

**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 17<sup>th</sup> 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?

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This is a Key Decision because: .....

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Wards/Parishes affected: .....

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**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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