

Convenor Briefing Note

Financial Interests



This briefing note includes legal advice that is confidential and legally privileged.

This note summarises the relevant legal considerations in relation to any financial interests held by Board Members, with a particular focus on a recent update to the Register of Interests by Owen McKee, in relation to a financial interest in Scotgold Resources Limited.

Background

On 12 November 2014, Owen requested that his register of interests be updated to record 520,000 shares in Scotgold. A copy of the letter received from Owen is attached.

We understand that the share holding was acquired by Owen after the company had received planning permission from the Authority for the Cononish goldmine development.

It would be advisable to obtain the following information from Owen:

- the date on which the shares were acquired;
- the registered company details;
- the value of the shares and proportion of the issued share capital of the company; and
- how the share holding was acquired i.e. was this “arms length”.

Scotgold Resources Limited

Scotgold obtained planning permission for the Cononish goldmine development on 13 February 2012.

A Special Board Meeting is to be proposed for 26 January 2015 to consider the new planning application by Scotgold to vary the processing plant operating hours. We understand that Scotgold intend to have the development underway by mid 2015.

At this stage, there do not appear to be any other implications for the above ground operations and they plan to proceed with the development as consented. However, as the development proceeds and given the new company ownership, it may be that further variations or further consents are required.

Relevant Legislation & Guidance

The legislation and guidance relating to the registration of interests by Board members of public authorities are intended to ensure transparency of any interests which might influence, or be thought to influence, the actions of a Board member.

1. National Parks (Scotland) Act 2000 & Standing Orders

The starting place for any consideration of Board members' interests is the National Parks (Scotland) Act 2000. The Standing Orders should mirror the Act, but where there is a conflict between the two, the Act should take precedence over the Standing Orders.

Standing Order 48 provides that the rules on registration and declaration of interests shall be as set out in the Code of Conduct.

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Standing Order 50(c) provides that where any dispute arises as to whether a declarable conflict exists, the Chief Executive Officer of the Authority, as its Accountable Officer, shall have the power to rule as to whether such a conflict exists. In the event of such a ruling being made, the Board member concerned will be required to take no further part in any business relating to that matter.

2. Ethical Standard in Public Life etc (Scotland) Act 2000 & Code of Practice

The Ethical Standards in Public Life etc (Scotland) Act 2000 required Scottish Ministers to lay before Parliament a Code of Conduct for members of devolved public bodies. As a Board member of a public authority, members are personally responsible for making sure they are familiar with the Code of Conduct and that their actions comply with the provisions of the Code. A copy of the Code can be accessed via this link: <http://www.lochlomond-trossachs.org/looking-after/national-park-authority-board/menu-id-403.html>

The Code provides some guidance on the kinds of interests which Board members must register. These are called "Registrable Interests". The Code provides that the public interest points towards transparency.

Section 4.1 provides that:

"You must at all times, ensure that registerable interests are registered, when you are appointed and whenever your circumstances change in such a way as to require a change or an addition to your entry in the body's Register. It is your duty to ensure any changes in circumstances are reported within one month of them changing".

Section 4.19 specifically refers to any interests in shares and securities. This provides that

"Category Five: Interest in Shares and Securities

4.19 You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body which may be significant to, of relevance to, or bear upon, the work and operation of (a) the Authority; and (b) the nominal value of the shares is greater than 1% of the issued share capital of the company or other body; or greater than £25k. When you are required to register an interest, you should provide the registered name of the company in which you hold shares; the amount or value of the shares does not have to be registered".

The test to be applied in considering if such an interest required to be registered is whether a member of the public would regard any such interest as being of such a nature that it could potentially affect the Board member's responsibilities to the Authorities and to the public or could influence the Board member's actions, speeches or decision making.

Section 5.15 refers to frequent declarations of interest. It provides that:

"Public confidence in a public body, is damaged by a perception that decisions taken by that body are substantially influenced by factors other than the public interest" If you would have to declare interests frequently at meetings in respect of your role as a Board member you should not accept a role or appointment with that consequence. If Board members are frequently declaring interests at meetings then they should consider whether they can carry out their role effectively and discuss with the Convenor." In some limited circumstances, an application can be made to the Standard Commissions for dispensation.

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The Standards Commission has various sanctions available to it, it is considered that a Board member has breached the Code. These include, Censure, Suspension, Disqualification etc.

Conclusions

Given the Authority's ongoing relationship with Scotgold as a planning applicant, Owen's share holding is a financial interest that must be registered and declared. To comply with the Code, Owen should have declared this interest within one month of acquiring the share holding.

It is arguable that a member of the public would reasonably regard Owen's interest as so significant that they would be likely to prejudice his actions or decision making.

Even if Owen has not been party to any further decisions or information about the Scotgold since the planning decision, given the high profile nature of the Cononish application and public interest, it is arguable that this shareholding should be on the public register. It is the responsibility of Board members to comply with the Code of Practice. Board members have been contacted on several occasions this year to ask them to ensure any "interests" are on the public register and despite notifying us of other interests, Owen did not update the Register to include this share holding.

It would therefore be advisable for:

1. A thorough investigation to be carried out in relation to the historic position of this share holding. In particular when/how this share holding was acquired and why the share holding has not been declared in accordance with the Ethical Standards in Public Life etc (Scotland) Act 2000 and the Code of Practice.

As a Board member and Chair of the Planning & Access Committee, the potential conflict of interest of owning shares in Scotgold should have been considered by Owen before acquiring the shares.

2. In accordance with section 5.18 of the Code, Owen to consider with the Convenor whether it is appropriate to continue as Chair of Planning and as a Board member. The shareholding is likely to become a frequent declaration of interest at the Planning & Access Committee, so as such it may be decided that Owen should step down from either or both roles.

It is worth noting that the Standing Orders also provide that the Depute Convenor can be removed from office if 2/3 Board members support a motion to that effect. Notice of such a motion must be made to the Proper Officer and be signed by at least 12 Board members no later than two weeks in advance of the Board meeting at which it is to be considered.

In the event that the shares are sold, Owen would no longer have a registrable interest. However, if Owen gains financially from the share sale, there would be reputational risk associated with this as it could be argued that his investment was made as a result of information gained and any decisions he has made in his role as a Board member and Chair of Planning.

3. Accountable Officer and Proper Officer, to be advised of results of investigation and the Accountable Officer then to decide whether a conflict exists.

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At this stage, we have not updated the public register to reflect Owen's share holding in Scotgold. We will wait for the outcome of your initial investigation before doing this.

Sandra Dalziel
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3 December 2014