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## **Cabinet Sub-committee (Medway Development Company Ltd Shareholder Board)**

**30 May 2024**

### **Reports by the Board of Directors (Non-Executive Director Recruitment and Remuneration Policy)**

Report from/author: Bhupinder Gill, Assistant Director Legal and Governance

#### **Summary**

The MDC Board of Directors has submitted reports for consideration by the shareholder board. In respect of each report, the shareholder board is requested to receive the report, provide any feedback to the Managing Director and the Chair of the Board of Directors, provide a steer on any matter arising and request any further information/ reports on matters of interest /concern to the shareholder board.

#### **1. Recommendations**

##### **1.1 That in respect of the reports submitted (Appendices A and B) the Cabinet Sub-committee:**

1.1.1. notes the contents of the report,

1.1.2. comment on the contents of the report, any matters specifically raised by the Board of Directors and or generally:

- a) the current breadth and depth of skill and experience on the board
- b) if they have any well-founded objections to the proposed recruitment to the board
- c) note the remuneration policy
- d) any other observations

1.1.3. considers if it requires any further information reports.

#### **2. Suggested reasons for decision(s)**

2.1 The Sub-committee is requested to consider the recommendations above and approve those which are each relevant to each report received to make sure that the shareholders views are communicated to the company and that the council's objectives for the company are being delivered.

### 3. Budget and policy framework

- 3.1. The decision is within the council's policy and budget framework including the Council Plan. The receipt of regular reports to shareholder board and the opportunity to hold to account the Managing Director and the Chair of the Board of Directors in respect of the company's performance aids and enhances transparency and accountability of the Council's LATCos.

### 4. Background

- 4.1 In December 2023 the Cabinet approved the establishment of three shareholder boards (Cabinet Sub-committees) one for each of its LATCos. At the inaugural meetings of the shareholder boards in January 2024 (save for the sub-committee for Medway Norse), each sub-committee approved revised Articles of Association and a Memorandum of Understanding (MOU).
- 4.2 The MOU detailed a reporting schedule to ensure that the shareholder boards received regular reports on the performance of the company and other matters so that the shareholder boards could exercise appropriate oversight and corporate governance over the activities of the company.
- 4.3 The company has submitted the following reports for consideration by the Shareholder Board:
  - 4.3.1 Non-executive directors and request to recruit (Appendix A)
  - 4.3.2 Remuneration policy (Appendix B)

### 5. Client Officer observations and recommendations

- 5.1. The lead client officer for this LATCo is the Assistant Director for Regeneration, the majority of the trading activity conducted by the LATCo is supplied to services within their span of their responsibility. As the reports listed in paragraph 4.3 above comment on governance arrangements, this report to the sub-committee has been produced by the Assistant Director for Legal and Governance.
- 5.2. **Non executive directors and request to recruit (Appendix A)**
  - 5.2.1. The LATCo officer management team is supported by a number of Non-Executive Directors in managing the affairs of the business. The NEDs can bring with them a wealth of experience from business and other sectors that can enrich the decision making in the business, provide an insight into the commercial world which those in the public and not for profit sectors may not have experienced.
  - 5.2.2. It is important that the LATCo board consist of NEDs who between them have a broad range of skills and experience that they bring to the company, and hence the companies Chief Executive, in consultation with the current Board members was required to produce

a skills and experience matrix to identify current strengths and identify those areas where greater support would be valuable.

5.2.3. The Articles of Association (para 21.1) state that the LATCo shall consist of less than 5 and no more than 10 Directors.

5.2.4. There are currently 3 NEDs and Appendix A recommends the appointment of one further NED. If no well founded objections are raised this will increase the NED compliment to 4, (one short of the minimum required).

### 5.3. **Recruitment Process**

5.3.1. The Articles of Association (paragraph 21) provides detail on the recruitment and number of directors to be appointed;

*21.2 Prior to advertising seeking applications for directors the board of directors shall obtain the agreement of the shareholders as to*

*21.2.1 the number of directors to be appointed,*

*21.2.2 the skills and expertise that they seek*

*21.2.3 the evaluation matrix to assess candidates (to be inclusive of a candidates local connections)*

*21.2.4 term of office for appointees*

*21.3 Following a recruitment exercise and prior to offering a role as a director, the board of directors shall consult with the shareholder and ensure that they have no well-founded objection to the appointment. (Same well founded objection process to be followed as applicable to the appointment of senior officers in local authorities).*

5.3.2. Thereafter, it is for the company, by ordinary resolution to appoint directors where no well-founded objections have been raised.

### 5.4. **Remuneration policy (Appendix B)**

5.4.1. The Articles of Association (paragraphs 23 and 24) state;

#### **23. DIRECTORS' REMUNERATION**

*23.1 Directors may undertake any services for the Company that the Directors decide.*

*23.2 No Director shall be entitled to any remuneration from the Company in their capacity as a Director unless it is specified in a remuneration policy approved by the shareholder.*

*23.3 Subject to 23.2, a Director's remuneration:-*

*23.3.1 may take any form; and*

*23.3.2 may include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that Director*

*23.3.3 accrues from day to day.*

*23.4 Unless the Directors decide otherwise, Directors are not accountable to the Company for any remuneration which they receive as Directors or other officers or employees of the Company's subsidiaries or of any other body corporate in which the Company is interested.*

## **24 DIRECTORS' AND OFFICERS' EXPENSES**

*24.1 The Company may pay any reasonable expenses which the officers (including alternate Directors and the secretary) properly incur in connection with their attendance at:-*

*24.1.1 meetings of Directors or committees of Directors;*

*24.1.2 general meetings; or*

*24.1.3 separate meetings of the holders of any class of shares or of debentures of the Company*

*24.1.4 shareholder board meetings, meetings with the chair of the aforesaid, the shareholder nominee or the client representative*

*or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.*

5.4.2 The production of a policy allows for greater transparency, aids recruitment to the roles and ensures consistency across the LATCOs, if appropriate.

5.4.3 A remuneration policy has been submitted however due to a misunderstanding the policy covers staff and not NEDS. The Managing Director of MDC has been requested to submit a NEDs remuneration policy to the next meeting of the sub-committee.

5.4.4 The Managing Director of MDC had been requested to submit a skills and experience matrix. The report submitted by the Managing Director at Appendix A details the skills and experience of the NEDs. This is not in a form of a traditional skills and experience matrix, and thus makes it difficult to establish what omissions exist and thus what qualities further NEDs will be required to have.

- 5.4.5 Whilst a CV has been attached (Exempt Appendix) for the recruitment of a fourth NED, no explanation has been provided of the recruitment process followed or the process to be followed for the fifth NED to reach the minimum requirements set out on the articles.
- 5.4.6 The sub-committee are requested to critically review the skills and experience matrix and provide a steer to the company Managing Director and the Chair of the Board on its contents, in particular
- (i) whether they are content the shared skills and experience matrix,
  - (ii) the current breadth and depth of skill and experience on the board
  - (iii) the recruitment process followed
  - (iv) if they have any well-founded objections to the proposed addition to the board
  - (v) any other observations (additions/deletions/remediation)
  - (vi) note the remuneration policy.

## 6 Monitoring Officers report on use Delegated powers.

- 6.1 The cabinet delegated authority to the Assistant Director, Legal and Governance, in consultation with the relevant Chairperson for each shareholder board, to take decisions that are required as a matter of urgency (decision no. 115/2023).
- 6.2 During the period 31 January 2024 to 20 May2024, that delegation has not been exercised.

## 7. Risk management

- 7.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Insufficient oversight of LATCO activity and performance	The company's objectives and performance do not align with the council's aspirations	Shareholders boards have been established to receive regular reports for the LATCO and provide steer to the company Managing Director and Chair of the board of Directors on their expectations	CIV
Council exposure to unknown risks	The company's activities expose the council financial and or risk	Regular reporting to the shareholder board on activity and risks	CIII
		A scheme of delegation ensure more significant decisions are taken at more senior levels within the company/ council.	CIV

Risk rating key

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

## 8. Climate change implications

- 8.1 [The Council declared a climate change emergency in April 2019](#) - item 1038D refers, and has set a target for Medway to become carbon neutral by 2050.
- 8.2. There are no direct implications arising from this report, any that do arise are contained within the individual reports from the LATCo.

## 9. Financial implications

- 9.1 There are no financial implications for the council arising from this report.

## 10. Legal implications

- 10.1 The shareholders own the business however the day-to-day management of the business is the responsibility of the Managing Director and the Board of Directors. The shareholders responsibility derives from the Articles of

Association (which set out the company's purpose and governance framework) and the Memorandum of Understanding sets out the operational decision-making framework.

- 10.2 The shareholder, (the subcommittee) is entitled to receive regular reports from the Board of Directors on the company's activities, its performance, outlook over the next quarter and beyond. The shareholders need to be confident that the company's Managing Director and the Board Directors can deliver on the approved business plan and to be informed if there are any material changes to the business plan or divergences from expected returns.

### Lead officer contact

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### Appendices

Appendix A - Non-executive directors and approval to recruit  
Appendix B - Remuneration Policy  
Exempt Appendix – CV for recruitment as Board Director

### Background papers

None