



**REPORTS FOR DECISION BY THE
CABINET MEMBER FOR ECONOMIC DEVELOPMENT AND
TRANSPORT**

Date Issued: 09 November 2011

	Page Nos.
1. Report of the Chief Executive and Head of Legal Services - Appointment of Director to Maidstone Town Centre Management Limited and Representative of Council at General Meetings of the Company	1 - 9

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Agenda Item 1

MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR ECONOMIC DEVELOPMENT AND TRANSPORT

REPORT OF CHIEF EXECUTIVE AND HEAD OF LEGAL SERVICES

Report prepared by Paul Fisher

Date Issued: 09 November 2011

1. APPOINTMENT OF DIRECTOR TO MAIDSTONE TOWN CENTRE MANAGEMENT LIMITED AND REPRESENTATIVE OF COUNCIL AT GENERAL MEETINGS OF THE COMPANY

1.1 Key Issue for Decision

1.1.1 To consider who to nominate to be a director of Maidstone Town Centre Management Ltd (MTMCL) and who should attend meetings of the company on behalf of the Council as a member.

1.1.2 To consider how that person should vote at the forthcoming Annual General Meeting.

1.2 Recommendation of the Chief Executive and Head of Legal Services

1.2.1 That Steve Goulette should be nominated to be a director of Maidstone Town Centre Management Limited.

1.2.2 That the Head of Legal Services represents the Council in its role as a member of the company at general meetings of the company.

1.2.3 That at the forthcoming AGM the Head of Legal Services vote in favour of the proposals set out in the agenda (see paragraph 1.1.3 below).

1.2.4 That the Head of Legal Services exercise the Council's vote at future meetings of the company having consulted the Cabinet Member for Economic Development and Transport as to use of the vote.

1.3 Reasons for Recommendation

1.3.1 The memorandum and articles of association of MTCML provide for Maidstone Borough Council to nominate a person to be a director of the company. Most recently the Chief Executive has held this position. However, she has recently resigned from the board of directors due to conflicts of interest between her role as a director of the company and

her role as Chief Executive of MBC. It is in the Council's interest to have a Council nominee on the Board of MTCML but that person should not be put in a position where their duties to the company and the Council conflict. For that reason we recommend that Steve Goulette Assistant Director for Environment and Regulatory Services be nominated to the Board.

- 1.3.2 The Council itself is a corporate member of MTCML and is therefore in a position to hold the Board to account at general meetings of the company. This role has been undertaken by the Head of Legal Services who, when necessary, takes instructions as to how to vote from the Cabinet Member. The role could be undertaken by the nominated director but we believe that it is important to keep the director role and the member role distinct. The current arrangements work well and we see no reason to change them. Generally, decisions taken at general meetings are not controversial, but if any controversial issues do arise, formal instructions will be sought from the Cabinet Member as to how to vote.
- 1.3.3 The AGM of the company is due to take place on 17 November 2011 and the agenda is attached at Appendix A. As well as the usual formal decisions about reappointment of directors, receipt of accounts, and appointment of auditors, there are proposals to change the memorandum of articles of the company. The most significant of these changes is to remove the requirement that the Maidstone Borough Council nominated director must be present for a board meeting to be quorate. At present, if the Council's nominated director for MTCML does not attend the board, no decisions can be taken. On occasions the Council's nominated director will not be able to attend, or may have to absent themselves due to conflicts of interest. This could lead to situations where no board decisions can be taken. This provision has been in place since MTCML was created and responded to the historical position when the Council employed the Town Centre Manager and circumstances when the Council's financial contribution to town centre management represented a significant proportion of the overall funding. Circumstances have changed since the creation of the company; MTCML employ the TCM staff and the Council's current contribution of £15,000 is a small percentage of overall income of approximately £250,000 a year. Given this position we do not believe that deleting this requirement significantly harms the Council's position, and does mean that the Board can act in the absence of the Council nominee. The company also intends to allow the council to have two nominees to the Board instead of one. A further report will be produced on the process of appointing directors in future.

1.4 Alternative Action and why not Recommended

- 1.4.1 The Council could chose not to nominate a director but this would deprive the Council of the benefit of one of its nominees having influence over the activities of MTCML. It would also deprive MTCML of the expertise of the Council nominated director.
- 1.4.2 It could decide not to agree to the proposed changes to the company’s memorandum and articles relating to the quorum for a board meeting but to do so could lead to the Board being in a position where it could not transact business.

1.5 Impact on Corporate Objectives

- 1.5.1 The proposed changes should not have any impact on Corporate objectives.

1.6 Risk Management

- 1.6.1 The risks involved in allowing the MTCM Board to meet without the Council nominated director being present are discussed at Paragraph 1.1.3.
- 1.6.2 The nomination of the Assistant Director for Environment and Regulatory Services as a Director of MTCM Board in place of the Chief Executive reduces the risk of potential conflicts of interest.

1.7 Other Implications

1.7.1

- 1. Financial
- 2. Staffing
- 3. Legal
- 4. Equality Impact Needs Assessment
- 5. Environmental/Sustainable Development
- 6. Community Safety
- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

1.8 Urgency

1.8.1 In view of the fact that a decision on these matters is needed before the Annual General Meeting takes place on the 17th of November, it is recommended that your decisions be treated as urgent thus dispensing with the possibility of call-in.

1.9 Relevant Documents

1.9.1 Appendices

1.9.2 The Agenda of the AGM due to take place on 17 November 2011 is attached at Appendix A.

1.9.3 Background Documents

1.9.4 Memorandum and articles of association of MTCML.

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, when did it first appear in the Forward Plan?

.....

This is a Key Decision because:

.....

Wards/Parishes affected:

.....

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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MAIDSTONE TOWN CENTRE MANAGEMENT LTD

11th ANNUAL GENERAL MEETING

25th November 2010.

The Mall
Management Suite
Pads Hill
Maidstone
Kent

MINUTES

1 APOLOGIES

Ms Olga D'Silva, Messrs: Malcolm Robertson, Malcolm Greer, Geoff License..

ATTENDANCE is recorded on the attached Schedule

2 MINUTES OF 10th ANNUAL GENERAL MEETING 26 NOVEMBER 2009.

The Minutes, having been circulated prior to the Meeting, were taken as read and being **PROPOSED** by **MEMBER** Mr I White and **SECONDED** by **Member** A Simms were **APPROVED UNANIMOUSLY**.

3 CHAIRMAN'S REPORT

The Chairman, Mr Alcock thanked the staff of Maidstone Town Centre Management(MTCM) for their enthusiasm and commitment. He went on to advise that the year under review had been a successful year for MTCM against a demanding economic background. Our Maidsafe service has continued to support the Police and all involved with crime prevention in Maidstone – so much so, that Maidstone has a very powerful anti crime profile. Maidstone is coming through difficult times and MTCM is proud of its support for business. Difficult times remain, of course, and the business community needs to remain strong and resilient but he expressed confidence in Maidstone's future.

4 DIRECTORS

The Meeting **NOTED** that Mr Lea Pulling, Manager of Sainsburys King Street, had accepted an Invitation to join the Company's Board of Directors. In accord with the Company's Memorandum and Articles of Association, Mr Pulling falls to be **RE-APPOINTED** as a Director at the first Annual Meeting following his Appointment as a Director of the Company. Additionally, in accord with the Company's Memorandum and Articles of Association, one Third of Directors require to retire at the Annual General Meeting and, if so minded, offer themselves for **RE-ELECTION**. Messrs A Simms; I White and Graeme Wyles fall to retire at this time but offer themselves for **RE-ELECTION**. The **PROPOSITION** to **RE-APPOINT** Mr Pulling and Messrs Simms, White and Wyles was put by **MEMBER** Mr M Baker and **SECONDED** by **MEMBER** Mr L Wright and **APPROVED** unanimously.

5 **PRESENTATION AND ADOPTION OF THE DIRECTORS' REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2010.**

The Report and Financial Statements, having been made available to all present prior to the Meeting were taken as read.. There being no questions the **ADOPTION** of the Directors Report and Financial Statements for the year ended 31 March 2010 was **PROPOSED** by **MEMBER** Mr M Baker, **SECONDED** by **MEMBER** Mr I White and **APPROVED** unanimously.

6 **RE-APPOINTMENT OF ACCOUNTANTS**

The Meeting **NOTED** that Dendy Neville, Tonbridge Road Maidstone had been the Company's Accountants since the Formation of the Company. **MEMBER** Mr P Alcock **PROPOSED** their **RE-APPOINTMENT**. Mr I White **SECONDED** the Proposition and the **RE-APPOINTMENT** of Dendy Neville for a further year as the Company's Accountants was **APPROVED** unanimously.

7 **OTHER BUSINESS**

There being no other business, the Meeting was closed

G Wyles
30/11/2010

MAIDSTONE TOWN CENTRE MANAGEMENT LTD

12th ANNUAL GENERAL MEETING

17th November 2011.

4.00pm

The Mall

Management Suite

Pads Hill

Maidstone

AGENDA

- 1 **APOLOGIES**
- 2 **MINUTES OF 11th ANNUAL GENERAL MEETING 25th NOVEMBER 2010** **[ATTACHED]**
- 3 **CHAIRMAN'S REPORT**
- 4 **DIRECTORS** **[PAPER A ATTACHED]**
- 5 **CHANGES TO MEMORANDUM< AND ARTICLES OF ASSOCIATION** **[PAPER B ATTACHED]**
- 5 **PRESENTATION AND ADOPTION OF THE DIRECTORS' REPORT AND FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2011.**
- 6 **RE-APPOINTMENT OF ACCOUNTANTS.**
DIRECTORS WILL BE PROPOSING THE RE-APPOINTMENT OF DENDY NEVILLE, TONBRIDGE ROAD MAIDSTONE.
- 7 **OTHER BUSINESS**

**MAIDSTONE TOWN CENTRE MANAGEMENT LTD
ANNUAL GENERAL MEETING
17 November 2011**

DIRECTORS

PAPER A

- **Directors invite Members to note the Resignation of Messrs Robert Bounds and Trevor Gasson with effect from 1 March 2011 and 22 July, respectively.**
- **In accordance with the Company's Articles of Association, one third of the Company's Directors are required to retire annually at the Annual General Meeting. At this time, Messrs Paul Alcock; Mark Baker; and Lloyd Wright are due to retire and, being eligible, offer themselves for re-Appointment. The Board will be so Proposing.**

**MAIDSTONE TOWN CENTRE MANAGEMENT LTD
ANNUAL GENERAL MEETING
17 November 2011.**

PAPER B

CLAUSE	PURPOSE	PROPOSED RE-WORDING
2 (3) (i) (ii)	Restriction in MBC nominated MEMBERS of MTCM	DELETE Clause 2. (3) DELETE Clause 2. (3) (i) DELETE Clause 2. (3) (ii)
26	Requirement that MBC shall always enjoy 1 MBC nominated MBC Trustee	AMEND final sentence “ At all times the trustees.....by Maidstone Borough Council” By ADDING – in the final sentence :- “ up to two trustees” between “shall include” and “nominated by...”
38 (5) (5) (i) (ii)	Limitation of MBC nominated Trustees to 20% of Trustees by number.	DELETE Clause 38 (5) DELETE Clause 38 (5) (i) DELETE Clause 38 (5) (ii)
42	Limitation on MBC nominated rep acting as Chairman having no casting vote.	The final sentence shall end at “...the chairman shall have a second or casting vote.” by DELETING from the final sentence the words “.... unless the chairman is an officer or member of Maidstone Borough Council, in which case he shall not have a second or casting vote.”
43	Quorum at Trustee Meetings required to include MBC Nominated Trustee Rep.	AMEND Clause 43 to read : The quorum for the transaction of the business of the trustees shall not be less than one third of their number, or three trustees, whichever is the greater.