameters.

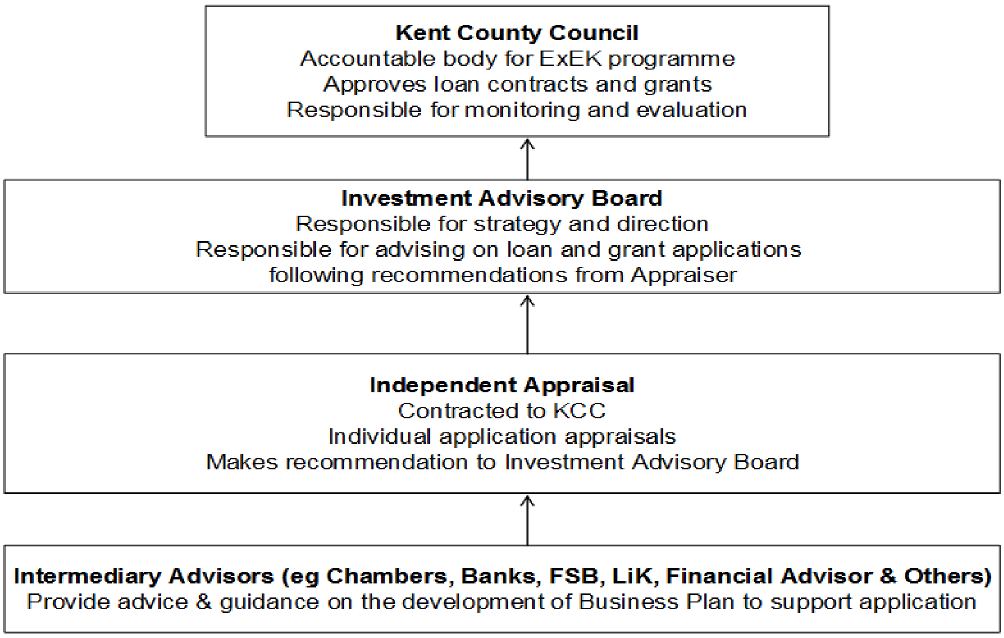
Reporting	Investors will receive a six monthly update report on the investments in the portfolio and an annual report and accounts which will constitute periodic statements for the purposes of FSMA. In addition, ExEK IAB will also receive updates regarding economic impact analysis (jobs, leveraged investment) in order to track and monitor key RGF outputs.
Set-up Costs	1% of total commitments to the Fund up to a maximum of £500,000 (limited to £50,000 during initial ExEK tranche)
Management Fees	A management fee of 3% of total commitments to the Fund per annum whilst below £15m, moving to 2% when £15m+ is achieved. *(Both set-up costs and management fees will be taken from the fund allocation of £5 million)*
Operating Expenses	The Fund will be responsible for ongoing operating expenses relating directly to the Partnership, including the annual fees of the Operator and all audit, accountancy, valuation, legal and other professional fees
Investment Committee	The Investment Committee provides final approval of all investments. KCC will have the right to assign 2 x Directors to the committee (with veto rights). Details of the Investment Committee are set out in the accompanying legal documentation.
ExEk IAB	The ExEK IAB will set this investment mandate, maintain oversight of the performance of the fund and key economic outputs via regular updates from the funds Investment Committee.
Target Initial Closing Date and Next Steps	Initial tranche of £5m (ExEk) by September 2014. Remaining £45m by April 2015, once the permissions are in place to convert the fund to CIS status.

6. Governance Arrangements

6.1 In May 2012 KCC accepted the role of accountable body for the Expansion East Kent funding programme. The governance arrangements for the programme were also approved by the Cabinet Committee on 14th May 2012. The following paragraphs set out the proposed way in which the current governance arrangements will be maintained whilst incorporating the East Kent Investment LP. The structure was formed following consultation with Legal and Democratic Services and is in line with the principles of the fund.

6.2 The diagram below sets out the governance structure that has been in place since 2012. This structure maintains a balance between independent, private sector advice and clear accountability.

Expansion East Kent Governance Structure



ExEK/Jacqui Working Docs/ExEK Governance Structure

6.3 The ExEK IAB will approve all investments. The proposals for equity investment will be presented to the Board (please see Annex 1 for structure diagram). The full membership of the ExEK IAB is as follows:-

Paul Carter (Chair)
Mark Dance (Vice-Chair)
David Smith
Miranda Chapman (Managing Director, Pillory Barn Creative - Media)
Ian Ellis (Director, McCabe Ford Williams - accountancy)
Simon Howell (private sector)
Elias Dencker (Renewables Strategy)
Eliot Forster (Managing Director, Creabilis SA – pharmaceutical R+D)
Laura Sandys MP

6.4 The ExEK IAB will approve each investment and the Fund Documents must reflect that stipulation by the Board. In practice, IAB and Narec Capital shall work closely together with KCC to ensure that this process is efficient.

6.5 KCC has raised the prospect of grandfathering existing investments into the Fund. The Fund documents will therefore allow for the concept of KCC and Narec Capital agreeing that certain existing KCC equity investments may be grandfathered into the Fund and thus managed by Narec Capital under the Fund.

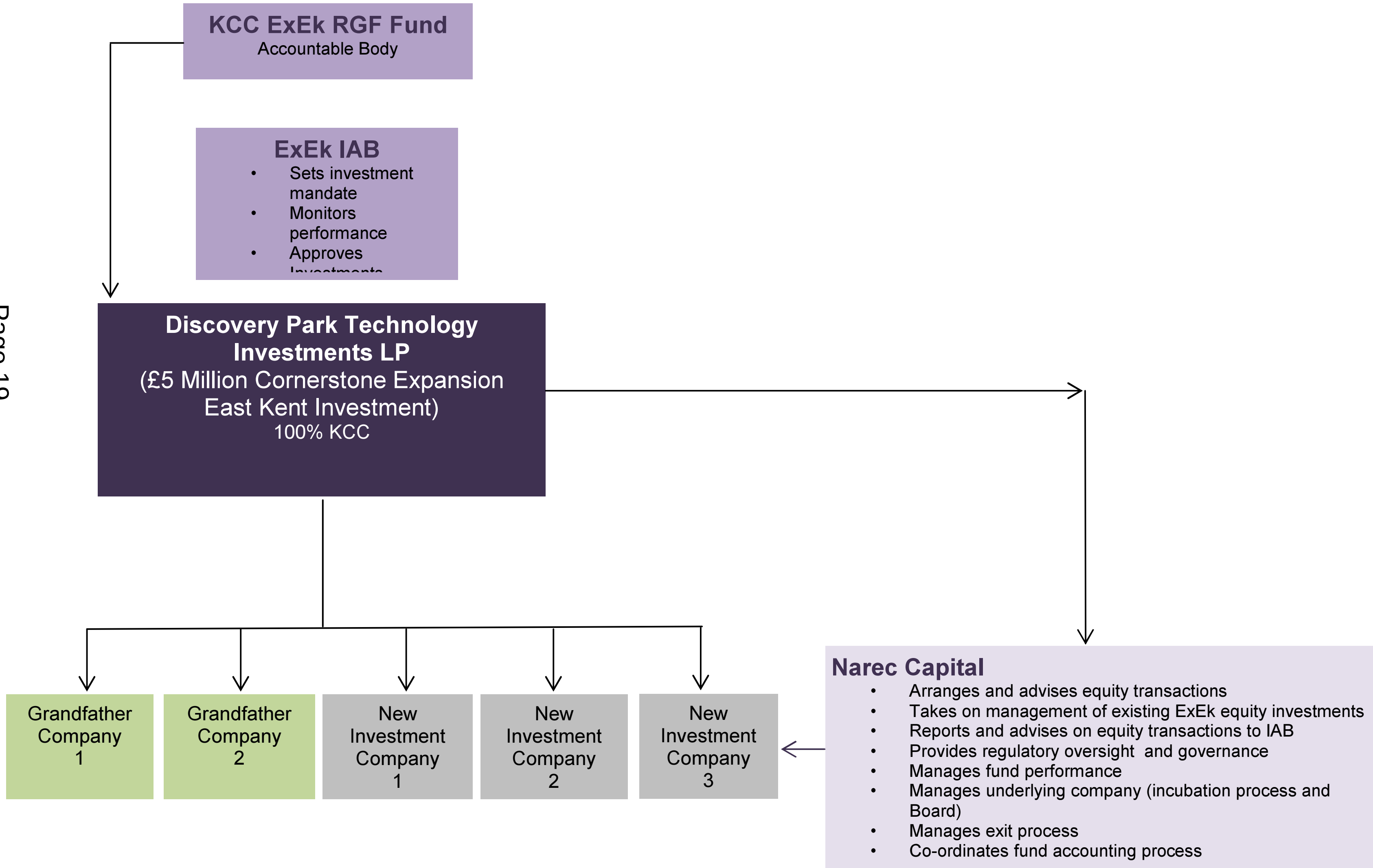
7. Recommendations

The Trading Activities Sub-Group is recommended to:-

(a) approve the governance arrangements as detailed above.

Report author:
Jacqui Ward (Jacqui.ward@kent.gov.uk)
RGF Programme Manager
Tel: 07740-183812

Annex 1 – Proposed Fund Structure & Governance (Phase 1)



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From: **John Burr, Director of Highways, Transportation & Waste**
David Brazier, Cabinet Member of Environment & Transport

To: **Trading Activities Sub - Committee – 20 November 2014**

Subject: **Establishment of a Transport Related Local Authority Trading Company**

For assurance

Classification: **Unrestricted**

Past Pathway of Paper: **E&T Cabinet Committee 17 September 2014**

Future Pathway of Paper**:** N/A

Electoral Division: All electoral divisions

Summary:

Kent County Council, together with a consortium of five other County Councils (Surrey CC, Dorset CC, Hampshire CC, East Sussex CC and West Sussex CC), owns a transport trip rate database known as TRICS (Trip Rate Information Computer System). The data base is widely used by the transport and planning profession.

The consortium has considered options for the management of the database in the longer term. The preferred option is to create a Local Authority Trading Company (LATC), to be owned equally by the consortium members, in order to retain control and exploit the commercial potential of the database.

The following report sets out the background, the Company Structure and Governance arrangements for the establishment of the TRICS LATC. This report was presented to the E&T Cabinet Committee and endorsed by members on 17 September 2014, the decision was subsequently signed off by the Cabinet member on 10 October 2014. Confidential aspects of this report have been deleted.

Recommendation(s):

The Trading Activities Sub-Committee is recommended to approve the governance arrangements as set out in the report

APPENDIX 1
Redacted version of Exempt report

From: **John Burr, Director of Highways, Transportation & Waste**
David Brazier, Cabinet Member of Environment & Transport

To: **Environment & Transport Cabinet Committee – 17 September 2014**

Subject: **Establishment of a Transport Related Local Authority Trading Company**

Non-Key decision:

Classification: **Restricted**

Past Pathway of Paper: N/A

Future Pathway of Paper: N/A

Electoral Division: All electoral divisions

Summary:

Kent County Council, together with a consortium of five other County Councils (Surrey CC, Dorset CC, Hampshire CC, East Sussex CC and West Sussex CC), owns a transport trip rate database known as TRICS (Trip Rate Information Computer System). The data base is widely used by the transport and planning profession.

[redacted] the consortium have considered options for the management of the database in the longer term. The preferred option is to create a Local Authority Trading Company, to be owned equally by the consortium members, in order to retain control and exploit the commercial potential of the database.

Recommendation(s):

1. The Cabinet Member for Environment and Transport approve the business case for the creation of a Local Authority Trading Company to be owned by Kent County Council and five other local authorities.

2. The Cabinet Member for Environment and Transport approve the governance arrangements for the Company, as set out in paragraphs 4.3.7 to 4.3.10, and as described in memorandum of terms form in a Shareholders Agreement between the local authorities and the Articles of Association for the company.

3. The Cabinet Member for Environment and Transport approve the provision of equity finance to the Company as described in paragraphs 2.1 to 2.2.

4. The Cabinet Member for Environment and Transport agree appropriate contractual arrangements on behalf of the County Council following completion of appropriate due diligence.

5. Authorise the Director of Highways, Transportation and Waste to appoint a LATC Director on behalf of KCC.

1. Introduction

1.1 The purpose of the report is to seek approval to set up a Local Authority Trading Company in partnership with Surrey CC, Dorset CC, Hampshire CC, East Sussex CC and West Sussex CC. The creation of a Local Authority Trading Company, to be owned by the six local authorities, will ensure that the commercial activities of the consortium are delivered in an appropriate manner and will enable the growth potential of the database to be fully exploited. Subject to the company being able to declare a dividend, the recommended delivery model will produce an ongoing income for the council to support future service provision.

2. Financial Implications

2.1 The TRICS Company will be incorporated with equity funds of £225,000. The six members of the consortium will each subscribe for 375 shares, an equity of £37,500 each. The amount of equity required has been determined in order to provide the company with sufficient funds and cash flow to cover the initial set-up costs and to provide for the payment of essential expenses for at least the first three months of trading. These arrangements will be subject to further review as part of the required financial and legal due-diligence.

2.2 The equity will be provided from the funds currently held in the consortium account as a result of the settlement achieved with the existing supplier in January 2014 of £363,600. The surplus funds of £138,600, and any further funds settled upon the exit from the current supplier will be returned to the consortium members in equal proportion.

2.3 The Business Plan appended to this report as Annex 2 demonstrates that the creation of the TRICS Company is a commercially viable proposition based upon prudent assumptions. The Shareholders can therefore have a reasonable expectation that the company will be able to declare a dividend within a short-timeframe.

2.4 As each shareholding authority will each hold a minority of the shares, the assets and associated liabilities of the TRICS Company will not be required to be consolidated in each council's balance sheet. However the company will be under local authority control and will therefore have to comply with the Local Government & Housing Act 1989 that requires that companies that are controlled or influenced by a Local Authority make a declaration statement of this in formal papers & documents.

3. Policy Framework

3.1 The database is used by the development industry to assess the impact of developments on the highway network. This is a key consideration in negotiating developer contribution for highway infrastructure provisions / improvements that are necessary to support growth as set out in "Bold Steps for Kent" and Corporate Objectives

4. The Report

4.1 Relevant History

4.1.1 The TRICS database was created in 1989 by a consortium of County Councils consisting of Hampshire, Dorset, East Sussex, Kent, Berkshire, Surrey and West Sussex. The database was originally named "Trip Rate Information Computer System" but quickly became known by its acronym. Following the departure of Berkshire County Council in 1996, the remaining six consortium members have continued to manage and grow the database.

4.1.2 The TRICS database is now the UK and Ireland's only nationally recognised system of trip generation analysis. The database is recognised in National Planning Policy and is cited by the Department of Transport in its good practice guide on transport assessments. The product is widely used by the transportation planning profession and has been given due weight by Inspectors at Planning Inquiries. The TRICS database is the only database of its kind that provides the data and analytical capability that covers the whole of the United Kingdom and is thought to be the largest database of its kind worldwide. The Consortium owns the Intellectual Property Rights (IPR) to the database, the registered trademark and associated website domain name.

4.1.3 The development of the database has been overseen by representatives of the Consortium who meet on a quarterly basis, the TRICS consortium management team. Each of the six Consortium representatives takes turns to undertake the role of Chair, Deputy and Secretary over a two year rolling programme. Each of the six representatives also takes on a lead role covering areas such as Treasurer, Data Collection, Event Management and System Development. Surrey County Council currently undertakes the role of Chair and Treasurer to the consortium. The consortium operates under an agreed Memorandum of Understanding.

4.1.4 The day to day operational management of the database is provided by an external supplier. The supplier is responsible for sales of the product to the user community (primarily from annual licence fees), maintenance of the database, management of the website providing the user interface, data collection activities and related third party contracts. The provider receives a management fee for this service and holds any surplus funds after the deduction of the fee on account on behalf of the consortium.

4.1.5 The current provider, JMP Consultants Ltd, a firm of transport consultants was awarded the contract to operate the database following a competitive public procurement exercise in 2012. JMP Consultants were the previous incumbent. The contract was awarded for a period of five years commencing on 1st April 2012.

4.1.6 During the due-diligence phase of contract award, JMP Consultants Ltd went into voluntary administration and was subsequently acquired by another company Volvere PLC in May 2013. The new business continues to operate as JMP Consultants Ltd with all the staff and business transferred to the new company.

4.1.7 The consortium sought legal advice which stated that the contract could not simply be novated across to the new owner. Based upon this advice the consortium requested that the new company continue to provide the contracted services on an interim basis pending a further procurement exercise. The new owners responded formally to the proposals of the consortium in July 2013 and requested changes to the terms of the contract and an increase in the management fee in return for a continuation of the service on an interim basis through to December 2014. The proposed revised arrangements were not acceptable to the consortium and further negotiations and requests for clarification have been discussed, however the parties have failed to reach a mutually acceptable position.

4.1.8 Despite these difficulties the new JMP Company has worked on behalf of the Consortium to secure the release of funds owing to the Consortium from the administrators, KPMG. Following an extended period of negotiation between the consortium, JMP and the administrators, the cumulative funds owed to the date of administration of £363,600 were returned to the consortium on 28th January 2014. These funds are being held on behalf of the consortium on Surrey County Council's balance sheet in accordance with the current Treasurer responsibilities.

4.1.9 As a result of the failure to reach agreement and prior to undertaking a further procurement exercise, the consortium have taken the opportunity to consider the options available to secure the longer term future of the database taking into account three key priorities;

- Achieve a managed exit from the current provider,
- Maintain ownership of the database,
- Create a structure or delivery mechanism that is legally permissible to progress the commercial potential of the database.

4.2 Local Authority Trading Company

4.2.1 The Consortium's preferred option is to take full control of the database and exploit the commercial potential of the product by creating a Local Authority Trading Company (LATC) to be owned equally by the Consortium members.

4.2.2 The most appropriate legal structure under the Companies Act 2006 for the Consortium to achieve the stated key priorities is a company limited by shares. The company will be owned in equal proportion by the six consortium authorities with each taking an equal part in the decision-making and oversight of the company.

4.2.3 The Consortium will transfer the IPR, the trademark, brand identity and associated website domain names to the company, which will be known as "TRICS Consortium Ltd". Similar names already registered at Companies House prevent the company being incorporated as TRICS Limited.

4.2.4 Each consortium authority will have the option to appoint a director to the Board of the Company to represent their interest and will enter into a shareholders' agreement which will set out the appropriate terms between the authorities for managing the Company and will agree the Articles of Association for the Company. The key provisions for these contractual documents are outlined in the Memorandum of Terms document (Annex 1).

4.2.5 The TRICS Company will be responsible for the cost of preparing for the commencement of trade, including the proposed contractual documents and all other arrangements necessary for the creation of the company, including the appropriate arrangements in relation to the IPR.

4.2.6 The Business Plan appended to this report as Annex 2 demonstrates that the creation of the TRICS Company is a commercially viable proposition. Full and complete financial analysis will be subject to further due-diligence and in particular will rely upon the release of updated information from the current supplier arrangement. The initial financial analysis is based upon information currently available to the consortium. The estimated financial statements have been prepared using a prudent approach, assuming no growth in sales and are inclusive of contingency sums.

4.2.7 Each consortium authority will require approval for the creation of the Company in accordance with their own governance procedures. The decision will be made by each authority based upon shared documentation and information. This includes the business case provided in this Cabinet Report, the Memorandum of Terms listing the key clauses of the Shareholders Agreement and the outline of reserved matters to be included in the Articles of Association for the Company and the Business Plan for the Company.

4.2.8 The Kent County Council (KCC) Cabinet Member for Environment & Transport will be responsible for the consideration of decisions reserved for the shareholders as outlined in the Articles of Association for the Company and for ensuring compliance with the agreed terms of the Shareholders Agreement. The KCC Director of Highways, Transportation and Waste will be responsible for appointing a Director to the Company to represent KCC's interest.

4.3 Legal Implications / Risk Management

4.3.1 [redacted]

[redacted]

4.3.2 [redacted]

4.3.4 The TRICS trademark, website domain name and associated media are currently registered by the existing supplier on behalf of the Consortium. The termination letter sent to the supplier will confirm the expectation that these will be transferred to the Company upon the termination of the contract.

4.3.5 The current supplier uses a customer database system which holds customer records, invoicing scheduling information, user names and password maintenance. This system is owned by the supplier and does not form part of the Consortium's assets. A replacement system will need to be purchased or built to continue to provide this essential functionally. The consortium will engage with an appropriate provider to specify the system requirements and build the appropriate solution in preparation for commencement of trade. Due to the expected lead-time required, this process will commence as soon as the majority of the consortium councils have approved the proposal to create the company.

4.3.6 There is a risk that the current supplier does not promptly return the funds accrued and owed to the Consortium since the date of the last settlement in January 2014. These funds are due to each of the Consortium members and do not impact upon the creation of the Company.

4.3.7 The success of the Company will rely heavily upon the accumulated knowledge of the current consortium management team. In addition new commercials skills will be required to supplement existing skills to ensure that the company is a success and is able to deliver the growth potential of the database. Each consortium authority will be responsible for determining their own directors appointment to represent their shareholding and due consideration will need to be given to achieve a balance between continuity of knowledge and the skills necessary to fulfil the duties of a director. Where practical the authorities may wish to work together in determining the appointment to achieve a good mix of skills on the Board of the Company.

4.3.8 There is a high risk of challenge from the existing supplier, JMP Consultants Ltd on the grounds of breach of contract, a breach against the implied current contractual relationship or regarding the creation of the company. The consortium have a right to terminate the contract with 3 months' notice and legal advice is being taken by the consortium to structure the planned arrangements to minimise the risk.

4.3.9 Each consortium authority will require approval for the creation of the company in accordance with their own governance procedures. There is a risk that not all authorities agree to proceed with the recommended option or that the terms of the Shareholder Agreement are not acceptable to all parties.

4.3.10 The Shareholders Agreement ensures that all of the consortium authorities have an equal role in the decision-making required and that each representative Director is appointed with the same responsibilities and delegated authority.

4.3.11 The agreed Memorandum of Understanding between the Consortium members contains provisions enabling a decision to be progressed with the agreement of the majority. If a member does not wish to proceed with the agreed decision, then that member may leave the consortium and is deemed to forgo their ownership rights to the database. This would also apply in respect of the recommendation to create a Company. The authorities that do not wish to participate in the creation of the company would receive their share of the all consortium funds due to date and would have no further involvement.

4.3.12 The Company will be responsible for costs incurred in preparation for the commencement of trade. preparing The Consortium have agreed that, should the proposal not gain the approval of the majority of authorities, that all abortive expenditure incurred will be funded from the balances held by Surrey County Council on behalf of the Consortium. This is in accordance with the existing practice of the consortium as established under the agreed Memorandum of Understanding.

4.4 The Director of Highways, Transportation and Waste will inherit the main delegations via the Officer Scheme of Delegation

5. Conclusions

The creation of a Local Authority Trading Company, to be owned by six local authorities, will ensure that the commercial activities of the Consortium are delivered in an appropriate manner and will enable the growth potential of the database to be fully exploited. Subject to the company being able to declare a dividend, the recommended delivery model will produce an ongoing income for the Council to support future service provision.

6. Recommendation(s):

1. The Cabinet Member for Environment and Transport approve the business case or the creation of a Local Authority Trading Company to be owned by Kent County Council and five other local authorities.

2. The Cabinet Member for Environment and Transport approve the governance arrangements for the Company, as set out in paragraphs 4.3.7 to 4.3.10, and as described in memorandum of terms form in a Shareholders Agreement between the local authorities and the Articles of Association for the company.

3. The Cabinet Member for Environment and Transport approve the provision of equity finance to the Company as described in paragraphs 2.1 to 2.2.

4. The Cabinet Member for Environment and Transport agree appropriate contractual arrangements on behalf of the County Council following completion of appropriate due diligence.

5. Authorise the Director of Highways, Transportation and Waste to appoint a LATC Director on behalf of KCC.

7. Background Documents

Annex 1 - Memorandum of Terms: Shareholders Agreement and Articles of Association

Annex 2 - Company Business Plan

8. Contact details:

Report Author:
Tim Read, Head of Transportation
03000 411662
Tim.read@kent.gov.uk

Relevant Director:
John Burr, Director of Highways, Transportation and Waste
03000 411626
John.Burr@kent.gov.uk

“TRICS Limited”
MEMORANDUM OF TERMS

SUBJECT TO CABINET APPROVAL

The Parties

(1) Dorset County Council (DCC)
County Hall
Dorchester
Dorset
DT1 1XJ

(2) East Sussex County Council (ESCC)
County Hall
St. Anne’s Crescent
Lewes
East Sussex
BN7 1UE

(3) Hampshire County Council (HCC)
The Castle
Winchester
Hampshire
SO23 8UJ

(4) Kent County Council (KCC)
Maidstone
Kent
ME14 1XQ

(5) Surrey County Council (SCC)
County Hall
Kingston Upon Thames
KT1 2DN

(6) West Sussex County Council (WSCC)
County Hall
Chichester
PO19 1RQ

The Company

1. The parties have agreed to collaborate to operate, manage and progress the commercial potential of a transport trip rate database, known as TRICS. The database is currently managed by a consortium of the parties who own the Intellectual Property Rights (IPR) to the database, the registered trademark and associated website domain. The parties will arrange for the managed exit from the current supplier who is contracted by the consortium to provide operational management activities.

2. The parties will create a Local Authority Trading Company, to be owned equally by the parties.

3. The company will issue, subject to legal and financial due diligence, ordinary share capital of 2,250 shares at £100 nominal value, total share capital of £225,000. Each party will subscribe for 375 shares (£37,500 each).

4. The IPR and TRICS trademark will be transferred by the consortium to the company.

5. Each party will appoint a director to the Board of the company to represent their interest in the company.

6. The parties will enter into a shareholders' agreement which will set out the appropriate terms between the parties for running the company and will agree the Articles of Association for the company. The key provisions for these contractual documents are outlined in this Memorandum of Terms document.

7. The Company will be responsible for the cost of arrangements necessary for the creation of the company and the commencement of trade.

8. The Company will be responsible for the parties reasonable legal and financial due-diligence costs necessarily incurred in order to gain appropriate approvals in accordance with each parties governance arrangements. These costs will be limited to a maximum of £2,500 per party.

9. The registered office of the Company will be the address of Surrey County Council in order to align with the agreed management arrangements and workplace location of the employees of the Company.

Shareholders Agreement

10. The Shareholders Agreement will set out the way in which the parties interact with each other to provide the strategic direction and management for the company. The agreement will include (but will not be limited to) the following key provisions.

    10.1 Each party will have the option to appoint a Director to the Board of the company to represent their interest in the company. The shareholder appointed Directors' remuneration will be limited to reasonable expenses necessarily incurred to partake in the Board meetings of the company. Each party will be entitled to dismiss or remove the person appointed by it to the Board and appoint any other person to take their place. The parties will work together, as far as is reasonably practical to do so, to ensure that the Directors appointed to the Board have an appropriate mix of skills.

    The shareholder appointed Directors will be authorised to appoint and remove the Managing Director of the Company, who will be in receipt of a salary determined at the discretion of the shareholder appointed Directors.

    The shareholder appointed Directors will be authorised to appoint and remove a Finance Director to the Board. In recognition of the additional responsibilities and time commitment required, the following financial arrangements will apply. If the appointed director is an officer employed by one of the shareholders, the officer will receive no additional personal remuneration; an appropriate charge will be made from the employing shareholder to the Company based upon agreed day / hourly rates to recognise the loss of officer time. If the appointed director is an independent party, the remuneration of the Finance Director will be determined at the discretion of the shareholder appointed Directors.

    10.2 Each party will ensure that appropriate approvals have been made in accordance with their own governance arrangements to create the company on the agreed terms and ensure that delegated authority is in place to enable each Director to fulfil their agreed responsibilities.

    10.3 Each party will ensure that appropriate arrangements are in place to take decisions that are not delegated to the Directors, but which are required to be made by the parties (the shareholders).

    10.4 The parties shall give notice of their decision on the matter in question within 4 months of notification by the company. If the parties fail to give notice to the Company of such decision within the agreed timeframe, then the decision shall be deemed to be in the negative.

    10.5 The parties shall agree to employ their best endeavours to respond to a commercially urgent request within 5 business days or within a longer timescale if noted to be otherwise at the point of request. If the parties fail to give notice to the Company of such decision within the agreed timeframe, then the decision shall be deemed to be in the negative.

10.6 The requirement that decisions made by the parties are unanimous.

10.7 The requirement that decisions made by the Directors of the Board are made by a majority decision. The Chair of each Board Meeting will rotate between the Shareholder appointed Directors, the Chair of the meeting will have the casting vote.

10.8 At least five business days' prior notice will be provided in writing of any meeting of the Board. Each Director will receive a proposed agenda of matters to be discussed at each board meeting together with all relevant papers for discussion and will promptly receive minutes after each meeting.

10.9 The Company will be required to hold no less than 12 Board meetings in each financial year of the company, and allow no more than 6 weeks to elapse between successive meetings.

10.10 The Directors shall each be entitled to appoint an alternate to attend any meetings of the Board in their place. The use of an alternate should not however become a regular occurrence, which will be deemed to be more than twice in each financial year.

10.11 The Shareholder Agreement will include deadlock resolution procedures within defined timescales, escalating any dispute between the Directors of the Board to the Chief Executive (Head of Paid Service) of each shareholder who will have authority to agree a mechanism to reach resolution and if not then agreed unanimously the provision for escalation to an independent mediation expert, acting as such. Deadlock provisions will apply only after the matter has been considered at two separate meetings of the Board.

10.12 Deadlock resolution procedures within defined timescales, escalating any dispute between the parties to an independent mediation expert, acting as such, provided that the parties have tried on at least two occasions to resolve the matter.

10.13 Provision for any party to resolve deadlock by selling their shares to the other parties at face value.

10.14 No party will be permitted to transfer their shares to another party (including the shareholding parties or other third-parties) without the prior written consent of the other parties, except to an entity that is directly and wholly owned by the party concerned.

10.15 No party will be permitted to sell their shares to another party (including the shareholding parties or other third-parties) without the written consent of the parties and without providing the parties (the shareholders) with the opportunity to purchase the shares in equal proportion in the first instance.

10.16 Should the parties agree to the sale of shares, the value of those shares will be determined by an independent expert to be engaged by the consent of the parties and employed at the expense of the selling party.

10.17 Each party will be required to ensure the resignation or removal of its

Director should the party sell their shareholding in full.

10.18 The Company will provide each party with the audited accounts for the company at the end of each financial year as soon as they are available, and no later than 3 months from the end of the financial year.

10.19 The Company will provide each party with an annual business plan not later than 30 days before the commencement of each financial year.

10.20 The parties will have a reasonable expectation that a dividend will be declared each year, assuming that the company is in a financial position to do so, and that only those funds required for the growth of the company and identified as required in the annual business plan of the company will be retained.

10.21 The parties and their respective financial advisors shall be entitled to examine the accounts and other records kept by the company as they may reasonably require to keep them properly informed about the business and to protect their respective interests.

10.22 All dealings between the parties and the company will be conducted on arms-length commercial terms.

10.23 The Company will take out and maintain at all times insurance to cover the actions of the Directors in performing their duties.

10.24 The parties will co-operate and aid one another in order to enable each party to comply with its obligations under the Freedom of Information Act or any successor legislation.

Articles of Association

11. The Articles of Association will set out the way in which the Directors will manage the Company. The Directors will be authorised to take all necessary decisions and actions in pursuit of the success of the company, with the exception of the following provisions which will be reserved for decision by the parties (reserved matters for the shareholders of the company).

11.1 Any change to the Articles of Association.

11.2 A material change in the scope or nature of the business of the company.

11.3 The appointment or removal of any director to the board of the company, with the exception of the appointment of a Managing Director and a Finance Director who would otherwise be deemed to be “de-facto” directors of the company.

11.4 The purchase of shares or interest in another company.

11.5 The Borrowing or raising of Finance in excess of £100,000.

11.6 The creation of any security interest in the assets of the company.

11.7 The formation of any subsidiary company.

11.8 The issue, withdrawal or buy-back of any shares.

11.9 Entering into any contract, liability, obligation, guarantee or commitment that is outside the ordinary course of business or is particularly onerous or unusual in nature.

11.10 Changing the name or the registered office of the company.

11.11 Entering into an administration order or steps to voluntarily wind up the company.

12. The above matters will require the consent of all parties (shareholders), with provisions for decision-making and deadlock procedures as described in the Shareholders Agreement outlined above.

Annex 2

TRICS Limited
Business Plan 2014

June 2014

Contents

1. Executive Summary

TRICS Limited will be established to operate, manage and to fully exploit the commercial potential of a transport trip rate database (TRICS), upon the transfer of Intellectual Property Rights (IPR), the associated trademark and website domain from a consortium of six local authorities, and a managed exit from the current service provider.

The Company will provide a direct service to the transport planning and property development customer community by;

- Maintaining a comprehensive trip rate database
- Maintaining the professional and technical reputation of the database to secure the continued recommendation of the Department for Transport
- The promotion of research into trip generation and transport related issues

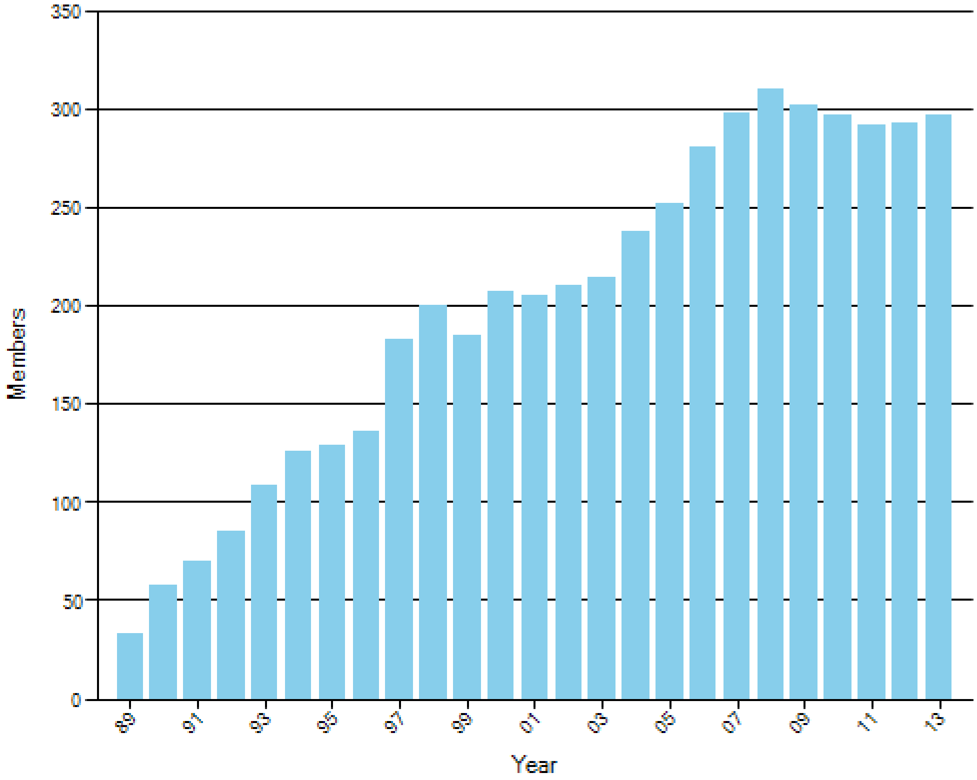
The Company will exploit the commercial potential of the database and the established reputation of the brand by;

- The development and marketing of the product to reach new customers both within the existing UK market and in worldwide locations where the market and nature of travel is similar, for example in New Zealand and Australia.
- The company will consider the business case for the continued development of a Travel Plan monitoring product that will run in parallel with the main database and which will be marketed to Travel Plan Officers within Local Authorities, private companies and transport consultants.

2. The TRICS Product

The database was established in 1989 and originally named “Trip Rate Information Computer System”, the product quickly became known by its acronym TRICS. The database was established by a consortium of County Councils consisting of Hampshire, Dorset, East Sussex, Kent, Berkshire, Surrey and West Sussex. Berkshire left the consortium in 1996 and in accordance with the Memorandum of Understanding signed by each consortium member has no further claim upon the database.

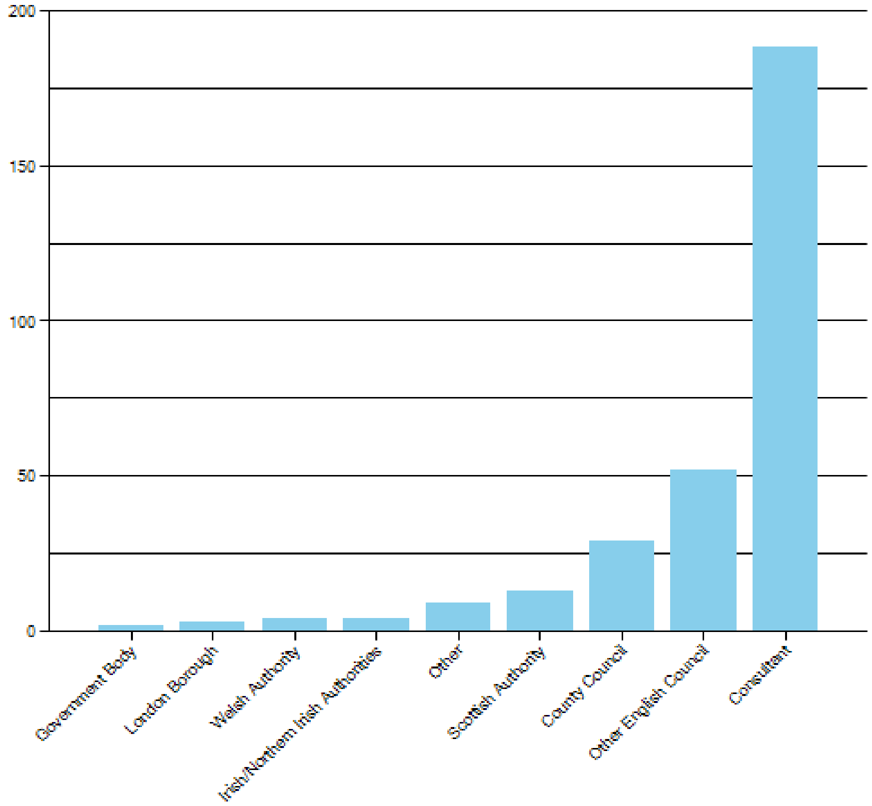
The database has been developed over the years by the consortium and to incorporate data previously held within separate databases created by other public sector organisations



TRICS is the now the UK and Ireland’s only nationally recognised system of trip generation analysis, containing over 6,600 directional transport surveys at over 100 types of development. The database is recognised in national planning policy and is cited by the Department of Transport in its good practice guide on transport assessments. The product is widely used by the transportation planning profession and has been given due weight by Inspectors at Planning Inquiries.

Survey data consists of vehicular “level one” trip data, multi-modal “level two” data – including cyclists, pedestrians, public transport users – and “level three” data which incorporates data contained within Travel Plans.

Data is collected through a combination of automated and interview surveys which are planned according to individual site circumstances. There is a continual re-investment in the quality of the data through an annual data collection programme which covers the whole of the UK and Ireland across 17 defined regions and is guided by the requirements of the TRICS licence holders. The TRICS website is visited by up to 25 separate users each working day. Website logins and searches are monitored in order to highlight demand for data and inform future data collection programming.



Sales income is generated by the following services;

Licence Fees: Users pay an annual licence fee to gain full access the database. A pricing structure is in place to suit the customer's requirements, with an escalation in the fee from a single user option, single location multiple users through to multiple users, multiple locations. The database is currently sold to 292 customers who primarily come from the public sector highway and planning authorities and from private sector transport consultants working on behalf of property developers. There is a potential risk with this pricing structure if there is consolidation within the planning consultancy industry and therefore this will be reviewed by the Company.

Bureau Service: A bureau service is provided for customers who do not buy a licence and have an occasional requirement to access the data. The price of the service is determined by the nature of the request.

Travel Plan Monitoring: A separate fee is payable for customised Travel Plan monitoring and reporting. This product is currently still in the development phase, but has growth potential as planning policy guidance states that a travel plan must be submitted alongside any planning application that has significant transport implications. This service is priced according to site and travel plan specifics.

3. Market Analysis

The TRICS database is the only database of its kind that provides the data and analytical capability that covers the whole of the United Kingdom; it is thought to be the largest database of its kind worldwide.

The database is widely used by the transportation planning profession – with market penetration of approximately 60% of the potential UK public sector market and 66% of the UK Transport Consultancy market. Market research is undertaken with the existing customer base, for example at the annual User Group meeting, from the use of questionnaires and interactive sessions.

The product is dominant within its core market which as high barriers to entry for competitors, for example a competitor product would take 8 years to develop a comparable product with the same depth of data. The TRICS product pricing could therefore be increased without eroding market share. There is more competition in the emerging market for Travel Planning particularly from "iTRACE" which charges significantly higher prices.

The UK market can be developed further by increasing brand awareness beyond transport professionals into associated markets in planning, regeneration and architecture, The product is currently offered to the market with a free-user trial of one-month access to the on-line version of the system and this has proved to be successful in attracting new customers.

Outside of the UK, the product will be developed and marketed to reach new customers in worldwide locations where the market and nature of travel is similar, for example currently 14% of the public sector market in Ireland accesses the product. The market in the Australasia region is similar to that of the UK being made up of Transport Planning Authorities and Transport Planning Consultancies. There are limited competitors in this market and therefore this region provides significant potential for growth.

The Company will evaluate the appropriate approach to expanding the reach of the product beyond the current customer base. There are a number of potential areas to explore, both within the UK and abroad. A new focus will be brought to these activities following the creation of the company and each opportunity will be thoroughly analysed and researched before committing to marketing spend or further product development.

4. Company Structure and Governance

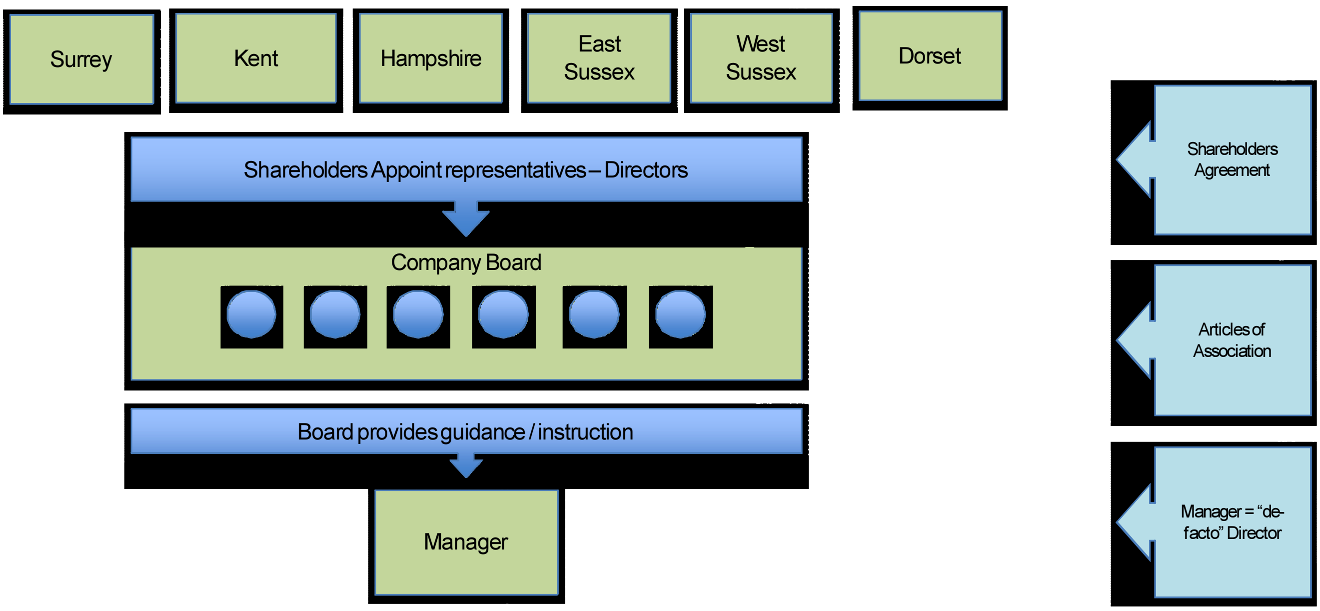
4.1 Share Capital

The company will initially issue, subject to financial and legal due-diligence, ordinary share capital of 2,250 shares at £100 nominal value, total shareholder capital of £225,000. The six members of the current consortium; Dorset County Council, East Sussex County Council, Hampshire County Council, Kent County Council, Surrey County Council and West Sussex County Council, will each subscribe for 375 shares.

4.2 Governance

Each shareholder will have the option to appoint a Director to the Board of the Company to represent their interest. The relationship between the shareholders will be undertaken in accordance with terms set out in a Shareholders Agreement. The outline heads of terms for the Shareholders Agreement is appended to the Business Plan as Annex 1 to the Cabinet report.

The Directors of the company will be responsible for decisions regarding the strategy and operation of the company, subject to the legally reserved matters outlined in the Articles of Association for the company (appended in heads of terms form to the Business Plan as Annex 1 to the Cabinet Report).



The Directors appointed by each shareholder will appoint a manager to provide the day-to-day operational oversight for the company, manage the employees and to implement the agreed strategy. The appointed manager will become a director of the board in order to formally recognise the role and to avoid being otherwise deemed to be a "de-facto" director of the company. Overall therefore the company will up to 7 Directors.

The Directors will be authorised to proceed with all necessary expenditure in pursuit of the objectives of the business and as described in the Annual Business Plan. The Directors will establish an authorisation threshold structure to determine the levels at which a decision can be made by a single director or where unanimous consent will be required.

The Directors will provide the shareholders with an annual business plan and year-end audited accounts. The Directors will determine an appropriate annual dividend payment, assuming that the company is a financial position to do so, with the dividend being set so as to satisfy the shareholders reasonable expectation of a dividend based upon the performance of the company and ensuring that only funds required for the growth of the company and identified as being required in the annual business plan are retained.

The Directors will be required to act with due skill and care in their field of professional expertise and to take proper legal, financial and tax advice in order to make appropriate decisions; having appropriately considered the level of risk and liabilities involved in the decision-making process.

5. Management, Company Administration and Support

The Directors of the company will be responsible for decisions regarding the strategy and operation of the company, subject to the legally reserved matters outlined in the Articles of Association. The Directors will receive no remuneration other than the reimbursement of reasonably and necessarily incurred expenses.

The Directors will employ staff, including a manager to implement the strategy on their behalf and manage the day-to-day operation, and will engage appropriate contractors, advisors and service providers to undertake the approved activities of the company.

The Company will be required to comply with the 2006 Transfer of Undertakings (Protection of Employment) Regulations (TUPE), and will therefore employ staff expected to transfer from the existing supplier relationship. The full details of the employees will not be known until notice has been given to the existing supplier and the required information is provided, this applies in terms of salary, terms & conditions of employment and specific roles & responsibilities. The business plan assumes that 3 employees, including the key System Manager post, will be subject to TUPE protection.

The initial employees of the company will be as follows;

Manager (Managing Director):	1 FTE	New Role
Systems Manager	1 FTE	TUPE employee
Systems & Administration	2 FTE	TUPE employee

The financial plan also allows for the cost of a further 0.5 FTE post in relation to client relationship management and marketing activity. This post will not be immediately recruited pending full evaluation of roles and responsibilities once trading commences. The Directors will evaluate whether this post is required in the longer term or whether to buy occasional marketing consultancy advice.

As noted above, full information regarding the roles of the current staff is not yet available, and therefore contingency sums have been included within the financial plan for further third-party services to be purchased where applicable, for example in relation to day-to-day accounting activities.

In order to facilitate the TUPE transfer, the employees who are currently based in London, will be based at the offices of Surrey County Council in Kingston Upon Thames. Surrey County Council will make an appropriate charge to the company for the rent of office space and associated services and will put in place the required contractual and licence agreement. For practical reasons, this may also extend to some day-to-day IT provision, for example in terms of network and telephony.

Further services may be provided by the one or more of the shareholders to the Company, for example in relation to transport research expertise, secretarial support for the Board meetings or professional services such as finance and legal advice. Where this is the case the council concerned will make an appropriate charge to the company for any services provided, ensuring that the full cost of the activity is recovered and that there is no subsidy in the arrangement.

The company will be required to prepare annual financial statements, to be filed at Companies House 9 months following the end of the accounting period and will require an external audit.

6. Financial Analysis

The forecast profit and loss statement (table 1) for the company has been developed based upon information available from the current suppler. The financial estimates are subject to change as a result of the due-diligence that will be performed upon notice of exit from the current supplier and receipt of requested information.

The estimated financial statements have been prepared using a prudent approach, assuming no growth in sales and are inclusive of contingency sums. The estimates cover the first two years of trading in order to demonstrate the expected profit once the initial set-up costs have been incurred.

The Directors will be responsible for fully evaluating the results of the company against these initial estimates and for preparing an updated business plan which will fully incorporate the plans to achieve the growth of the business as soon as practical to do so.

Table 1) Estimated Profit & Loss

Profit & Loss	£000s Year 1	£000s Year 2
Sales	1,035	1,035
Employees	-220	-220
Data Collection fees	-205	-205
Software Designer	-80	-80
Travel Plan product development	-22	-22
Research	-30	-30
Data Hosting	-10	-10
Marketing	-22	-22
Company Administration	-82	-82
Depreciation	-6	-6
Contingency	-30	-30
Initial Set-up costs	-95	
Total Costs	-802	-707
Profit Before Tax	233	328
Tax estimate	-51	-72
Profit After Tax	**182**	**256**

The initial costs of preparing to commence trade and all necessary arrangements have been estimated to be £95,000 revenue expenditure (table 2) and £30,000 capital expenditure (table 3), with the capital expenditure required in order to purchase and develop a customer records management interface which will not transfer upon the exit from the existing supplier.

Table 2) One-off costs to commence trade: Revenue

Revenue	£000s
Legal Advice	35.0
Financial Advice	10.0
TUPE Management	5.0
Project Management	7.5
Shareholders Due Diligence	15.0
Employee IT provision	2.5
Accounting Package and set-up	5.0
Contingency	15.0
Total	**95.0**

Table 3) One-off costs to commence trade: Capital

Capital	£000's
Management System	30.0
Total	**30.0**

The equity required from the shareholders has been calculated with reference to these total preparation costs plus cash equivalent to three months of business essential expenditure. The total equity provided is in line with the estimated pre-tax profit in the first year of trading.

A full cash flow analysis has not been possible to compute at this stage as this will rely heavily upon customer licence sales information not yet available from the existing supplier. In addition to the equity funds available, the company will further ensure that the banking relationship put in place includes provision for an overdraft facility should this be required.

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