

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

Wednesday, 27th April, 2016

10.30 am

Darent Room, Sessions House, County Hall, Maidstone





AGENDA

GOVERNANCE AND AUDIT COMMITTEE TRADING ACTIVITIES SUB - COMMITTEE

Wednesday, 27 April 2016 at 10.30 am
Darent Room, Sessions House, County
Hall, Maidstone

Ask for: **Andrew Tait**
Telephone: **03000 416749**

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 C P D Hoare

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 - 29 February 2016 (Pages 5 - 8)
- 4 Protocol relating to companies in which KCC has an Interest (Pages 9 - 20)
- 5 Legal Services - Alternative Business Structure (Pages 21 - 48)

- 6 Discovery Park Investment Fund - Development of the Fund and changes to governance structure TO FOLLOW
- 7 Other items which the Chairman decides are Urgent
- 8 Motion to exclude the public

That under section 100A of the Local Government Act 1972 the 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 paragraphs 3 and 5 of Part 1 of Schedule 12A of the Act.

EXEMPT ITEMS

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

- 9 Consolidated Commercial Services 2014-15 (Pages 49 - 60)

Peter Sass
Head of Democratic Services
03000 416647

Tuesday, 19 April 2016

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, 29 February 2016.

PRESENT: Mr R L H Long, TD (Chairman), Mr R J Parry (Vice-Chairman) and Mr C P D Hoare

ALSO PRESENT: Mr R H Bird and Mr D Smyth

IN ATTENDANCE: Mr A Wood (Corporate Director Finance and Procurement), Miss E Feakins (Chief Accountant), Ms B Gibbs (Accountant), Mr R Patterson (Head of Internal Audit) and Mr A Tait (Democratic Services Officer)

UNRESTRICTED ITEMS**1. Minutes - 23 November 2015**

(Item 2)

RESOLVED that the minutes of the meeting held on 23 November 2015 are correctly recorded and that they be signed by the Chairman.

2. Statutory Accounts for companies in which KCC has an interest

(Item 4)

(1) The Chairman informed the Committee that his company had acted for minority shareholders in *Digital Contact Ltd*. Whilst this did not constitute a disclosable pecuniary interest, he would not participate in any detailed discussion on that company's accounts.

(2) The Chief Accountant reported on each of the statutory accounts for those entities in which KCC had an interest and in which it had purchased shares.

(3) The Chief Accountant explained that the reason that no accounts for the *TRICS Consortium Ltd* were available was that it had only recently been incorporated and that its first accounts would not be due until June 2016. She also drew the Sub-Committee's attention to two entities which did not appear after having done so in 2015. These were *Business Support Kent Community Interest Company* which had entered administration in April 2015 and the *North Kent Architecture Centre* which no longer listed KCC as a member in its articles.

Following the meeting, the Chief Accountant explained that prior to the centre being an "independent not-for-profit organisation" it had been a nominating organisation. KCC had a right to appoint a director but this was not a requirement. On formation of an "independent not-for-profit organisation" KCC's formal association had come to a natural conclusion.

(4) The Sub-Committee asked that the Cabinet Portfolio Holder be invited to attend the next meeting of the main Committee in order to answer questions on a report explaining KCC's investment strategy in respect of the Investment Companies in which KCC had an interest. This would include an explanation of the grounds for investing in companies which were showing a loss.

(5) RESOLVED that subject to paragraph (4) above, the latest available Statutory Accounts for those companies in which KCC has an interest be noted for assurance.

3. Consolidated Commercial Services 2014/15

(Item 5)

(1) The Corporate Director of Finance and Corporate Procurement explained that Commercial Services consisted of three entities. These were the "Teckel" company which was able to trade with other local authorities, the "section 95" company which could trade more widely, and a large amount of turnover which went through internal Commercial Services and not through either of its companies. Considerable discussion had taken place on how best to report the consolidated Commercial Services accounts, and following publication of the report, a suggestion by Mr Bird would be further considered by the Cabinet Portfolio Holder. He explained that Commercial Services had a trading surplus for the year of £5.5 m and that following a dividend of £6.1m to KCC this had reduced to a deficit of £ 575,000

(2) The Chief Accountant introduced the consolidated Commercial Services accounts for 2014/15. She explained that the reason the combined turnover figure for the two companies was not the total shown for the parent company was due to consolidation, including the removal of any elements which reflected any inter-company arrangements.

(3) The Sub-Committee agreed to the suggestion of the Corporate Director of Finance and Procurement to include an Exempt report on Commercial Services' entire accounts for 2015/16 in February 2017, including the Laser business (which was not part of either company). This would include the reasons that such a high proportion of the Commercial Services turnover remained in house.

(4) In response to Members' comments that they were considering 17% of the accounts whilst 83% of them were not shown, The Chief Accountant offered to provide the summary spreadsheet of the entire Commercial Services accounts to all Members present.

(5) The Head of Internal Audit confirmed that Commercial Services' system of financial control had improved over recent years and that he had confidence in their efficiency.

(6) RESOLVED that the latest available Statutory Accounts for Commercial Services be noted for assurance and that in future years, an Exempt report on the entire Commercial Services accounts will be presented to the Sub-Committee.

4. East Kent Opportunities LLP
(Item 6)

RESOLVED that the content of the report be noted for assurance together with the East Kent Opportunities LLP Annual Report and Financial Statements for 2014/15 as set out in the Appendix to the report.

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From: Andy Wood, Corporate Director Finance & Procurement
Geoff Wild, Director Governance & Law

To: Governance and Audit Committee Trading Activities Sub-Committee – 27 April 2016

Subject: Protocol relating to companies in which KCC has an interest

Classification: Unrestricted

Previous and Future Pathways:

- 1) Governance and Audit Committee Trading Activities Sub-Committee – 27 April 2016
- 2) Governance and Audit Committee – 27 April 2016.

Electoral Division: All

Summary: To report on a review of the existing protocol relating to companies in which KCC has an interest (the Protocol)

INTRODUCTION

1. As the Council's Facing the Challenge programme progresses with a focus on commissioning outcomes, the use of alternative service delivery models may require the creation of more companies owned in whole or part by the Council.
2. This review has been undertaken to determine whether substantive updates and amendments are required to the Protocol to ensure that its terms continue to be appropriate, whilst ensuring that requisite controls and governance frameworks are in place in relation to how KCC companies are established and operated.
3. The review has been conducted by officers in Finance and Procurement and Governance and Law.
4. The Protocol was last reviewed by the Governance and Audit Committee Trading Activities Sub-Committee in July 2012.
5. Any comments about this review made by the Governance and Audit Committee Trading Activities Sub-Committee Members will be reported to the main Committee at its meeting later today.
6. A copy of the current version of the Protocol is attached as **Appendix A**, with recommended amendments shown using tracked changes.

PROPOSED AMENDMENTS

7. It is proposed that a small number of amendments are made to the current Protocol. The reasoning behind the substantive changes are set out below. The numbering refers to the clause numbering in the Protocol:

2

- Reference is now made to the toolkit, which has been written since 2012 to inform officers of the options around creating an alternative service delivery model.
- It is now made clear that officers must take appropriate technical advice before a company is set up.
- Clause 2 has been reformatted but the key change is that any company set up cannot trade until the business case and governance arrangements have been examined by the Governance and Audit Committee Trading Activities Sub-Committee.

4

- There may be occasions, especially in the case of a joint venture, where for commercial reasons the Council will not be able to insist on what is included in the articles of association. This clause has been amended to make it clear that it applies only if the Council has that control.
- The amendment to Clause 4(a) reflects the fact that there may be circumstances where it may not be appropriate to have Sessions House as the registered office, especially if the operational base of the company is not there. However, it is recommended that this is controlled carefully by requiring the approval of the Monitoring Officer and the Section 151 Officer before any alternative address is selected.

5(a)

- The governance structures for a number of companies owned by the Council incorporate a Shareholder Board with significant KCC officer and Member representation. It is recommended that such a Board, if there is one, should nominate who is appointed to represent the Council on the Board of Directors.

7(d).

- This clause has been simplified to make it clear that if a company decides to adopt its own policies it must, before it starts trading, give assurance to the Governance and Audit Committee Trading Activities Sub-Committee that adequate policies and procedures are in place.

9

- The existing Protocol is designed to be retrospective and to apply to companies already in existence, which may have been set up without all the safeguards in place as required by the Protocol. However, this may not always be possible and so it is suggested the words “so far as is reasonably practicable” are added.

11

- This clause has been updated to refer to the correct bodies and again it is suggested that this clause is only applicable where the Council has a controlling interest in the company.

RECOMMENDATION

8. It is recommended that Members

- (a) consider the amendments detailed in Appendix A and recommend their acceptance to the Governance & Audit Committee and
- (b) note that the Protocol and Guidance should continue to be reviewed bi-annually, unless fundamental changes (for example, legislative changes) necessitate a review during the intervening period.

Background Papers

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Protocol relating to companies in which KCC has an interest

1. In relation to companies in which the Council has an interest, it is imperative that they are set up, managed and run according to rules of good governance so that risks are mitigated. This Protocol aims to establish processes and provide additional controls to ensure such rules are in place.
2. Anyone within the Council intending to set up a company should refer to the [‘Guidance on Local Authority Companies’](#) document ~~on KNET~~ and the [MG11 Toolkit http://knet/ourcouncil/Pages/MG11-%20ASDM-toolkit.aspx](#) both on [KNET](#).
 - ~~Before the company is set up legal, financial and audit advice must be taken.~~
 - A robust business case must be provided which gives a cost benefit analysis, considers the accounting and tax implications for the Council and identifies any risks to the Council. ~~The business case must go through the Governance and Audit Committee Trading Activities Sub Committee who will examine this and make recommendations. In light of the recommendations the relevant Cabinet Member shall approve the company’s business case.~~
 - Where the company is intending to exercise the power to trade pursuant to section 95 of the Local Government Act 2003, the business case shall contain enough detail to satisfy the requirements of this Act and be similar to that required by the Council for major capital projects.
 - ~~Before the Company commences formal trading the business case and proposed governance arrangements must go through the Governance and Audit Committee Trading Activities Sub Committee who will examine these and make recommendations. In light of the recommendations the relevant Cabinet Committee/–Cabinet Member shall approve the company’s business case.~~
3. This Protocol relates to the following companies:
 - (a) in the case of companies with issued share capital, those companies in which the Council's interest is more than 1% of the issued share capital, where those shares are held other than for solely investment purposes
 - (b) in the case of any company without shares, where the Council is a member
 - (c) any company of whatever sort in which the Council nominates one or more directors or itself is (or has the right to be) a company director
4. In the case of a company ~~formed or~~ controlled by the Council (or where the Council has, or can reasonably have, ~~input into~~ control over the wording of the Memorandum and Articles), the following provisions must appear in the company's Articles:
 - (a) The registered office of the company shall be specified as: Sessions House, County Hall, Maidstone, Kent ME14 1XQ (care of the Corporate

Director of Finance and Procurement~~);~~ unless otherwise authorised by the Monitoring Officer and the Section 151 Officer.

- (b) The relevant Corporate Director (~~or Managing Director~~) within whose remit the company's business lies shall be responsible for nominating any secretary for the company ~~from among his/her staff.~~ A register of all company secretaries will be maintained by the Section 151 Officer.
 - (c) Any Member or officer of the Council who is appointed as a director or secretary of that company shall not be appointed in their own private capacity but shall be appointed as a nominee of the Council, which shall have the power to remove and replace such director or secretary as it may see fit.
 - (d) It shall be the responsibility of the Council's representative on the board or the Corporate Director within whose remit the company's business lies to make whatever arrangements may be necessary to ensure the company makes a full annual report of its activities to the Cabinet within three months after the end of its financial year.
 - (e) No Member or officer of the Council who is appointed as a director or secretary of that company (or who represents the Council at any meeting of the company or of the board) shall receive any income from the company unless the Council's Corporate Director of Finance and Procurement so agrees in writing in advance. If any income is received by a Member or officer, it must be documented in the relevant Register of Interests and published on the Council's website.
5. In respect of any company to which this Protocol applies the following rules shall also apply (even if not included in the company's Articles):
- (a) Any director of the company who is nominated by the Council (and any person authorised to represent the Council at a meeting of the company or of the board) shall be appointed by the Shareholder Board of the company or, if there is no such board, by the Cabinet or relevant Cabinet Member in accordance with the decision making procedures set out in the Council's Constitution.
 - (b) Any person authorised to represent the Council at a meeting of the company (where the Council is a member of the company) or of the board (where the Council is a director of the company) shall follow such directions as to the operation of the company as may be determined by the Cabinet or relevant Cabinet Member from time to time in accordance with the decision making procedures set out in the Council's Constitution.
 - (c) Directors nominated by the Council shall (so far as permitted by law and their duties to the company as directors) follow such directions as to the operation of the company as may be determined by the Cabinet or relevant Cabinet Member from time to time in accordance with the decision making procedures set out in the Council's Constitution.
 - (d) Members or officers representing the Council on any board shall only take decisions which are in accordance with the company's articles and any Council policies that are to apply to the company.

- (e) Where Members or officers of the Council incur expenses as a result of their involvement in the company, this shall be claimed by them from the company as the Council's Corporate Director of Finance and Procurement may direct.
6. In any situation where a Member or officer of the Council (or any member of their close family) is (in their private capacity) a member, director or secretary of a company of which the Council is also a member or director, or in respect of which the Council has the right to nominate one or more directors, then such Member or officer shall notify the Corporate Director of Finance and Procurement of this in writing as soon as they become aware of the same. These should be documented in the relevant Register of Interests or Statement of Related Party Transactions. The purpose of this is to prevent the company becoming a local authority company without the Council becoming aware of it.
7. The Council shall only become a member or director of a company following a decision of the Cabinet or relevant Cabinet Member taken in accordance with the decision making procedures set out in the Council's Constitution. When seeking such a decision any report to the Cabinet or relevant Cabinet Member shall state:
- (a) the Council's rights of membership and to nominate directors (or to itself become a corporate director)
 - (b) the purpose of the company and of the Council's involvement
 - (c) the ~~identity~~identities of the initial nominated directors and secretary and any person who is intended to be authorised to represent the Council at a meeting of the company (where the Council is a member of the company) or of the board (where the Council is a corporate director of the company)
 - (d) what Council policies (if any) are to apply to the company. ~~If no policies have been stated in the Member decision and the company directors do not formally set their own, the policies adopted should default automatically to KCC policies.~~ Where a company adopts its own policies, before it commences trading assurance must be provided to the Governance and Audit Committee Trading Activities Sub Committee that adequate policies and procedures are in place, with particular reference to anti-fraud ~~and, bribery, corruption, gifts and hospitality.~~
 - (e) that appropriate due diligence has been completed which must include an evaluation of the background, experience and reputation of the company and/or the proposed and existing directors
 - (f) any other limits the Councils' Corporate Director of Finance and Procurement or Monitoring Officer recommend be placed on the activities of the company.
8. Once the decision process to establish the company is completed, the company shall be formed and the Council Members and officers involved with the company shall ensure (so far as it is within their remit) that the relevant policies are applied by the company.
9. This Protocol shall (so far as is reasonably practicable) also apply to companies already in existence and as regards such companies:

- (a) a decision dealing with all the relevant matters set out in this Protocol is to be taken under the decision making procedures set out in the Council's Constitution by Cabinet or the relevant Cabinet Member as soon as reasonably practicable, and
 - (b) the Articles to such companies shall (where appropriate and reasonably practicable) be amended as soon as possible.
10. Both as regards companies already in existence and companies yet to be formed, all Members and officers of the Council should, from the date of adoption of this Protocol, act (so far as is reasonably practicable) as if the Articles had already been amended as required by this Protocol, whether or not this has in fact happened.
11. Companies in which KCC has ~~ana controlling~~ interest must pass a resolution of the company to provide KCC Internal Audit with all information and explanations (in the specified format) required to perform internal audits of the companies and participate in the ~~Audit Commission's (or successor body's)~~ Cabinet Office National Fraud Initiative data matching exercise. In addition, the Members and officers of the Council who are running KCC companies must seek appropriate advice from time to time to ensure that:
- (a) they and the company are operating within the law, specifically where they intend to change or expand the business activities of the company
 - (b) they are aware of the extent of their potential personal liabilities, conflicts of interest and any indemnities or insurance cover provided by KCC that may apply to them.
- ~~12. KCC Legal Services and KCC Finance between them have produced 'Guidance on Local Authority Companies' that covers these issues in detail and will update and expand this as necessary from time to time.~~
- ~~13.~~ In order that Members and officers of the Council can be fully aware at all times of the extent of KCC's interests in local authority companies and their exposure to potential legal, financial and reputational risks, the Corporate Director of Finance and Procurement shall maintain an accurate, complete and up-to-date record of all companies in which KCC has an interest, clearly identifying those that are trading. Members and officers of the Council are required to supply timely information to the Corporate Director of Finance and Procurement so as to ensure that these records can be fully and properly maintained.
- ~~14.~~ Pursuant to Part II of the Local Authorities (Companies) Order 1995, where a company is regulated by KCC (i.e. KCC either controls or has serious influence over it) then the company must:
- (a) provide any Member of the eCouncil who requests it such information as that Member reasonably requires for the proper discharge of their duties (but not so as to require breach of any law or of any obligation to a third party)
 - (b) (**only** if it is a KCC controlled company) before it first appoints any person as auditor of the company obtain the Public Sector Audit Commission's (or successor body's) Appointments Ltd consent to the appointment of that person.

Note (i) A Controlled Company is a company (a) which is a subsidiary of a Local Authority or (b) in which a Local Authority controls the majority of votes at a general meeting or (c) in which a Local Authority has the power to appoint/remove a majority of the Board or (d) which is under the control of another company which is itself a controlled company.

(ii) An Influenced Company is a company (a) in which a person associated with a Local Authority controls 20% or more of the votes at a general meeting or (b) in which 20% or more of the directors are persons associated with a Local Authority (i.e. employees and members) or (c) in which 20% or more of the voting rights at Board meetings are held by persons associated with a Local Authority.

4514. Members and officers representing the Council on the board of any company will at all times comply as appropriate with the County Council's Code of Member Conduct and the Officers Code of Conduct as set out in the Constitution from time to time.

46

For information only

15. Under Appendix 2 Part 2 of the Council's Constitution, the Selection and Member Services Committee is responsible (inter alia) for "making appointments and nominations on behalf of the Council to serve on outside bodies (except those needing to be made by the Leader in connection with a delegation by him of his functions, the list of those appointments to be agreed between the Leader and the Committee from time to time)". Where a decision to appoint rests with the Leader, then the formal decision of the Cabinet or relevant Cabinet Member under paragraph 6 of this Protocol shall act as such appointment. Where the decision rests with the Selection and Member Services Committee, then such appointment shall not take effect unless and until the Committee has resolved to make such appointment.

4716. Company directors' duties are codified in Companies Act 2006. There are seven specific duties:

- (a) to act within powers
- (b) to promote the success of the company
- (c) to exercise independent judgement
- (d) to exercise reasonable skill and care
- (e) to avoid conflicts
- (f) not to accept benefits from third parties
- (g) to declare any interest in a proposed transaction

4817. As a matter of general principle, the overriding duty of any director in considering an item before the company is to vote in accordance with the interests of that company. In the case of a director who is also an elected Member, or an officer of KCC, this might give rise to a conflict with the interests of KCC.

4918. Directors and company officers are responsible for keeping accounts and making relevant returns to the Registrar of Companies, and in addition are required to lodge a copy of the Companies House Annual Return (showing

directors and ownership) and a copy of each set of Statutory Accounts submitted to Companies House with KCC Legal Services and KCC Finance.

2019. Elected Members and council officers are under a specific obligation (under the Local Authorities (Companies) Order 1995) to report back to the council through the Trading Activities Sub Committee on their involvement in outside companies to which they have been nominated by KCC. Any changes to companies' structure should also be reported to this Sub Committee.

2120. Various breaches of obligation can lead to a director having personal liability or being disqualified from acting as a director. In particular, failure to declare an interest is a criminal offence.

2221. KCC's insurance arrangements do not provide an indemnity for Members and officers involved with outside bodies when they act:

- (a) solely on behalf of an outside body
- (b) outside their delegated powers, i.e. in a decision-making capacity rather than as advisors or observers
- (c) outside the authority's statutory powers

23-22 Companies should purchase directors' and officers' liability insurance to protect their directors and officers against claims of negligence, breach of duty, trust, default, etc. Directors should liaise with the company to ensure that such a policy of insurance is maintained at all times, and covers the director as much as it can.

2423. KCC may exceptionally give a wider indemnity to specific members/officers where the council specifically requires that person to become a director for KCC business reasons. KCC would insist that such a wider indemnity only dealt with anything not covered by the company's insurance.

2524. More detail on indemnities and insurance can be found in the advice note "Members & Officers Indemnity" prepared by the Finance Unit to which reference should be made.

2625. There can be a tendency to assume that a new venture requires a new legal entity, and that therefore a new project should be commenced in a new company. This is not necessarily the case. There is a limited number of situations where a limited company might be appropriate, namely:

- (a) Where there is trading to be carried out under the provisions of section 95 of the Local Government Act 2003. Section 95 provides a specific power to trade but the Act says that such trading must be carried out through a limited company. It must be noted that not all trading by KCC is necessarily under the provisions of Section 95. There are other cases where trading can be carried on under other powers (and where therefore a limited company may not be needed). Examples of these other powers are:
 - i. Where what is being done is the provision of goods and/or services to another public body under the provisions of the Local Authorities (Goods and Services) Act 1970, whether a particular organisation is a public body for the purposes of that Act is specified in regulations.

- ii. Where what is being done is incidental to the main function that is being carried out. An example of this might be a library occasionally selling books as part of a promotion of reading. This power will be fairly tightly interpreted. If the main purpose of the activity is to raise money that will not be considered incidental to the original function.
- iii. Where what is being done is use of surplus capacity. An example might be a council landscape service having raised too many plants and selling off the surplus to the public. If the activity requires the taking on of additional staff or the procurement of new services or equipment then it will almost certainly not come within this category.

- (b) Where for some other specific reason it is advised that a limited company be formed. Typically these reasons will include the wish to take the activity out of the mainstream of KCC activity – either so as to encourage external funding or involvement, or to permit employment of staff outside KCC’s usual terms and conditions for directly employed staff, e.g. Kent Top Temps.

2726. Whatever power is being used, and whether a company is being formed or not, care must be taken not to exceed the scope of activity permitted by such powers.

2827. More detail on companies generally can be found in the advice note “Local Authority Companies”– prepared by the Corporate Director of Finance and Procurement and the ~~Director of Governance and Law~~ Monitoring Officer to which reference should be made.

28...KCC Legal Services and KCC Finance between them have produced ‘Guidance on Local Authority Companies’ that covers these issues in detail and will update and expand this as necessary from time to time.

April- 2016

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Paul Carter, Leader of the Council and Cabinet Member for
Commercial & Traded Services
David Cockburn, Corporate Director Strategic & Corporate
Services
Geoff Wild, Director of Governance & Law

To: Governance and Audit Committee Trading Activities Sub
Committee - 27 April 2016

Subject: Legal Services – Alternative Business Structure

Classification: Unrestricted

Past Pathway of Paper: Policy and Resources Cabinet Committee (14 March
2016)
Cabinet (21 March 2016)

Summary

This report sets out the background, rationale and governance arrangements for the establishment of an Alternative Business Structure, which involves the formation of a wholly owned, stand-alone company that will provide legal services to Kent County Council and the wider market.

Recommendation

The Committee is recommended to approve the governance arrangements as detailed in this report and the exempt appendices.

1. Background

- 1.1 Legal Services was part of the first phase of reviews undertaken as part of the Facing the Challenge process. The project was managed by a team comprising internal and external advisors and reported to the Transformation Advisory Group (TAG) with updates being presented to the Commissioning Advisory Board (CAB) and Policy and Resources Cabinet Committee, before receiving formal approval at Cabinet on 21 March 2016.
- 1.2 The original scope of the Legal Services review had the following three core aspirations for any new delivery model, when compared with the current in-house service:
 - **Better** - through a greater use of automated processes, greater resilience and reduced corporate and legal risk.
 - **Cheaper** - through lower overheads, reduced hours, cheaper rates, and shorter timescales leading to an overall reduction in total internal annual legal costs.

- **More profitable** - through increasing the level of external income generation.

1.3 These core aspirations remain at the heart of the proposal that is presented to Members in this report.

2. Governance and Controls

- 2.1 The Alternative Business Structure (ABS) will be a company limited by shares and wholly owned by KCC with a separate KCC shareholder board. The detailed governance and controls will fully accord with the KCC protocol relating to companies in which KCC has an interest.
- 2.2 The requirement for an intelligent client function remains the same whether legal services is provided through an in-house team or an external ABS. The Council agreed this in February 2015 as part of the restructure of the Strategic and Corporate Services Directorate.
- 2.3 As part of the proposals for the creation of a stand-alone ABS, a Corporate Law and Assurance Team has been created, which will be responsible for monitoring the outputs of the company insofar as they deliver services back to KCC. As part of this process, the Director of Governance and Law post will be replaced by a General Counsel post operating in a different way to the role currently performed.
- 2.4 Due to the commercially confidential nature of the Alternative Business Structure, the detailed governance and controls are outlined in the exempt **Appendix 1**.

3. TUPE, Pensions and HR Policies

- 3.1 Staff will TUPE transfer into the company with their existing terms, conditions and service protected. There will be a closed pension arrangement within the LGPS for existing KCC staff and a separate defined contribution pension scheme for newly appointed and promoted staff.

4. Conclusion

- 4.1 The proposal for the future delivery of legal services has been considered as part of a structured review and analysis appraisal to meet the requirements of the MTFP. The commercial outputs have been carefully considered by TAG, CAB and Policy and Resources Cabinet Committee which led to the Cabinet decision to proceed. The governance and controls fully apply the lessons and learning gained from Commercial Services and adheres fully to the KCC Companies Protocol.
- 4.2 The business case considered and approved by the Policy & Resources Cabinet Committee on 14 March 2016 is attached as **Appendix 2**, and the supporting S151 Officer's Report as **Appendix 3**.

5. Recommendations

- 5.1 The Trading Activities Sub-Committee is recommended to approve the governance arrangements as detailed in this report and the exempt appendices.

Contact details

Geoff Wild
Director of Governance & Law
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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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By virtue of paragraph(s) 3, 5 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 9

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