

This report will be made public on 5 September 2017.

Folkestone

Hythe & Romney Marsh
Shepway District Council



Report Number **AuG/17/07**

To: Audit and Governance Committee
Date: 13 September 2017
Status: Non executive
Head of service: Amandeep Khroud – Head of Democratic Services and Law

SUBJECT: APPLICATIONS FOR DISPENSATIONS UNDER THE CODE OF CONDUCT FOR DIRECTORS OF OPORTUNITAS

SUMMARY: This report considers the applications for dispensations under the code of conduct for councillors to speak and vote received by the councillors who are also directors of Oportunitas. The recommendation is that the dispensations are granted.

REASONS FOR RECOMMENDATIONS:

The committee is asked to agree the recommendations to enable the dispensations to be granted.

RECOMMENDATIONS:

1. To receive report no AuG/17/07.
2. To grant dispensations under the code of conduct and under section 33 Localism Act 2011 to Councillors Mrs Claire Jeffrey, Roger James Wilkins and Mrs Mary Lawes, to allow them to speak and vote at meetings where company affairs are discussed;
3. That the dispensations be time limited to 2 May 2019;
4. That in the event of a change of directors the monitoring officer be authorised to consider applications for and grant dispensations to any councillor who becomes a director of Oportunitas on the same terms provided that the councillor concerned is not a member of the cabinet and the dispensation is time limited in the same way.

1. BACKGROUND

- 1.1 As councillors will be aware the council has established a housing and regeneration company – Oportunitas – which is wholly owned by the local authority.
- 1.2 The company's board of directors is composed of four councillors – Councillors Claire Jeffrey, Philip Martin, Roger James Wilkins and Mary Lawes. The councillors (other than Cllr Martin) have requested dispensations under the code of conduct for councillors and S33 Localism Act 2011 to enable them to speak and vote on matters relating to Oportunitas. The position of these councillors, in relation to the code of conduct for councillors and the Act now needs to be considered. It should be noted that none of the councillors are members of the cabinet.
- 1.3 Requests in the same form, and indeed from, in two cases, the same councillors (namely Councillors Wilkins and Miss Govett) were considered by the Audit and Standards Committee on 24 June 2015. The committee resolved (minute 11):-

“Resolved:

- 1. To receive report AuS/15/05.*
- 2. To grant dispensations under the code of conduct and under section 33 Localism Act 2011 to Councillors Richard Pascoe, Ann Elizabeth Berry, Roger James Wilkins and Susanna Elena Govett, to allow them to speak and vote at meetings where company affairs are discussed;*
- 3. That the dispensations will be time limited to 1 July 2017;*
- 4. That in the event of a change of directors, the Monitoring Officer be authorised to consider applications for, and grant dispensations to any councillor who becomes a director of Oportunitas, the same terms for provided that the councillor concerned is not a member of the cabinet and the dispensation is time limited in the same way”.*

2. CODE OF CONDUCT

- 2.1 The Council's Code of Conduct is set out in part 9 of the Constitution. It refers to the two types of interests which a member might hold, namely a discloseable pecuniary interest (which derives from the Localism Act 2011) and another significant interest.
- 2.2 One of the categories of discloseable pecuniary interest is a councilor's "employment, office, trade, profession or vocation" which is defined as "Any employment, office, trade, profession or vocation carried on for profit or gain." Some directors receive an allowance for their work on the board so those that do will have a discloseable pecuniary interest.
- 2.3 In addition an Other Significant Interest could also arise in respect of directors who are also councillors. Other significant interests include the interest of an "associated person". One of the definitions of "associated

person” is a company over which a member has control/management and to which the councillor has been appointed by the council. The relevant definition is:

“Any body of which you are in a position of general control or management and to which you have been appointed by the authority.”

- 2.4 At a meeting where a discloseable pecuniary interest or an “Other Significant Interest” arises, a member would have to declare it. He / she would be prevented from voting on the matter. A discloseable pecuniary interest prevents a councillor from making any representation at the meeting on the matter, in the case of an other significant interest the member can only make such representations as a member of the public can make.
- 2.5 At any meeting where the business of the company is discussed and any decisions about the company are taken, under the Act and the Code of Conduct, those members who are directors and who sit on the committee, would be barred from discussing fully and/or voting on, the matters. Most decisions about the company will be made at cabinet; therefore the conflict of interest will not arise at these meetings. However, there will be other meetings, such as Council, Overview and Scrutiny etc, where the interest may arise.

3 DISPENSATIONS

- 3.1 The Code of Conduct in respect of other significant interests and section 33 Localism Act 2011 in respect of discloseable pecuniary interests allows dispensations to be granted to members who have an interest to speak and/or vote at meetings at which an interest arises. These powers are delegated to this committee and in certain circumstances to the monitoring officer.
- 3.2 The Code sets out the circumstances which must be taken into account in considering granting a dispensation. In summary, they are:

That, without the dispensation:

- There would not be political balance in the committee
- That there would be too few members of the committee remaining to operate
- Members of the executive (Cabinet) would be preventing from participating in the business of the executive.
- The interests of people living in the district would not be served
- It is otherwise appropriate to grant the dispensation.

- 3.3 The committee at its meeting on 26 September 2012 considered report AuS/12/14 setting out possible criteria for deciding whether dispensations should be granted. The agreed criteria are:-

- a) The nature of the member’s interest and allowing them to participate would not damage public confidence in the conduct of the Authority’s business.

If public confidence would be damaged then such an application would be likely to be refused. It is unlikely that it would be appropriate therefore, for example, to grant a dispensation to a member who has an interest arising as a result of an effect on their personal financial position or on that of a relative.

- b) The interest is common to the member and a significant proportion of the general public.
- c) The participation of the member in the business that the interest relates to is justified by the member's particular role or expertise.
- d) The business that the interest relates is about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee and the member's interest is not a financial one.

3.4 The committee resolved, minute 17

“To adopt the criteria for granting dispensations set out in paragraph 3.4 of the report where the application for dispensation is made on any of the following grounds:*

- (i) Without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;*
- (ii) That the authority considers that the dispensation is in the interests of persons living in its area; or*
- (iii) Where the Committee considers that it is otherwise appropriate to grant a dispensation.”*

*These are the criteria shown above.

3.54 The committee is asked to consider the applications. However the monitoring officer is of the opinion that the public confidence is unlikely to be damaged by the participation of the councillor / directors; the company is wholly owned by the council, apart from an allowance (if paid) the directors do not stand to gain financially) and most of the decisions on the company will be made in cabinet which the directors do not sit on. It is the recommendation therefore all of the directors are given a general dispensation under the Code of Conduct and the Act when discussing company matters at any committee of the Council. It should be noted, in passing, that it has not been necessary to grant dispensations pursuant to the resolution of 24 June 2015.

3.6 It is also recommended that the dispensations be time limited to 2 May 2019 which is, in any event the date of the next district election. In the event of a change of directors it is also recommended that the monitoring officer be authorised to consider applications for dispensations from any new director and provided that the new directors are not members of the cabinet to grant them if she sees fit. It is considered that the committee should have the opportunity to consider the position of directors who are members of the cabinet if this situation arises.

4 RISKS/CONTROLS

The risks are that those members who are appointed directors will not be able to fully participate in Council meetings at which company matters are discussed. As the directors are not on cabinet and hence will in all likelihood not be making decisions as local authority members about the company their inability to participate would not be in the best interests of both the Council and the Company. This report therefore seeks to grant a time limited blanket dispensation to those members to allow them to speak and vote at such meetings.

5 LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal officer's comments (AK)

The legal implications are included within this report.

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5.2 Finance officer's comments (RH)

There are no financial implications within this report/recommendation.

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5.3 Diversities and equalities implications (AK)

There are no specific diversity and equality implications.

6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Amandeep Khroud - Head of Democratic Services and Law
Tel: 01303 853253
Email: Amandeep.khroud@shepway.gov.uk

The following background documents have been relied upon in the preparation of this report:

Applications for dispensation from Councillors Claire Jeffrey, Roger James Wilkins and Mary Lawes

Appendices:

Appendix 1: Applications for dispensation from Councillors Claire Jeffrey, Roger James Wilkins and Mary Lawes

Appendix 1 – Applications of Dispensations from Councillors:

Councillor Claire Jeffrey:

From: [REDACTED]
To: Edwards, Gavin
Cc:
Subject: Re: Dispensations For Directors

Dear Gavin

Thank you for your email, I would like to request dispensation please.

Many thanks

Claire

Claire Jeffrey
Shepway District and Folkestone Town Councillor
East Folkestone Ward

Councillor Mary Lawes:

From: [REDACTED]
To: Edwards, Gavin
Cc:
Subject: RE: FW: Oportunitas: Dispensations For Directors - Reminder

Dear Gavin,

Thank you for your confirmation. I should have read the report properly.

I would like to make an application to have Dispensation for matters pertaining to Oportunitas.

Kind Regards

Cllr Mary Lawes UKIP
07505882169
Sent from my Sony Xperia™ smartphone

Councillor Roger Wilkins

From: [REDACTED]
To: Edwards, Gavin
Cc:
Subject: Re: Oportunitas: Dispensations For Directors - Reminder

Hi Gavin,

I can confirm I would like to make an application for disclosure.

Kind regards,

Roger j Wilkins