

GOVERNANCE AND AUDIT COMMITTEE

Minutes of the extraordinary meeting held on 26 February 2014 at 7.00 pm in Pugin & Rossetti Rooms, First Floor, Council Offices, Cecil Street, Margate.

Present: Councillor John Worrow (Chairman); Councillors Lodge-Pritchard, Campbell, Day, Moore, D Saunders, M Saunders, W Scobie and S Tomlinson

In Attendance: Councillors Cohen, Fenner, King and Poole

330. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Binks, substituted by M. Saunders.

331. DECLARATIONS OF INTEREST

There were no declarations of interest.

332. AUDITOR'S REPORT

Mr Andy Mack, Audit Director (Grant Thornton, LLP) introduced the report. He provided information regarding the back ground to and the process used for producing the audit report. Mr Mack said that local electors had raised objection on three matters which were: (1) that deferral of debt was unlawful (state aid); (2) that proper accounting had not been followed (3) that the Council had failed to achieve value for money arguing the fact that the Transeuropa debt could be classified as state aid. The objectors were of the view that the deferment of the debt was unlawful. Mr Mack said objections were treated as a serious matter which required a quasi-judicial role for Grant Thornton to adjudicate and hence make a determination over the objections. The process involved meeting the objectors and formally recording their statements, the Council representatives and analysing relevant documentation.

Mr Mack reported that a provisional view by Grant Thornton was produced in December 2013 and shared with the Council and objectors. Additional views were then received and a final view was produced which was now before the Committee. As far as Mr Mack was aware, no representations had been made to court before the 28 day period of appeal had passed. The first objection on the Transeuropa issue was rejected. It was the view of the External Audit that the debt payment arrangement was a normal practice. Mr Mack reported that Grant Thornton had rejected the three heads of objection raised by the local electors and would not be issuing a report in the public interest. However Grant Thornton did have recommendations for the Council which they had included within the covering

Mr Mack said that the audit report offered recommendations, one of which was handling confidential information. He also said that some Councillors had told the audit team that they had not been aware of the discussions between Council and Transeuropa. Mr Mack advised that good governance required trust and sharing of information, including information on delicate matters. This also required Members to respect the confidentiality of information.

The Chairman then invited Members to comment on the report. Some Members requested for the view of the auditors regarding the payment arrangements of the Transeuropa debt; whether it was a key decision or non-key. They said that the report appeared to show that Grant Thornton was of the view that this was a key decision. Members wanted to know what test was applied. Grant Thornton's view is that the deferral was a key decision. However Mr Mack acknowledged that the legislation was

complex and allowed scope for interpretation. He understood that the Council had come to a different view and did not consider that this was material to the objection.

The Corporate & Regulatory Services Manager, Mr Harvey Patterson said that the Member who raised objections with the auditor was at the time the Chairman of the Overview & Scrutiny Panel. It meant that if the decision to reschedule the Transeuropa debt was a key decision; the Chairman of the Panel should have been consulted. Members wanted to know whether the decision had been designated as a non-key decision in order to avoid consulting the Panel Chairman. Mr Patterson refuted this saying that in his opinion the decision was not a key decision because it failed to satisfy either of the two test required for a decision to be a key decision, that is to say that the decision to reschedule the Transeuropa debt did not result in significant savings or expenditure nor did the decision have a significant impact on communities living or working in Ramsgate. Members expressed the view that this issue should have been referred to the Overview & Scrutiny Panel for the Members to set up a Task & Finish Group to investigate the matter further.

Sue McGonigal, CEx said that the Council had accepted all the recommendations of the Auditor and officers had put in place an action plan to address the issues raised in the audit report.

Some Members said that the Transeuropa was making a loss in profit of about £2million per year for the last four years and was bailed out by its parent company. One Member suggested that Council should have sought legal advice on temporarily impounding the Spirit of Ostende when it was at the Port of Ramsgate.

In response Sue McGonigal said that at the time Council had not been presented with the option to seek legal advice. She said that the issue of maritime law needed to be addressed. Officers did not know all the facts in this quick timetable to make the decision. There was a risk of a legal challenge if a decision regarding impounding the vessel had been made. Sue McGonigal said that in her experience it would not have been possible to get the legal advice in the short time available.

Mr Patterson said the legal advice received had confirmed that the Council could have impounded the Spirit of Ostende in Ramsgate to sell it and recover the debt attributable to it. However to impound the boat in Tilbury would have required the Council to establish that it had a maritime lien, which it could not.

Some Members felt that the way in which the issue was reported by the media was unfair. In retrospect Members felt that the Council should have come up with a more effective media strategy to handle the issue. They acknowledged that there was a tough choice to make between maintaining confidentiality and informing Councillors. They said that if Members were not adhering to the request to maintain confidentiality it made the situation difficult for officers to share such information with Members. Members said that there was a need to share the confidential information with the Chairman of the Overview & Scrutiny Panel. However the view expressed was that the then Chairman of the Panel would share confidential information in the public domain.

Some Members expressed the view that the decision made on the issue was the right one. This was because Transeuropa had previously fallen behind with their payments and then came good. The company had been paying about £800,000 per year for the last fifteen years.

Councillor Campbell proposed, Councillor D. Saunders seconded and Members agreed the following recommendations:

1. To accept the auditor's report;
2. To approve the action plan at Annex 2 to the covering report and note the action already taken.

Meeting concluded: 7.45 pm