

Report to the Cabinet

Report reference: C-031-2019/20
Date of meeting: 06 February 2020



Portfolio: Leader

Subject: Group Company Governance Documents

Responsible Officer: S Jevans (01992 564229).

Democratic Services: A Hendry (01992 564246).

Recommendations/Decisions Required:

- (1) That Cabinet approve the Qualis Group Shareholder Agreement.**
- (2) That Cabinet note the Directors Roles and Responsibilities.**
- (3) That Cabinet note the terms of reference for Qualis Group Board Meetings.**
- (4) That Cabinet approve the selection and recruitment process for Group Board Members.**
- (5) That Cabinet appoint the Interim Board on the recommendation of the Leader in consultation with the LRA Group Leader and operate in accordance with the Shareholder Agreement.**

Executive Summary:

In order to ensure that there is effective governance of the Council Group Companies there is a requirement to put in place several key documents to provide the framework for control of decision making, levels of authority and powers of delegation. The Shareholder agreement sets out the matters that the Directors of the relevant company cannot undertake without the express consent of the Council specified body. This report covers; the draft Shareholder Agreement including the 'reserved matters' schedule, the guidance on Directors' Roles/Responsibilities, and the Terms of Reference for Board meetings.

It is proposed that the composition of the Board be made up of a combination of Council Officer Appointees, Council Members (pro rata) and Independent Non-Executives. The paper sets out the selection and recruitment process of the Group Board and the Qualis Managing Director.

The Qualis Group and subsidiaries will move from the governance of an EFDC Group Steering Board (Membership: Cllr S Stavrou, Cllr A Patel and Cllr H Whitbread, Cllr B Jennings, CEO Georgina Blakemore and Qualis Lead Sacha Jevans) to a formal company structure with Board Directors both Executive and Non-Executive but with approvals on key and significant matters being

retained by EFDC.

An Interim Board appointed by Cabinet on 6th February will operate in order to ensure Qualis delivers on the commitments made to EFDC embedded within the 20/21 Budget.

Members will be pro rata represented (currently 2 Conservative, 1 LRA).

Qualis Group is a Ltd Company and the registered office is:

Civic Centre
Epping High Street
Epping
Essex
CM16 4 BZ

Reasons for Proposed Decision:

It is a requirement the Council ensure that the appropriate governance documents are in place for the commencement of operational activity/trading within the Group Company Structure.

Other Options for Action:

The operation of the new Group Company Structure would not proceed without the correct governance arrangements in place to ensure the effective management and control of decision making between the Council and its companies.

Shareholder Agreement

1. A new corporate structure is to be established consisting of:
 - a. A holding company limited by shares (Qualis Group)
 - b. Three wholly owned subsidiaries of Qualis Group each being a company limited by shares being:
 - i. A development company (Qualis Commercial);
 - ii. An investment company (Qualis Living); and
 - iii. A Services company (Qualis Management).
2. It is intended that each of these four companies will have a board of directors who will be appointed by EFDC and responsible for the day to day governance of the companies but subject to EFDC Reserved Matter approval for key issues. Each of these boards can delegate where appropriate and, subject to compliance with directors' duties and the constitutional constraints of the vehicles, to other Council personnel to undertake actions on behalf of the companies.
3. It is advised that it is acceptable for the board of each company to be the same. This can facilitate a streamlined setup, as board meetings of all the companies can be held sequentially without separate personnel having to attend. These meetings will need to be documented as separate board meetings. It is also appropriate for the board for the differing vehicles to include different people depending on the skill sets required, noting activities within the different companies vary.
4. Each company will enter into a shareholders' agreement. The parties to the shareholders' agreement will be the relevant company and its sole shareholder. For Qualis Group this will be the Council and for each Key Subsidiary it will be Qualis Group.
5. The primary purpose of the shareholders' agreement is to set out the parameters within which each vehicle operates and is governed and those matters that the directors of the relevant company cannot undertake without the consent of a specified body (known as "Reserved Matters").
6. It is recommended that for the Council this person would be the Section 151 Officer on behalf of EFDC as the Shareholder's Representative. The Shareholder agreement is attached to Appendix 1 of this report. The Reserved Matters are listed in Schedule 2.

Directors Roles and Responsibilities

7. The document attached to Appendix 2 of this report sets out the roles and responsibilities of Company Directors.
8. There are seven main areas which Company Directors should act accordingly in their role as a Director of the Qualis Board.

9. The Section 151 Officer will act on behalf of EFDC as the main conduit with Qualis Group and other Qualis Companies. This role needs to be specifically mentioned in EFDC's constitution and delegations.
10. The main controls over Qualis are:
- the annual ability of Cabinet to review annually the business cases proposed by Qualis and the 1 year and 6 year Business Plans, to review it and subsequently recommend it to council for approval, (with a commentary and recommendation provided by the Section 151 Officer).
 - The inclusion of the impact of the Qualis annual business case into EFDC's Annual Budget for approval by Cabinet and recommendation for approval to Council.
 - The specific requirement for Qualis to approach Cabinet for any loans and give first refusal to EFDC to either provide these loans or approve another counterparty for the loans, (this requirement should be in the Qualis annual business, (with a commentary and recommendation provided by the Section 151 Officer).
 - The quarterly requirement for Qualis to provide a progress reports including standard financial and business measures, to Cabinet and through to Council, (with a commentary and recommendation provided by the Section 151 Officer).
 - The ad hoc ability for the Section 151 Officer to exercise the "open book" requirement and provide a report to the Cabinet as necessary.
11. In the main therefore the Section 151 Officer will act in accordance with already sanctioned, business case, budget and loans already agreed or approved by the Cabinet or delegated authorities to the s151 officer (both generally and in its capacity as Shareholder's Representative). The Shareholder Representative / the s151 officer will also bring to the attention of the Cabinet any significant issue or deviation from these approvals on the precautionary principle. (The Section 151 Officer's responsibilities are therefore as exercised in a way that they would be with any individual director or budget holder.)
12. In respect of any issue of concern or requiring a decision beyond the parameters of approvals previously provided by Cabinet and Council to the s151 Officer (in its capacity as Shareholder's Representative the Section 151 Officer will:
- Firstly, brief the Leader
 - Secondly, if requested set out the issue and decision to Cabinet or Full Council for approval in line with the mandates of the existing EFDC Constitution.
13. In summary the controls exercised over Qualis will be by means of approving a Qualis Business case together with a Qualis Budget and the separate controls over loans and by means of quarterly and ad hoc reports, i.e. very similar to the business arrangements that exist with direct services.

Qualis Board – Terms of Reference

14. The document attached to Appendix 3 of this document sets out the formality in how the Board should operate. These general guidelines will be adopted into a full Terms of Reference for the Qualis Group. It will be the responsibility of the Company Secretary to ensure good governance in line with the adopted Terms of Reference.

Qualis Group Board Members – Selection and Recruitment Process

15. The Directors of the Qualis Group Board will need to reflect the collective skills and experience required to successfully manage the activities of the Council companies.

16. Qualis Commercial Ltd will develop several council owned sites to deliver significant residential, retail and leisure amenities for the District. The estimated gross investment by the Council will be around £100m in the next five years, delivering a minimum 3% net return across the portfolio.

17. The current budget estimates expect Qualis to deliver:

- A return of £600,000 a year for four years in respect of working capital loan
- A return of £600,000 a year in perpetuity around new asset purchases (initially these have been purchased via the Council).
- A return £2,200,000 for 30 years in respect of loans given for developments
- A return £192,000 a year in leasing space and buying services from the Council.

18. In addition to the benefits set out within the budget the Council may also achieve:

- Additional dividends as properties are sold, potentially from 2022/23
- Possible savings in EFDC if further services and personnel are transferred to Qualis.

19. The table below sets out the proposed composition of the Group Board. The salaries have been externally benchmarked against existing salaries for similar roles and as such reflect the current market. Examples of Harlow and Gilston Garden Town, Cornwall Council Development Company and Executives across Health Boards have been researched and of equal importance the recruiters and search organisations who are approaching candidates on a frequent basis.

Role	Equivalent Days Per Week	Rate
Independent Non-Executive Director Chair of Board	1 day	£1000 / day
Independent Non-Executive Director (Development and Commercial expertise)	1 day	£500 / day
Independent Non-Executive Director (Services expertise)	1 day	£500 /day
Council Member	1 day	£500 / day
Council Member	1 day	£500 / day
Council Member	1 day	£500 / day
Executive Director Qualis Group Managing Director	Full Time	£125k salary
Executive Director of Operations Qualis Group	Full Time	£100k salary
Executive Director of Resources Qualis Group	Half Time	£50k salary
Executive Officer Council Appointee	1 day	£500 / day
Executive Officer Council Appointee	1 day	£500 / day

20. It is proposed that all members of the Board undertake the same recruitment and selection process. All posts will be advertised externally using an independent recruitment specialist company who will be working on behalf of Qualis Group. Due diligence will be undertaken at the selection stage and will pay attention to other commercial and development interests of potential candidates.

21. The final selection process to be undertaken by the Councils Senior Management Selection Panel. Recommendations to appoint will then be made to Full Council for approval.

22. It anticipated that this process will take six months or more to complete. There will be a period (whilst the full Board is recruited) within which an interim Board will need to be established to ensure key deliverables are achieved. The set-up of the Qualis Management company is underway with an operational date 'go live' of July 2020. The work to establish the full business cases for sites to be developed by Qualis Commercial is to be completed by March 2020. It is essential that the interim Board oversee this work over the coming months whilst the full recruitment process is underway.

23. The interim board will be operational from the approval of the 6th February Cabinet decision with full board director responsibilities in the new Ltd Company. Future incoming members of the Interim Board post February Cabinet will go through a Cabinet approval process following the same process. The Interim Board remuneration is in line with Group Board.

24. The interim Board would comprise of the following:

Role	Equiv Days per Week	Nominee
Independent Chair of Board	1 day	In recruitment
3 x Co Opted Council Members	1 day	Pro rata representation
2 x Co Opted Council Executives	1 day	Georgina Blakemore Sacha Jevans
Development Director Qualis	1 day	Chris Ives
Interim Managing Director Qualis Management	1 day	Glen Finch

25. In the interim period the existing Development Director (Chris Ives) and the interim Managing Director of Qualis Management (Glen Finch) will bring the Commercial and Services expertise to the Board that will be replaced by the two independent NED roles. The recruitment of the Qualis Group Board Chair will be prioritised with the view to being in post by the end of March 2020.

26. Members are recruited (with appropriate skills and experience) and paid in line with the independent Non Executive Directors. As Non Executive Directors legal advice will be provided to ensure all appropriate declarations are made in all roles. The Monitoring Officer, S151 and external legal advice has been sought in this regard.

Resource Implications:

The total Qualis Group Board costs (including the Interim Board) as set out in the table are contained within the Council budget 20/21 and medium-Term Financial Strategy.

Legal and Governance Implications:

All governance documents will be in place to enable the operational trading and have been reviewed by the Monitoring Officer.

Safer, Cleaner and Greener Implications:

Any construction through the development company will meet standards and requirements of the local plan.

Consultation Undertaken:

All Member workshop on the 3rd February with a presentation from the legal advisors Penningtons to cover all aspects of the governance documents contained within this report.

Background Papers:

Shareholder Agreement
Directors Roles and Responsibilities
Qualis Group Board Terms of Reference

Risk Management:

The Group Company Steering Group review and update the risk map on a regular basis. All risks are identified and mitigating actions put into place as appropriate.

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