

**KENT AND MEDWAY BUSINESS FUND (KMBF)**

**KENT & MEDWAY INVESTMENT ADVISORY BOARD (KMIAB)**

**DRAFT TERMS OF REFERENCE**

**November 2016**

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**1. Purpose**

- 1.1 This document sets out the Terms of Reference for the Kent & Medway Investment Advisory Board established to support the Kent and Medway Business Fund.

**2. Definitions**

- 2.1 Within these Terms of Reference, the following definitions apply: -
- 2.2 Kent and Medway Business Fund (KMBF) is scheme offering public loan or equity assistance to businesses in the Kent & Medway area (the areas covered by: Ashford Borough Council, Canterbury City Council, Dartford Borough Council, Dover District Council, Gravesham Borough Council, Kent County Council, Maidstone Borough Council, Medway Council, Sevenoaks District Council, Shepway District Council, Swale Borough Council, Thanet District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council) funded from recycled Regional Growth Fund (RGF) loan repayments. The conditions for this investment are set out in the Programme Funding Agreements between Kent County Council (KCC) and the Department for Business, Innovation and Skills (BIS now known BEIS) and in the Kent and Medway Business Fund Manual.
- 2.3 The Kent and Medway Business Fund has three sub-programme areas covering the local authority areas of:
- East – Ashford, Canterbury, Dover, Shepway and Thanet (formerly the RGF Expansion East Kent eligible area).
  - West – Maidstone, Sevenoaks, Tonbridge and Tunbridge Wells (formerly part of the RGF Escalate eligible area).
  - North & Medway – Dartford, Gravesham, Medway and Swale (formerly part of the RGF Tiger eligible area).
- 2.4 KCC is the Accountable Body for the Kent and Medway Business Fund and as such is responsible for: -

- The allocation and management of Government funds provided for the purpose of the Kent and Medway Business Fund;
  - Ensuring that contracted outputs are met; and
  - Ensuring that the programme is managed in accordance with grant conditions (including State Aid restrictions).
- 2.5 The Secretariat for the Kent and Medway Business Fund shall be provided by KCC – this includes but is not exclusive to the following activities – managing the application process, co-ordination appraisal, contract negotiations and monitoring.

### **3. Functions of the Kent & Medway Investment Advisory Board – KMIAB (known as the Board)**

- 3.1 The Board has been established by KCC as the Accountable Body to: -
- (a) Provide advice, monitor and review the overall investment strategy for the use of the Kent and Medway Business Fund. This will include (for example) encouraging applications from particular sectors or geographical areas, and determining the conditions under which investments from the Kent and Medway Business Fund that should be allocated.
  - (b) Making recommendations to KCC whether to approve, reject or defer individual applications for funding from the Kent and Medway Business Fund programme, and to advise on the conditionality of the loan which includes payment terms and repayment profile.
  - (c) Keep under review the performance of the programme against the outputs and leverage levels specified in the Programme Grant Agreement and take action (as set out in (a) above) to improve performance where appropriate.
- 3.2 The intention is that Members of the Board when giving advice should make a distinctive contribution by drawing on their industrial and commercial experience of businesses within the sectors and areas covered by the programme.

### **4. Membership**

- 4.1 The Board shall be appointed by the Accountable Body and consist of no more than (tbc) Members and no fewer than (tbc) Members. The Accountable Body will provide the Board's Secretariat.
- 4.2 A majority of Board Members shall be from the private sector.
- 4.3 The Accountable Body shall be represented by a minimum of two elected representatives see paragraphs 6.1 and 6.2. For the three sub-programme areas Board Members will be

drawn from the membership of the advisory panels established for the former RGF schemes (Expansion East Kent, Tiger and Escalate) – see paragraph 2.2.

- 4.4 If an elected representative on the Board is unable to attend a specific Board or sub-group Meeting, their views should be submitted to the Secretariat prior to the scheduled Meeting using the form in Annex Three.
- 4.5 Other Members may join the Board with the agreement of the Accountable Body and the Board.
- 4.6 Members shall be appointed until 31<sup>st</sup> March 2021. Reappointment may be made at the appropriate Annual Meeting, with no limit to the number of times a Member may be reappointed.
- 4.7 New Members may be appointed within the year, subject to the provisions of paragraphs 4.1, 4.2 and 4.5.
- 4.8 Members may resign from the Board by giving no less than 20 working days' notice to the Chairman and Secretariat.
- 4.9 The Chairman may (at his/her discretion) require that a Member resign should that Member fail to attend four consecutive Meetings of the Board, provided that the Secretariat has sent a letter to the member following the failure to attend three consecutive Board Meetings.
- 4.10 The membership of sub-groups shall be drawn from Board Members and conform to the principles laid down in paragraphs 4.2, 4.3, 4.4, 4.5 and 4.6.

## **5. Quorum**

- 5.1 The quorum of a Board or a sub-group Meeting shall be at least a third of the full membership of Board or at least a third of the membership of the sub-group, which should always include at least one representative of the Accountable Body.
- 5.2 Should a Board or a sub-group Meeting not be quorate before or during the Board or sub-group Meeting itself, the Chairman may choose one of three options: a) Board Members to convey their views electronically to all the other Members of the Board or sub-group via the Secretariat, providing formal response to an emailed request for their decision. Members must respond with 5 working days of the request being sent (see Annex Three); b) arrange a Special Meeting of the Board to deal with outstanding business; c) allow business to adjourn to the following ordinary Board or sub-group Meeting.

## **6. Chairman**

- 6.1 The Chairman of the Board shall be an elected Member of KCC (as the Accountable Body) and also a Member of the Board.
- 6.2 The Vice Chairman of the Board shall be an elected Member of KCC (as the Accountable Body) and who also a Member of the Board.
- 6.3 The Chairman shall preside at Meetings of the Board. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of the Chairman and the Vice-Chairman, the Board shall elect a Member of the Board to act as Chairman for that Meeting only. In the case of a sub-group the Chairman may delegate the Vice-Chairman or elected Member of the Board to act as Chairman for that sub-group Meeting only.
- 6.4 At each Meeting of the Board or a sub-group should the agenda indicate a decision to recommend funding is required related to an applicant from one of the three sub-programme areas, the discussion on that item shall be led by an elected member from:
- East – KCC elected representative.
  - West – An elected representative from one of the local authorities of Maidstone, Sevenoaks, Tonbridge and Tunbridge Wells.
  - North & Medway – An elected representative from one of the local authorities of Dartford, Gravesham, Medway and Swale.

## **7. Conflicts of Interest**

- 7.1 A Register of Interests shall be held by the Secretariat. Members shall be responsible for ensuring that the Secretariat is informed of any changes that should be made to the Register of Interests. The Register will be available for public scrutiny.
- 7.2 Should a Board Member become aware that s/he has any interest, direct or indirect, in any matter being considered by the Board, then s/he shall: -
- (a) Disclose the interest to the Meeting and not take part in any consideration or discussion of the matter or vote in any questions with respect to it; and
  - (b) Unless the Meeting invites him/her to remain, withdraw from the Meeting.
- 7.3 The rules in paragraph 7.2 apply whether or not the interest concerned is already set out in the Register of Interests.
- 7.4 However, the rule in paragraph 7.2 above does not apply where the interest concerned relates primarily to the general interest of any public sector Member in his/her area of geographical responsibility, or to the interests of Kent & Medway as a whole.

## **8. Secretariat and administration**

- 8.1 Secretariat and administration shall be carried out by KCC. This shall include management of the project appraisal process, preparation of Board agendas, papers and minutes and the efficient execution of Board Recommendations.
- 8.2 The Board shall be asked to give its recommendations on the basis of detailed case papers, circulated in advance, and short oral presentations by the appraisal team.
- 8.3 The Board shall be entitled to ask the Secretariat to prepare sectoral and geographic analyses of applications, and impact assessments, and papers evaluating the administration of the programme.

## **9. Minutes and agenda**

- 9.1 Minutes of Meetings of the Board and sub-groups shall be prepared by the Secretariat and circulated to Board Members together with the proposed Agenda for the next Board or sub-group for confirmation.
- 9.2 The papers for Board or sub-group Meeting shall be circulated to the Members by the Secretariat not less than five working days before each Board or sub-group Meeting.

## **10. Decision-making**

- 10.1 Recommendations agreed by the Board or sub-group shall be taken by consensus.
- 10.2 In the absence of consensus, the following matters require the support of at least 75% of Board or sub-group members present, including the support of the representatives of the Accountable Body: -
  - (a) Appointment of new Board Members.
  - (b) Approval or variation of the Investment Strategy.
  - (c) Variation of the Terms of Reference.
- 10.3 Where the Board or sub-group decides to recommend approval, rejection, part-funding or deferral of an application, that decision to recommend shall be without prejudice to any subsequent application. The template for communicating responses to applicant is attached.
- 10.4 Should a Board Meeting agenda indicate only applications from a specific sub-programme area (see paragraph 2.3), the Secretariat after consultation with the Chairman may convene a smaller sub-group Meeting (see paragraph 18.1, 18.2, 18.3, 18.4 and 18.5) drawn from current Board Members with elected member representation from the specific sub-programme area – see paragraph 4.10.

- 10.5 The Secretariat shall confirm to the Board or sub-group Meeting the budgets available to be allocated at that Meeting. For each Meeting the overall budget is divided between the three sub-programme areas - East, West and North & Medway (see paragraph 2.3) – the budget for each area is based on the level of loan repayments from the respective loan investments of the former RGF schemes (Expansion East Kent, Escalate and Tiger) active in those areas.
- 10.6 Where the number of supportable projects (i.e. projects that are recommended for approval by the Board or sub-group) exceeds the available budget for each of the three sub-programme areas (East, West and North & Medway) available at specific Board or sub-group Meeting then process for prioritisation laid down in Annex 2 will apply. If the Board or sub-group agree to defer a decision on an application for funding the Board or sub-group also need to confirm that the funding related to this application is ring-fenced until a decision to recommend.
- 10.7 All applications for assistance from the Kent and Medway Business Fund shall be appraised and recommended for approval before being submitted to the Board or sub-group. The Board or sub-group shall make no decision to recommend unless the Board has received the appraisal documentation.
- 10.8 The recommendations shall be summarised for the Kent and Medway Business Fund for the form attached here as Annex 1. The Chairman or Vice-Chairman of the Board must sign off the form.

## **11. Urgent decisions**

- 11.1 The Chairman may decide that a matter requires an urgent decision to recommend. In the event that an urgent decision to recommend is required, the Chairman may either: -
- (a) Through the Secretariat, call a Special Meeting giving no less than three working days' notice. In such a case, the quorum requirements set out in paragraphs 5.1 and 5.2 shall apply; or
  - (b) Through the Secretariat, request that a decision to recommend be made by e-mail. In such cases, the Secretariat shall provide Board Members with appropriate information requesting a decision to recommend in no less than three working days. The minimum response for a decision to recommend can be made shall be a third of the Board Members, including the Member representing the Accountable Body. In the absence of consensus, the provisions set out in paragraph 10.2 shall apply.

## **12. Transparency**

- 12.1 The Board shall seek to operate in an open and transparent manner.

- 12.2 Where items should be regarded as commercial in confidence, this shall be clearly specified.
- 12.3 Commercially sensitive information is likely to be circulated to the Board. All applications for assistance and papers describing negotiations with applicants will be considered as having protected information and shall be marked "Restricted – Commercial". A summary outcome of the Board's discussions and its recommendations shall be on the public record, but with appropriate exclusions for commercially sensitive information. The detail of individual cases will remain confidential between the Board, KCC and applicant companies.

### **13. Reporting**

- 13.1 The Board shall consider and approve an Annual Report setting out a presentation of Fund allocation, expenditure and output over the course of the year. This document can be made publicly available and disseminated widely at the discretion of the Board.
- 13.2 In addition, the Board may provide updates on its activities to interested organisations and partnership bodies on either a regular or ad hoc basis.

### **14. Board and Sub-Group Meetings**

- 14.1 Board and sub-group Meetings shall be scheduled in such a way that the business of the Board and sub-groups can be expedited efficiently and in accordance with the target timescales for decisions to recommend set out in the Kent and Medway Business Fund Manual.
- 14.2 In any case, the Board shall meet no less frequently than once every three months.

### **15. Termination**

- 15.1 The Board and sub-groups shall terminate their activities when the operation of the Kent and Medway Business Fund ceases.

### **16. Indemnity**

- 16.1 The Accountable Body shall indemnify the Members of the Board in respect of all decisions and recommendations made by the Board or sub-groups.

### **17. Variations of Terms of Reference**

- 17.1 The Board or sub groups may decide to vary its Terms of Reference, provided the procedure in paragraph 10.2 is followed.

## **18. Sub-Groups**

- 18.1 The Board may choose to establish one or more permanent sub-groups to deal with issues such as governance, legacy issues relating to previous loan agreements, discuss applications from specific sub-programme areas (see paragraph 2.3) or ad-hoc sub-groups for a specific activity on a time limited basis.
- 18.2 When establishing a permanent or ad-hoc sub-group the Board should agree its Terms of Reference and follow the procedure laid down in paragraph 10.2.
- 18.3 Membership of sub-groups should be determined on the basis of paragraph 4.10.
- 18.4 KCC shall act as the Secretariat for all permanent or ad-hoc sub-groups agreed by the Board.
- 18.5 All permanent or ad-hoc sub-groups agreed by the Board shall seek to operate in an open and transparent manner as indicated in paragraphs 12.1, 12.2 and 12.3.

## **19. Appeals**

- 19.1 There is no automatic appeals process. However, applicants may ask for a review of the decision of the Board or sub-group in specific circumstances, for example if the applicant can prove the Board has not followed the correct procedures or assessed their bid correctly? There are three options to review:
- (a) That the Board or sub-group did not follow the published procedures for the bid;
  - (b) The applicant can show that the Board or sub-group have misunderstood a significant part of the application;
  - (c) The applicant can show that the Board or sub-group did not take notice of the relevant information.
- 19.2 For those applicants requesting a review - no new evidence or no additional information not already provided can be taken into account. If there is no substance to back up the review, then the original decision stands automatically.



**Kent & Medway Investment Advisory Board (KMIAB)**

**Recommendation Summary Form**

Applicant Company	KMIAB Meeting	KMBF Support Requested £	Jobs Created	Jobs Safeguarded	Total Jobs
		Funding Approved	Recommendation	Decision	

Appraiser Recommendation		
Appraisal Type	Recommendation	Follow-up from Board

KMIAB Prioritisation (only to be completed if the Board is required to prioritise application due to oversubscription)		
Prioritisation Category	Weighted Score	Follow-up from Board
High		
Medium		
Low		
Reject		

KMIAB Recommendation

**APPROVED BY:-**

Signed by Chairman (Paul Carter)	Decision	Approval
If Chairman is not available, signed by Vice-Chairman		
Signed by KCC Delegated Officer (David Smith)		

**Register of Interests**

**Kent & Medway Investment Advisory Board**

Date of Meeting and Agenda Item	
Brief Summary of Item	
Application Reference if applicable	
Name of Board member declaring an interest	
Interests declared	
Any other matter you would like to declare	

Date:

Signed:

## Prioritisation: When demand outstrips the budget

## Annex 2

Where the number of supportable projects (i.e. projects that are recommended by the Board or sub-group) exceeds the available budget available for any one of the three sub-programme areas – East, West and North & Medway- the following process shall be followed:

**Step one:** The KMIAB confirms and agrees the budget for the Board or sub-group Meeting.

**Step two:** Based on the appraisal presented at the Board or sub-group Meeting, those attending either:

- Reach a Recommendation by voting by a show of hands and assign a tentative score of High (each vote scores 3); Medium (each vote scores 2); Low (each vote scores 1) or Reject. There is no further discussion of projects that are rejected

or

- Reach a Recommendation based on level of priority (high, medium, low, reject) by general consensus.

**Step three:** Having discussed all the projects it is good practice to assign a score and produce a table (sample below) placing the applications in high, medium and low priority bands (high = 3; medium = 2; low priority = 1; Reject = 0), according to their score at step two.

On the basis of 7 Board members present:

Project	High	Med	Low	Reject	Total	Cost	Cumulative Cost	Priority Band
Bid B	7	0	0	-	21	£305,100	£305,100	High
Bid F	6	1	0	-	20	£293,200	£598,300	High
Bid C	2	3	2	-	14	£331,600	£929,900	Medium
Bid D	0	6	1	-	13	£444,800	£1,374,700	Medium
Bid A	0	0	7	-	7	£225,000	£1,599,700	Low
Bid E	-	-	-	7	0	£144,000	£1,743,700	Reject

The Board or sub-group will be asked to confirm that, having had the opportunity to compare the relative merits, of the applications they are content with the list produced or wish to argue that particular applications should move up or down to a different band.

**Step four:** Review this list against the available budget for the Meeting. The discussion will then focus on the band in which the budget runs out. So, if the budget is insufficient to fund all the High priority projects, there will be further discussion and comparison of the projects in the high band. This is the group of projects that we have decided offer the best overall return on our investment.

After further discussion, a vote by show of hands or agreement by consensus on which of these applications are high/medium or low. This process may not be easy, but discussion must continue until a list of High priority projects that fits within the budget for the Meeting is agreed.

This is where weighting of the relevant considerations comes into play. It is the Board or sub-groups prerogative to choose a portfolio of projects to go forward and, under the principles of administrative law, they are free to do so taking account:

1. Consideration that a varied portfolio is important, for example, geographical and sector spread as well as the range of size and type of applications received by the KMBF.
2. The published criteria, appraisal reports and the criteria below:
  - **Value for money** – Assessing the overall benefit in proportion to our investment. Which projects have the greatest impact and give us the opportunity to make the greatest difference for our investment (which offer the greatest overall added value)?
  - **Job Creation** – Those applications offering the most potential for new job creation or safeguarding existing jobs.
  - **Added value** – Offering the opportunity to impact on local supply chains, act as catalyst for other businesses and leveraging other funding.

The minutes record the final priority given to each case.

#### **v) Communicating Reasons for Rejection to applicants**

Applicants should be provided with clear reasons for rejection and feedback on their projects.

##### **High priority**

If we are unable to fund some high priority cases then we make clear that the application was turned down solely for reasons of insufficient money. The Board may also want to provide guidance for Secretariat on any messages to be given to the unsuccessful applicant regarding coming back with or without a reduced loan. As now, there should be no automatic right of return with the same project.

##### **Medium priority**

In the case of medium priorities the reason for not supporting them will also be insufficient funds, and the Board may also wish to provide feedback as to how the project might achieve better value for money.

##### **Low priority**

Low priority for our funding will be given as the reason for rejection in these cases with additional feedback as appropriate.

##### **Recommended for rejection by the Secretariat**

Where a case is recommended for rejection by the Secretariat the paper should set out clearly the reasons and these should be agreed or amended by the Board.

**Prioritisation Form**

<b>Name of Applicant:</b>		<b>Name of Board Member:</b>					
<b>Declaration of Interest:</b>							
<p><b>Prioritisation</b> - Where the number of supportable projects (i.e. projects that are approved by the Board) exceeds the available budget available for any one of the three sub-programme areas – East, West and North &amp; Medway. Board Members are therefore asked to assign score of High (each vote scores 3); Medium (each vote scores 2); Low (each vote scores 1) or Reject to this application to assist with the prioritisation process and the ranking of applications.</p>							
<b>High</b>	<input type="checkbox"/>	<b>Medium</b>	<input type="checkbox"/>	<b>Low</b>	<input type="checkbox"/>	<b>Reject</b>	<input type="checkbox"/>
<b>Additional Comments:</b>							