

Report to the Cabinet

Report reference: C-040-2019/20
Date of meeting: 26 March 2020



Portfolio: Leader

Subject: Community Interest Company

Responsible Officer: S Jevans (01992 564229).

Democratic Services: A Hendry (01992 564246).

Recommendations/Decisions Required:

- (1) That Cabinet approve the set up of Qualis Community Interest Company in line with the following principles:**
 - a) To improve the economic, social and general wellbeing of the public through a sustainable approach to providing public infrastructure and services.**
 - b) To operate in the Epping Forest District Council area, adjacent authorities and broader East of England initiatives (with partners).**
 - c) For each defined project to set up a representative steering group that will make recommendations to the Qualis Community Interest Board (effectively the Qualis Group Board).**
 - d) Activity of the community interest company will be reported to the Council on a quarterly and annual basis in line with the proposals for the other Qualis group companies.**

Executive Summary:

The formation of the Qualis group of companies required the setup of Qualis Community Interest Company (CIC). A CIC will be registered as a Company Limited by shares and will need to describe the community or section of the community that the company's activities will benefit. This information will enable the regulator to decide the company's eligibility for CIC status.

The existence of such a company was deemed to allow public realm and public services to be delivered in a flexible way whilst being attentive to local need and being a useful vehicle for potential future schemes where community support was essential, e.g. solar farms and water management measures. The formation of such a company would also offer appropriate financial and tax flexibility.

In addition, the existence of a community interest company with the support of the Qualis Group but locally focused would allow it to immediately play a role in the Harlow and Gilston Garden Town Project. In addition, some of the Epping Town Centre sites and other potential developments across the district may have areas of public realm or community assets that would benefit from being operated through the Qualis community interest company.

Report

CICs were first established in the UK in 2005. Since then they have grown considerably both in number and in the diversity of the activities they undertake. The CIC legal structure supports a wide range of activities, they range from very small local projects to multi – million-pound health services covering many industry sectors.

CICs are limited companies which must operate to provide a benefit to the community however they are not strictly 'not for profit' as they can deliver a return to the investor. The primary purpose however is one of community benefit and not 'profit'. If an activity does generate a profit, then it can be used to reinvest in support services that are to the benefit of the community.

A CIC is regulated and will be required to submit an annual statement detailing the activities undertaken and how these have benefited the community. The creation of a CIC has several legal implications; the most important of these is the 'asset lock'. This is designed to ensure that the assets of the CIC (including any profits or other surpluses generated by its activities) are used for the benefit of the community.

The principal legislation governing CICs is covered under the Companies Act 2006, the Companies (Audit, investigations and Community Enterprise) Act 2004, and the Community Interest Company Regulations 2005.

Overview

CICs are a new type of limited company for organisations wishing to establish businesses which trade with social purpose, or to carry on other activities for the benefit of the community. The CIC will sit well with the other Qualis Limited Companies and provide a useful form for holding assets such as community halls and facilities, as well as trading in a conventional sense through the provision of goods and services.

Although a CIC is not a charity a CIC could be established in such a way that it could pass some or all some of its profits to its charity (if set up) to finance the charitable activities.

CICs must operate the following:

They are subject to an 'asset lock' which ensures that assets are retained within the company to

support its activities or otherwise used to benefit the community. As such CICs may not:

- transfer assets at less than full market value unless the transfer falls within a narrow range of permitted transfers such as to another asset locked body or for the benefit of the community.
- If the company constitution allows for the payment of dividends these will be subject to a cap that limits the amount of dividend payable. The cap applies to interest payments on loans where the rate of interest is linked to the CICs performance.
- On dissolution of a CIC any surplus assets must be transferred to another asset locked body once all liabilities have been met.

For Qualis Communities Ltd to register as a CIC it must adopt a suitable constitution in the form of Articles that comply with the CIC Regulations 2005 and meet the 'community interest test' to demonstrate to the regulator that the activities will be carried on for the benefit of the community.

A CIC is subject to regulation and will need to comply with the obligations. The CIC will operate in the same way that the other Qualis companies limited by shares; for example - the ability to enter into contracts and own assets in the company name; and flexibility in borrowing and fund raising. The separate legal entity means a CIC will continue to exist despite a change in ownership or management.

The CIC will produce accounts and annual returns in the same way that the Qualis Group of companies operates, and it is hoped that Qualis Communities Ltd will be established as a brand company that residents recognise, trust and whose social purpose is understood.

Steering Group

It is proposed that a representative Steering Group be established as each project is established. This will ensure that there is adequate local engagement inputting into the planning and development of each project. The details of these groups and how they operate will be developed in the set-up stage once the company has been registered and the first community benefit activity identified.

Reasons for Proposed Decision:

It is important that the Council take an active role in the social and community benefits for its residents and this approach will enable a company structure to achieve significant long-term advantages. The governance that sits around the existing Qualis Group of companies will provide the skills and experience to manage this new company.

Other Options for Action

Not proceeding with the set up of this company within the existing structure will mean that the Council potentially lose the community interest opportunities within Harlow and Gilston Garden Town. In the same way there will be many opportunities for the Council to create community benefit on existing council owned sites, for example the St John's Road development.

Resource Implications:

The total Qualis Group Board costs (including the Interim Board) are contained within the Council budget 20/21 and medium-Term Financial Strategy. The set-up costs of the proposed community interest company would be contained within the budget for the Group. The skills, staff and board already exist for the other companies.

Legal and Governance Implications:

All governance documents will be in place to enable the setup, registration and operational trading of the company and will be reviewed by the Council Monitoring Officer.

Safer, Cleaner and Greener Implications:

Any construction through the development company will meet standards and requirements of the local plan. The CIC will adopt the sustainability principles set out in the Local Plan and consider implications for each project undertaken.

Consultation Undertaken:

.
A stakeholder representative Steering Group will be established for each project as these are identified and commissioned. These groups will set the terms of reference for wider public consultation.

Background Papers:

None

Risk Management:

The Qualis Group Board will establish a framework for risk management across all the companies. A risk and Audit committee will be set up.

.