

## APPOINTMENT OF INDEPENDENT DIRECTORS TO COUNCIL COMPANIES

### Executive Summary

The Appointment of Independent Directors to the ThamesWey Group Companies brings oversight, experience and skills that are advantageous and appropriate to the companies. As part of the continuous programme of work in respect of the governance of the ThamesWey Group Companies, ThamesWey has undertaken a review of the skills required on the Boards and have developed a recruitment strategy to strengthen the Boards. This review has been considered and endorsed by the Board and Council Officers. The Executive is requested to note and endorse the proposals outlined in this report.

### Recommendations

The Executive is requested to:

#### **RESOLVE That**

the report be noted and recruitment strategy be supported.

### Reasons for Decision

Reason: To strengthen the Board of Directors of the ThamesWey Group to ensure that they continue to bring oversight, experience and skills that are advantageous and appropriate to the companies.

The Executive has the authority to determine the recommendation(s) set out above.

<b>Background Papers:</b>	None.
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## **Appointment of Independent Directors to Council Companies**

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# **Appointment of Independent Directors to Council Companies**

## **1.0 Introduction**

1.1 The Appointment of Independent Directors to the ThamesWey Group Companies brings oversight, experience and skills that are advantageous and appropriate to the companies. As part of the continuous programme of work in respect of the governance of the ThamesWey Group Companies, ThamesWey has undertaken a review of the skills required on the Boards and have developed a recruitment strategy to strengthen the Boards. This review has been considered and endorsed by the Board and Council Officers. The Executive is requested to note and endorse the proposals outlined in this report.

## **2.0 Background**

2.1 The Cadbury Report states that ‘the responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to the shareholders on their stewardship.’

2.2 Woking Borough Council has determined following its review of Governance in July 2022 that the Board should consist of two classes of Director to fulfil this function. Officer Directors, who are also directly employed and salaried Council Officers and Independent Board Directors (normally referred to as Non-Executive Directors or NEDs). Both sets of Directors must comply with the requirements of the Companies Act (2006), the Cabinet Office’s Code of Conduct for Board Members of Public Bodies (2019) and also as ThamesWey is wholly owned by a public body, they must adhere to the Seven Nolan Principles of Public Life.

2.3 According to the Higgs Review (2003) the core role of a NED is to:

- Challenge and contribute to the development of the company’s strategy,
- Scrutinise performance of management in meeting agreed goals and monitor reporting of performance,
- Satisfy themselves on the accuracy of financial information and that financial controls and risk management are robust and defensible,
- Take a prime role in appointing/removing senior management.

2.4 The ThamesWey Group of Companies has three NEDs who sit on the ThamesWey Limited Board and are each also appointed to a number of the subsidiary companies. Under the current company governance arrangements each board is chaired by a NED. Two of the existing NED were appointed in 2010 for an initial three year fixed period which has been rolled on since and the third NED was appointed in 2021 following retirement of the existing 2010 appointee.

2.5 Given the time which has expired since the original appointment of the ThamesWey NEDs, the significant growth of the activity and scale of the ThamesWey Group and the 2022 changes to the Governance of Council Companies the Shareholder has agreed that the Independent Board Director roles should be reviewed. The intention being that the existing NED step down and are replaced via a new appointment process. This paper sets out this process.

## **3.0 Existing Independent Board Director Membership**

3.1 The current NED experience is predominantly finance based with two of the appointments qualified accountants. One role has a corporate finance background and the other a housing finance background. The third NED has a background in sustainable technology development and sales.

## **4.0 Independent Board Director Proposed Skillset**

4.1 The proposal in this paper is to have the following skillsets at NED level to contribute to the Board governance and development of ThamesWey. These roles would in effect be ‘technical NED roles’:

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### **4.2 Residential Market experience**

4.3 ThamesWey currently lets over 1000 units and this is expected to grow as the current phases of the Sheerwater development complete. The majority of this stock is within the private rented sector (PRS) and experience in this sector would be beneficial to the company, both in terms of marketing and positioning the offer as well as current trends in management and funding. In the last recruitment process it was proposed experience in residential development would be beneficial. However, with the change in the priority of the Shareholder and access to public funding, future development is likely to be significantly curtailed. As such, this skillset is no longer a priority and the priority focus is on operational PRS experience. Therefore a candidate is likely to come from a background in a large scale residential private landlord or the commercial arm of a RSL (registered social landlord).

### **4.4 Commercial Finance experience**

4.5 ThamesWey's operations are funding by debt across the residential, environmental and energy sectors with the historic position being that this debt was provided by the Shareholder. However, the current Council administration has set out a manifesto commitment to 'bring the Council's finances under control' and combined with the DHLUC review the Shareholder's position will be to reduce its overall debt level. This is likely to limit ThamesWey's access to Public Works Loans Board (PWLB) funding. Experience in commercial funding would therefore be a benefit to ThamesWey. Linked to this would be experience in accounting standards and commercial finance risk. Therefore the candidate is likely to come from a background in a bank, broker/finance house or institutional investors.

### **4.6 Energy Market experience**

4.7 ThamesWey operates TCMK and TEL who deliver small scale district energy (heat, power and cooling) to both domestic and commercial customers. Power has been a regulated market for some time and Heat is due to be a regulated market from 2024. Operational or business development experience in the energy market, ideally both district energy and the wider regulated a significant advantage to ThamesWey bringing a commercial understanding of the contractual and regulatory challenges of the market. Therefore the candidate is likely to come from a background in either an existing player in the district energy field or the business development side of a larger regulated provider.

### **4.8 Chairperson**

4.9 The previous appointment process, person specifications and appointment letters for NED do not specifically reference the chairperson role. However, the role of Chair will generate significantly more work than the other proposed NED roles, particularly regarding running the Board meetings, liaison with the Shareholder and contribution to the Audit process.

4.10 The skillset is also different from the other proposed NED as the focus will be on governance and interpersonal rather than technical contributions to the Board process. As such it is proposed that the Chairperson is a separate role from the technical NED making 4 NED appointments.

4.11 It would be beneficial to have previous experience in chairing a Board but also working with public sector governance structures, for example an NHS trust, ALMO or another local authority owned company.

## **5.0 Independent Board Director Remuneration and Tenure**

5.1 The current NED are paid directly through the Woking Borough Council payroll and the Council is reimbursed by ThamesWey quarterly in arrears. The most recent WBC advert for NED recruitment was posted on the WBC website and stated that they were paid based on the

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number of appointments to subsidiary companies (£7,115 for the first company with 50% of that value for each subsequent one) with the pay level originally pegged to Councillor Basic Allowance and agreed on appointment. The advert set out an expectation of 3 Board meetings per annum with an unspecified number of ad-hoc 'additional meetings'. There is no mention of any special responsibility payment to reflect the appointment of Chair of any of the companies.

- 5.2 Provision 34 of the 2018 UK Corporate Governance Code states that: "The remuneration of non-executive directors should be determined in accordance with the Articles of Association or, alternatively, by the board. Levels of remuneration for the chair and all non-executive directors should reflect the time commitment and responsibilities of the role".
- 5.3 The current ThamesWey NED remuneration for 2022/23 paid by WBC payroll is £15,375. This rate was agreed outside of the Board process and has not been formally notified to ThamesWey however, we are expecting the next quarterly invoice to reflect this figure. At the moment, this flat rate approach does not reflect the code assumption set out above nor are the NEDs expected to provide a particular time commitment which currently varies between the individuals. In addition, the remuneration based upon the number of Boards an individual sits on doesn't reflect the current approach to Governance of ThamesWey (where all the Board business is dealt with at a single meeting rather than multiple individual boards) or the Business Plan direction of travel to consolidate companies, reducing the need for multiple appointments.
- 5.4 Current pay levels in the market for NED vary significantly by sector and scale of the organisation ranging from voluntary positions to compensation in the £100,000s. Given this extensive range, sector averages are also skewed so it is very difficult to read across a general NED 'market' position for ThamesWey. However, looking at Housing Association and NHS Board NED positions currently being advertised (as of 22/2/23) which are organisations in similar fields and public ownership the range seems to be £8-£18,000 for a normal NED with an additional premium applied to the Chairmanship.
- 5.5 In addition to the NED roles the Board is made up of Officer Directors who earn, on average (based on median pay scales for 2022/23), £60 per hour. If this base pay rate was applied to the NED role with the expectation that a NED would spend the equivalent of 3 days per month on ThamesWey business, with the Chair spending an additional day, it would equate to a salary of £16,500 and £21,600 respectively. This is based on the assumption that with sickness and leave the 'average' employee/NED is available 44 weeks of the year. This single rate would be applied irrespective of the technical number of appointments. The salary points would be market competitive, and this paper recommends that they are implemented and then linked to WBC Officer Director annual cost of living increases going forward.
- 5.6 The equivalent time used to calculate the figures in paragraph 5.5 equally sets out an expectation of time committed to the Board and contribution to Group Company activities. The current letter of appointment of the NEDs states that 'sufficient time' is expected to be allocated to ThamesWey business, however without context or an indicative expectation. As such the contribution and available time currently provided by the NEDs varies significantly. Going forward it is recommended that a time expectation is added to set a context to the level of contribution the Group and Shareholder expects the NED to provide.

## **6.0 Recruitment Process**

- 6.1 The first step in commencing recruitment of new NED is to agree the end dates of the existing NED appointments. The existing NED do not all have up to date appointment documents but, as stated above, they were initially appointed for a 3 year term and have therefore carried over with the exception of NED 3 who was appointed in 2021. To avoid an immediate loss of ThamesWey knowledge and experience it is proposed that the end dates are staggered over a two year period commencing this April with an end date agreed for the following two Aprils. The logic being that the most recently appointed NED should leave ThamesWey in April 2025.

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All of the existing NED have indicated a willingness to continue with their appointments to allow for this transition.

- 6.2 Another advantage of staggering the end of the existing NED terms is that it will embed a staggered tenure to avoid future incidences of the NED needing to be recruited on mass.
- 6.3 The last time that NED were recruited (2021) the advert was placed in the local paper and advertised on the Shareholders website. The overall response was low and the breadth of skills was also not what was needed. As such, despite there being more than one role available at the time, only one appointment could be made. It is proposed to widen the search this time and recruit with the assistance of a recruitment agency who specialises in the NED field. Subject to the Board agreeing the recommendations of this report recruitment will be commenced immediately with the aim of appointing the Chair and one of the technical roles this Spring.
- 6.4 The intention to use a recruitment search agency will also enable their advice to be taken on market acceptable job descriptions and person specifications as NED roles are not a day to day appointment for ThamesWey and their experience would be beneficial. The Davis review highlighted the benefits improving gender balance on Boards and Parker review found similar benefits regarding ethnic diversity. As part of this recruitment process advice will be taken regarding positioning the recruitment process to encourage diversity in the Board.

### **7.0 Conclusion**

- 7.1 ThamesWey strategy should be supported. They should take steps to appoint 4 Independent Board Directors (NED) with three technical roles (Residential Market, Energy Market and Commercial Finance) and a separate Chair. Remuneration for the roles be set at £16,500 for the technical NED roles and £21,600 for the Chair linked to WBC cost of living going forward. Independent Directors shall be appointed for a period of 4 years with the option to extend once for a further 4 year period.
- 7.2 ThamesWey shall issue written notice to the existing independent board directors to formally clarify their appointment end dates. The end dates to be staggered to allow for a managed transition to the new appointments keeping existing knowledge within the group. End dates of the existing appointments to be April 2023, April 2024 and April 2025. The order of notice to be agreed with the Shareholder.
- 7.3 ThamesWey commences recruitment of the Independent Chair and one of the technical roles with immediate effect using a recruitment consultancy as opposed to direct advertising with the intention to appoint the Chair and one of the technical directors in Spring 2023.

### **8.0 Corporate Strategy**

- 8.1 This report supports the Council's Corporate Strategy.

### **9.0 Implications**

#### Finance and Risk

- 9.1 The continuous development and assessment of the specialist skills appointed to the Board ensures effective risk management.
- 9.2 The financial implications namely remuneration is outlined in the report.

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### Equalities and Human Resources

- 9.3 As outlined in the body of the report, there are benefits to improving gender balance and ethnic diversity on the Boards. As part of this recruitment process advice will be taken regarding positioning the recruitment process to encourage diversity in the Board.

### Legal

- 9.4 Nothing specific arising directly from this report.

### **10.0 Engagement and Consultation**

- 10.1 Nothing specific arising directly from this report.

REPORT ENDS