

KENT COUNTY COUNCIL

GOVERNANCE AND AUDIT COMMITTEE TRADING ACTIVITIES SUB GROUP

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

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

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

UNRESTRICTED ITEMS

8. Terms of Reference

(Item 2)

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

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

9. Minutes - 1 September 2009

(Item 3)

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

10. Review of Commercial Operations

(Item 4)

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

(2) RESOLVED that:-

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

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

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

11. Date of next meeting and future agenda items

(Item)

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

EXEMPT ITEMS

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

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

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

12. Business Case for limited company private hire operation

(Item 6)

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

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

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

(4) RESOLVED that:-

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

13. Business case for Kent County Supplies Ltd

(Item 7)

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

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

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

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

14. Loan agreement Kent Top Temps Ltd

(Item 8)

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

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

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

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

(3) RESOLVED that:-

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

15. Limited Company accounts 2008-09

(Item 9)

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

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

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

16. Dividend Policy - private companies

(Item 10)

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

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

17. Return on investment - Kent Top Temps Ltd

(Item 11)

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

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

(3) RESOLVED that the report be noted.