

**CABINET**  
**17 JANUARY 2017**  
**CATEGORY MANAGEMENT TRADED SERVICES**

Portfolio Holder: Councillor Adrian Gulvin, Resources  
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**Summary**

The Category Management team has been successfully providing professional commercial expertise to all services across the Council, ensuring best value and quality is maintained when purchasing goods and services, since 2012.

The team have produced significant savings back to the council through various strategic methods, as well as through tender exercises and hard negotiation

Over the past 2 years, the team have tested the concept of trading its services to other public bodies and have offered advice to private sector organisations across Kent and Medway, which has proven successful.

This report asks the Cabinet to agree for the discharge of the category management team to enable it to trade formally. The report sets out the recommendation for the option that is considered to be the most viable with further details on mobilisation, risks, structure and finances.

**1. BUDGET AND POLICY FRAMEWORK**

- 1.1 The establishment of a subsidiary of Medway Commercial Group Limited to deliver Category Management Services is a matter for Cabinet.

**2. BACKGROUND**

- 2.1 The Category Management Team was created in December 2012 as part of a redesign of how goods and services were being procured within the council. At that point purchasing within the council was undertaken by approximately 100 “gifted amateurs”, across various teams, as part of their daily duties, at an estimated cost of £3.5m with support from a procurement officer. The new Category Management team was centralised into categories with a suggested team size of 24, covering 3 categories, People, Place and Operational Support and Strategy, at a cost of £1.2 million.
- 2.2 Today the team currently consists of 10 members and is split between 2 categories, People and Place, at a cost of £805,000. Each category is still divided into sub-

categories such as Adults social services, Public Health, ICT, Fleet, Highways etc. which enables team members to specialise to ensure that the most appropriate purchasing strategy is employed to deliver the right outcomes for the organisation.

2.3 Since 2012 taking a “whole life costing” view the Category Management team have recorded just short of £30 million of impact in savings set out in more detail in Table 1 below

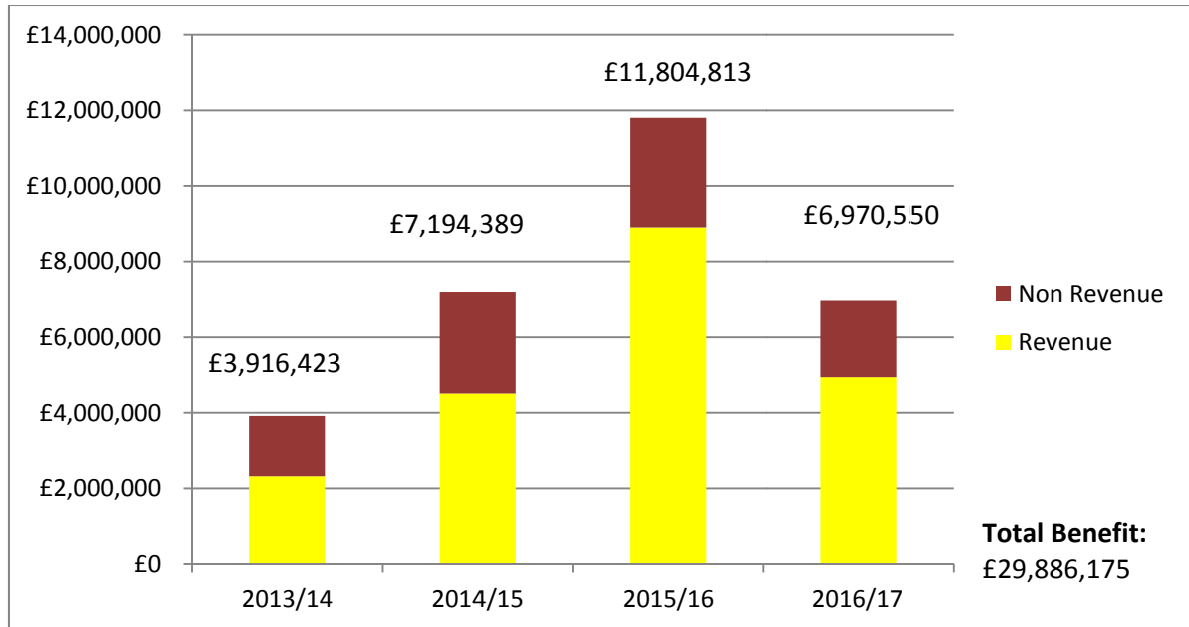


Table 1

2.4 It should be noted that category management activity has been fluid in nature with some projects not proceeded with in year and with new activity required as a result for example of grants received. Some measures will be needed to provide more certainty and governance to the process.

2.5 The Category Management team have increased their productivity over the period and table 2 below shows this as a “return on investment” per member of the team expressed as savings achieved.

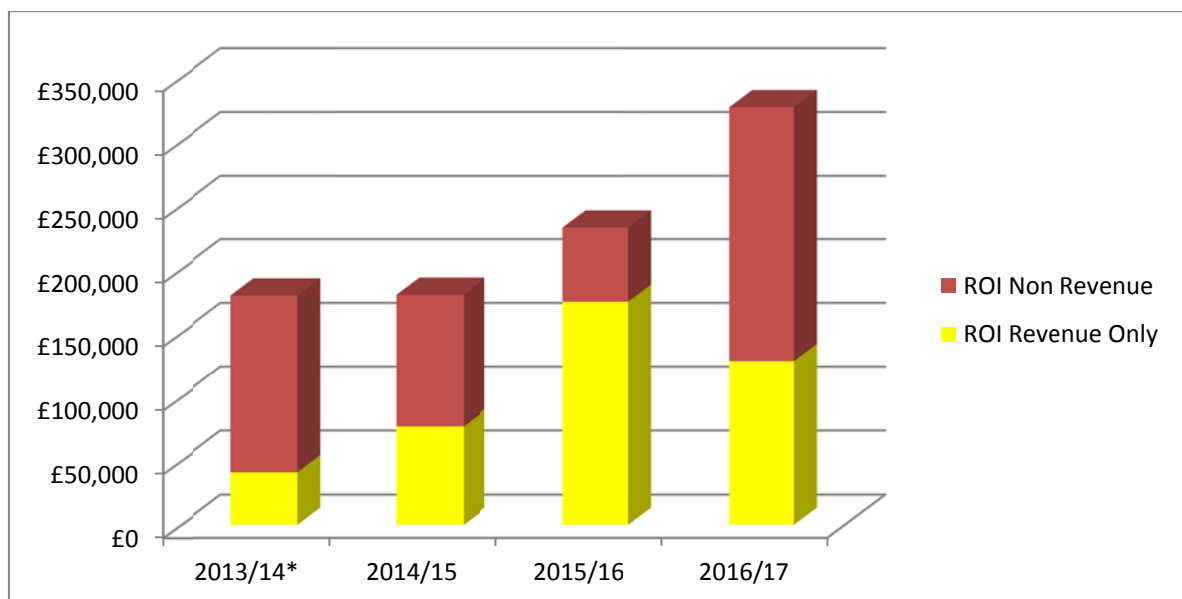


Table 2

### 3 OPTIONS FOR TRADED MODEL

3.1 6 options have been considered as summarised below

Do nothing	
Opportunities	Threats
Continued savings identified to support revenue reductions	<p>Cyclical nature of contracting means some “lean” years.</p> <p>Revenue reductions could mean the need to reduce team size and therefore capacity, will impact on savings delivery, legal compliance and all external income</p>

Shared Service	
Opportunities	Threats
Shared learning, resources and risk	<p>Kent County Council are mobilising their resource</p> <p>Reduced opportunity for income</p>

Local Authority Trading Company (LATCo)	
Opportunities	Threats
Opportunity to bid for contracts from the private sector (such as SMEs) allowing profit rather than cost recovery+	Subject to corporation tax on profits
Subsidiary of MCG would remain 100% owned by Medway Council	Would current clients come to the new company?

Community Interest Company (CIC)	
Opportunities	Threats
Would Provide the service with access to charitable funding opportunities	<p>A charity approach will not enable financial returns to filter back to the Council. There would be no formal or legal Council ownership and a maximum 20% representation on the Board by law.</p> <p>Funding Opportunities are finite</p>

Provides opportunities around Teckal contracts including sideways Teckal	Are we able to convert market opportunities?
Additional income could off-set revenue costs and ultimately provide net revenue income	

	Perceptions of control or ownership outside of the charity could be negatively viewed by funders who can withdraw their investment, and lead to investigation by the Charity Commission
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Public Sector Mutual	
Opportunities	Threats
This approach has been promoted by central government and could unlock a number of start up loans, investments and support.	This would however transfer ownership and profit away from Medway Council

Joint Venture	
Opportunities	Threats
Opportunity to generate income.	MC would only own 50% of the company and therefore only benefit from 50% of the profit.
	There is currently no such arrangement in place and no partners who we have identified despite some discussions

- 3.2 The recommended option is the establishment of a Local Authority Trading Company and furthermore it would be proposed to set up Medway Category Management as a subsidiary of Medway Commercial Group. This will enable the combined team to attract external customers across the region. MCG already has financial accounts, governance arrangements, policies, procedures and systems to meet commissioners' requirements for compliance, governance and deliverability.
- 3.3 As a new company within Medway Commercial Group, category management will be well placed to deliver current business in Medway, through a Teckal arrangement including up to 20% of income from the private sector. We will also be well placed to bid for new business, which can provide a financial surplus to reduce the costs to Medway Council of our Medway operations, enabling us to maintain and improve our service offer. Importantly, a subsidiary of MCG would ultimately be 100% owned by Medway Council, which provides a number of safeguards and mitigates key risks.

## 4 ADVICE AND ANALYSIS

- 4.1 The ownership model allows for any surplus or dividend arising from its success to be paid back to the Council for further investment in services or to facilitate savings. This dual element of control (through contract and through governance) allows flexibility, but lowers risk in terms of strategic alignment.
- 4.2 As it is independent of the operational decision-making processes within the Council, the service can deliver services which are more flexible and adaptable than through in-house delivery and its arm's length nature allows it to make cost reductions more readily than with in-house provision. However, as the majority shareholder of the service, the Council retains control.
- 4.3 Careful consideration will be given to ensure there is no conflict of interest between the Company and the Council. This is set out in a policy veto that the Council retains as part of the governance of the Company and its subsidiaries.
- 4.4 The Category Management subsidiary will apply a strict policy to ensure conflicts of interest are handled promptly. The policy will include the LATCO:
- will identify if there were any potential professional conflicts of interest with new clients
  - Refer any potential conflicts of interest to the Monitoring Officer for advice.
  - In the event a client required support for work that related back to the Council, the LATCO would refer this work to an alternative provider to avoid a conflict of interest.
  - Will ensure that where colleagues are working on tenders for customers they will not be able to advise other customers on how to bid for those projects.
  - Will comply with the Chartered Institute of Procurement and Supply (CIPS) code of conduct as part of a professional duty to ensure there are no conflicts of interest in the practice of the subsidiary.

## 5 RISK MANAGEMENT

<b>1. Risk Category: Finance and Reputational</b>	<b>Likelihood: Low</b>	<b>Impact: II</b>
<b>Outline Description:</b> Council does not benefit from future income from the new company		
<b>Plans to Mitigate:</b> Medway Council will hold majority shares in the company and therefore has the opportunity to remove any of the Directors and bring the services back in-house.		
<b>2. Risk Category: Contract delivery</b>	<b>Likelihood: Low</b>	<b>Impact: II</b>
<b>Outline Description:</b> That the new company does not generate income or the overall arrangement is not successful		
<b>Plans to Mitigate:</b> As the majority shareholder, Medway Council will have the full step-in rights to revert back the service in-house with immediate effect. Risk will be minimised through regular business review of performance by the Governance Board		
<b>3. Risk Category: Contract Delivery</b>	<b>Likelihood: Low</b>	<b>Impact: I</b>
<b>Outline Description:</b> Current external clients see the transition as a risk and do not agree to progress with transferring their services into the new company		
<b>Plans to Mitigate:</b> Early, and continued, consultation by key officers from the council		
<b>4. Risk Category: Staff (Workforce)</b>	<b>Likelihood: Medium</b>	<b>Impact: II</b>
<b>Outline Description:</b> The key knowledge & skills within the workforce are not retained		
<b>Plans to Mitigate:</b> A staff incentivisation scheme would be a means to retain key staff		

## **6 CONSULTATION**

### **6.1 Internal (Medway) Stakeholder Consultation**

Consultation has already taken place with the following officers, Members and other stakeholders

Finance – Phil Watts – Chief Finance Officer  
Legal – Perry Holmes – Chief Legal Officer  
HR – Carrie Mckenzie – Chief People Officer  
Portfolio Holder – Cllr Adrian Gulvin

- 6.2 Further consultation will take place with MCG personnel to agree all relevant internal departments and staff in relation to TUPE, Legal and on agreement of this proposal, a new structure will be created.
- 6.3 Consultation with current external stakeholders, the Clinical Commissioning Group and other client Councils will also take place on agreement of this proposal.
- 6.4 Staff affected by this proposal will be consulted at the earliest opportunity following the Cabinet decision. All TUPE implications will be undertaken in accordance with Medway Council's Organisational Change Policy and Procedure and in line with this the Council will seek to minimise the need for compulsory redundancies wherever possible.

## **7 FINANCIAL IMPLICATIONS**

- 7.1 The legal, HR, ICT and other service requirement and its associated delivery (as per the recommendations at Section 11) will be funded under a service level agreement (SLA) for the initial years of trading.
- 7.2 Medway Council will transfer a total agreed expenditure budget across to the new entity at inception.
- 7.3 A representative from Finance will be consulted at all times during the transition period from establishment through to novation of services into the new company.

## **8 LEGAL IMPLICATIONS**

- 8.1 Due to the nature of an Authority owned entity, Section 95 Local Government Act 2003 enables Local Authorities to provide, on a commercial basis, anything that is related to a function of the authority. The powers under the Act enable Local Authorities to trade with private bodies and persons for profit (i.e. charges fixed at more than the cost recovery). Surpluses on commercial operations under the section 95 trading power would be available to individual authorities.
- 8.2 This legislation has been further strengthened by the Localism Act, which expand Local Authority's trading activities to areas not related to their existing functions and removes geographical boundaries so trading can take place for

a variety of service provisions and anywhere in the UK.

- 8.3 Both internal and external legal advice has been sought in relation to the company set up and distribution of profit and ownership shares
- 8.4 Full staff consultation will be made with HR on agreement of this proposal
- 8.5 A representative from Legal will be consulted at all times during the transition period from establishment through to novation of services into the new company.
- 8.6 To take full advantage of a wholly owned local authority company a 'Teckal' exemption (PCR 2015 Regulation 12), whereby an authority sets up arrangements to supply services back to those authorities in the same manner as in-house arrangements, would need to be applied. In order to be Teckal compliant (and exempt from EU procurement rules), the company would need to abide by three Teckal rules covered in Regulation 12 of the Public Contracts Regulations 2015.
- 8.7 **HR**
- 8.8 Transfer of Undertaking Protection of Employment (TUPE) regulations apply to this with staffing costs and conditions to maintain the current LGPS for existing employees.
- 8.9 TUPE regulations will apply on the grounds of a Service Provision Change in the event that the same or similar services will be continued by the new LA Company.
- 8.10 It is important to ensure that both the incoming and outgoing providers of the service complies with their respective obligations under the TUPE Regulations to minimise the risks of successful legal challenges with the council likely to be a party to any potential legal challenges.
- 8.11 A representative from HR will be consulted at all times during the transition period from establishment through to novation of services into the new company.
- 8.12 The traded service will be an admitted body status allowing staff under the current terms of employment and pension to be transferred under their current terms of employment
- 8.13 To maintain pace while TUPE and LGPS discussions are underway, all current Category Management staff could be seconded to the new entity.
- 8.14 **ICT Implications**
- 8.15 As there are ICT implications, a representative from ICT will be consulted at all times during the transition period from establishment through to novation of services into the new company.



## **9 Other Considerations**

### **9.1 Diversity & Equality**

9.1.1 A Diversity Impact Assessment (DIA) screening will not be undertaken as part of the implementation process as the service does not affect front line services.

### **9.2 Social, Economic & Environmental Considerations**

9.2.1 The Public Services (Social Value) Act 2012 requires local authorities to consider:

- (1) how what is proposed might improve the economic, social and environmental well-being of their areas and
- (2) how the local authority might act with a view to securing that improvement in conducting the procurement process.

9.2.2 The new company will include the following to satisfy this duty:

9.2.3 Establish a profit share for employees and Medway Council. Growth of the business will create employment opportunities such as the creation of apprenticeships and access to opportunities for local businesses.

## **10. ASSETS**

10.1 **Premises** – The Category Management team are currently sited within Gun Wharf. The SLA costs will include an amount for the provision of premises. The new team will be able to look at alternative provision in due course as a part of the wider MCG business plan.

10.2 **Back Office Equipment** – This includes all other assets that are required to fulfil business operations. These assets are:

- a) Laptops
- b) Mobile Phones
- c) Remote working Fobs
- d) Furniture
- e) Stationery

10.3 Due to the above assets age, they have minimal value, therefore all the above 'Back Office Assets' should be transferred to the new entity making the responsibility for any repairs, replacements, upgrades or renewals wholly on the category management traded service, this will ensure that there are no financial liabilities for Medway Council.

## **11 RECOMMENDATIONS**

- 11.1 The Cabinet is asked to approve the creation of a new subsidiary for Category Management under the MCG parent/holding company, and in addition, create two trading vehicles one as Teckal and the other as a Non-Teckal company.
- 11.2 The Cabinet is asked to agree to delegate authority to the Chief Legal Officer, in consultation with the, Leader, the relevant Portfolio Holder(s) and Chair of the MCG Ltd Board to finalise the governance arrangements for the new company and complete any necessary legal requirements and any other arrangements as necessary, subject to paragraph 11.3 below.
- 11.3 The Cabinet is asked to note that subject to the agreement by the Cabinet of recommendation 9.3 in agenda item 9, the Chief Executive will have authority to make the necessary appointments to this and any MCG Subsidiary Boards subsequently established, in consultation with the Leader and the Chair of the MCG Ltd Board.

## **12 SUGGESTED REASONS FOR DECISION**

- 12.1 As the council moves into future years, the budgets for services are becoming increasingly difficult to maintain for statutory services. The opportunity to allow the Category Management team to trade externally and deliver its primary pipeline internally, will allow for the team costs to become neutral over time, and an income being brought back to the council that it did not have before.
- 12.2 MCG is an established Medway Council owned trading company that will provide the most efficient way of delivering traded procurement services.
- 12.3 This ownership model allows for any surplus or dividend arising from its success to be paid back to a Council for further investment in services or to facilitate savings. This dual element of control (through contract and through governance) allows flexibility, but lowers risk in terms of strategic alignment.

### **LEAD OFFICER CONTACT**

Perry Holmes – Chief Legal Officer  
James Harris - Head of People Category  
Carl Rogers – Head of Place Category

### **APPENDICES**

Exempt Appendix – Business Case

### **BACKGROUND PAPERS**

None