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To: Governance & Audit Committee, Trading Activities Sub-Group - 28 September 2012

Subject: Re-alignment of Commercial Services company structure following external review of its activities

Classification: UNRESTRICTED

Summary: Following an independent review by BDO and Eversheds, and consideration by the Governing Board for Commercial Services, a number of changes are taking place in the management, operations and company structure of Commercial Services.

Recommendations:

- i) The Governance & Audit Trading Activities Sub-Group is asked to note the contents of the paper which was considered by the Policy and Resources Committee on the 27th of September to change and improve the management, governance and operations of Commercial Services.
- ii) The Sub-Group is further asked to note that the Cabinet Member for Environment, Highways and Waste, the Cabinet Member for Business Strategy, Performance and Health Reform and the Corporate Director, Environment, Highways and Waste propose to take formal decisions in relation to the formation of new companies; the transfer of existing KCC employees to such companies; and the entering into of all necessary leasehold and other agreements to give effect to these arrangements.
- iii) All subject to the terms of the KCC Constitution and the Articles of Association of the Company.
- iv) As requested by the Sub-Group, a copy of the review of Commercial Services, and a progress update report, are attached, and the Sub-Group is asked to note these documents.

1. Introduction

1.1 Commercial Services (CS) is a non-budget funded division of the County Council, which funds itself from the income generated by its own activities. It is largely, and increasingly, focused on trading outside Kent, and made a net return to KCC central funds of £7m in May this year.

1.2 The County Council's policy document Bold Steps for Kent set out the need for new approaches to meet the financial challenges facing local government. In this context the Cabinet Member for Environment, Highways and Waste and Corporate Director Environment, Highways & Waste last year commissioned an external appraisal of the management, operations, governance and future business potential of Commercial Services.

1.3 This independent review recognised the value that Commercial Services added to the County Council and made a number of recommendations concerning changes and improvements to governance arrangements and clarification of the legal and governance relationship between KCC and Commercial Services. It has also provided valuable advice on areas of current and future business with the greatest potential profitability and sustainability, in order to underpin and strengthen future income returns to KCC.

1.4 The County Council meeting in December last year approved a proposal to establish a Board of Cabinet Members and senior officers to manage Commercial Services, and to ensure a proper separation between 'decider' and 'provider' which had the potential to become blurred under the existing arrangements. The Board has met a number of times and worked through the recommendations of the independent report. A copy of the report is attached as **Appendix 1** to this paper and the status report is at **Appendix 2**.

1.5 The objective has been twofold. Firstly to make Commercial Services a leaner, more efficient business, better equipped to compete in challenging conditions. Secondly, to ensure that it operates properly at "arms length" from KCC with an appropriate company structure. It is proposed to simplify its current complex operating model of five companies to two specific company structures as set out below.

1.6 These company changes will pre-emptively address the risk of any challenge under current and forthcoming public sector trading regulations which the government has indicated it may introduce to ensure local authorities do not use their public status to gain commercial advantage over the private sector. They will also ensure the total transparency of future business operations and the profit and loss of Commercial Services.

2. Proposals

2.1 The transformation programme is reconfiguring the current 26 disparate business units into five client-facing divisions. These new business divisions will act under the auspices of the two new legal entities, rather than under the current five limited company structure.

2.2 The new business divisions will cover the areas of Education, Energy, Care, Employment and Direct Services with the sole purpose of returning an income dividend to the Council at no cost.

2.3 The proposed changes to the company structure, and the entering into of various leasehold and other agreements, require various formal Cabinet Member

and officer decisions. The proposal is to simplify the current operating model from managing under five limited companies to two specific company structures. One will be a “Teckal” compliant company, which will trade exclusively with the County Council, and the other a “Section 95” company, which will enable CS to trade with the wider public and private sectors under the auspices of Section 95 of the Local Government Act.

2.4 A more detailed note on these two types of company is attached as **Appendix 3** to this paper.

2.5 “Driving Economic Prosperity” is a key theme of Bold Steps for Kent. These proposals will enable KCC to be confident of, and to demonstrate, the existence of a level playing field with the private sector, and that it is operating on the same principles as its private sector competitors to deliver maximum benefit to its shareholder, Kent County Council, and the people of Kent.

2.6 The review has confirmed the direction of travel for local authority trading, which will encourage a greater use of company vehicles than is common at present. It is considered likely that trading without using a company is probably only possible under government regulations in the short to medium term. The recommendations in this paper address this advice, which it is proposed be implemented now, subject to the Cabinet Member for Environment, Highways and Waste, the Cabinet Member for Business Strategy, Performance and Health Reform and the Corporate Director, Environment, Highways & Waste taking the necessary formal decisions. Such companies will remain totally under the direct control of KCC.

2.7 All KCC staff currently employed by CS will transfer to Commercial Services Kent Ltd (CSK Ltd - the ‘Teckal’ company) on their existing terms with no degradation to either working practice or pension. New joiners, including future appointments to the Executive Team, will move to different, more-private-sector orientated employment terms.

2.8 Private sector trading will be focused more clearly on the Section 95 (non Teckal) company, to be named Commercial Services Trading Ltd, and the premises from which this arm operates must allow such commercial activity to be undertaken.

2.9 To achieve this Commercial Services will change the name and the Articles of Association of the existing wholly-owned company Kent County Supplies Ltd to form the Teckal company, and will change the name of the existing wholly-owned company Kent County Facilities Ltd to form the Section 95 company. The remaining three companies will be dissolved as soon as is practicable. The new company names are subject to approval by Companies House. Simultaneously a relocation of headquarters functions to different premises will allow CS to operate more efficiently and effectively.

3. Financial Implications

3.1 This will be a cost neutral action. As a “Teckal” company, CSK Ltd will provide the manpower and expertise to deliver services to KCC, providing a managed service to KCC to enable it to trade to meet the needs of its general interest. As such, CSK Ltd is not designed to generate a profit (all profit being made by KCC). Furthermore this will allow the regularisation of the property relationship between KCC and CS.

4. Staffing Implications

4.1 A full staff consultation will be undertaken on the TUPE transfer of all existing KCC staff employed by CS to the limited company. TUPE regulations ensure that the existing employment terms, and pension provision, of staff transferring to a new provider are protected and there will therefore be no adverse impact on transferees. CSK Ltd will obtain admitted body status to the Local Government Pension Scheme in order to provide for the transferred-in pensions.

5. Equalities Impact Assessment

5.1 Initial screening reveals no further action is required. A report on the assessment is at **Appendix 4**.

6. Legal Implications

6.1 The specialist Articles of Association for the new “Teckal” company have been reviewed by the Director of Governance and Law and will be refined to fully meet KCC requirements.

7. Conclusion

7.1 The establishment of the two new limited companies will meet the aims of “Bold Steps for Kent”, protect KCC from the impact of anticipated legislation and will enable Commercial Services in future to operate more effectively, efficiently and transparently creating a more viable and sustainable business platform.

Background Documents

Appendix 1: Report by BDO/Eversheds on Commercial Services

Appendix 2: Transformation programme recommendations status report

Appendix 3: Briefing note – Teckal vs Section 95 companies

Appendix 4: Equalities Impact Assessment

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