

**Minutes of an extraordinary meeting of the Board of Governors
held at 4.00 pm on Tuesday, 13 June 2017
1B27 - Technopark, SE1 6LN**

Present

Jerry Cope (Chair)
Andrew Owen (Vice-Chair)
David Phoenix
Steve Balmont
Michael Cutbill
Douglas Denham St Pinnock
Neil Gorman
Carol Hui
Kevin McGrath
Mee Ling Ng
Jenny Owen
Tony Roberts

Apologies

Temí Ahmadu
Shachi Blakemore
Hilary McCallion
Calvin Usuanlele

In attendance

Pat Bailey
Matthew Dunn
Mandy Eddolls
Richard Flatman
Ian Mehrrens
James Stevenson
Michael Broadway
Con Alexander (Veale Wasbrough Vizards)
Elizabeth Knight (Veale Wasbrough Vizards)

1. Welcome and apologies

The Chair welcomed governors to the meeting. The Chair welcomed Con Alexander and Elizabeth Knight from Veale Wasbrough Vizards LLP (VWV) who are LSBU's legal advisers for Project Larch.

The Board noted apologies from Shachi Blakemore, Hilary McCallion and Calvin Usuanlele and from Katy Elstrup from PricewaterhouseCoopers LLP (PwC) who had developed the full business case.

2. **Declarations of Interest**

The Board noted that Shachi Blakemore had previously declared an interest in the Transaction and that she had sent apologies for the meeting.

3. **Purpose**

The Chair noted that the following items had been circulated to the whole Board for information and discussed separately as part of two Board workshops on the project:

- an application submitted to the Department for Education by Lambeth College (“LC”) applying for funds to implement the outcome of the area review process;
- a letter dated 30 May 2017 from the GLA relating to the Lambeth College Nine Elms Skills Centre Grant Agreement

The Chair noted that the strategic case for the transaction had been discussed by the Board at its meeting of 19 May 2017.

The Board noted the minutes from the meeting of 18 May 2017. The Chair summarised decisions previously taken by the Board on Project Larch, as follows:

- that there was a strong strategic fit for building further education capability as part of the LSBU Family;
- the Board was largely content with the proposed Lambeth estates strategy; and
- the reputational risks to LSBU if a decision was made to “unwind” the transaction were manageable with an appropriate PR strategy.

The Chair explained that the purpose of the meeting was to consider and, if thought fit, conditionally approve arrangements whereby LSBU would enter into an agreement with LC under which LSBU would:

- obtain rights to appoint the majority of governors of the board of Lambeth in accordance with revised instrument and articles of government to adopted by LC on completion; and
- provide certain support, advice and guidance to LC under the terms of a collaboration agreement.

together the “Transaction”.

The Chair further explained that it was originally proposed to complete the Transaction as soon as reasonably practicable following a meeting of the LC board of governors on 15 June 2017. However, the Executive understood that the FE Commissioner had recently raised concerns with LC about the proposed governance structure of the College following completion. Completion would be delayed while the concerns were addressed.

Accordingly, the focus of the meeting was on whether:

- the Board had confidence in the business plan as set out in the full business case (FBC);
- the Board had confidence that LSBU could turn LC around without materially “diluting” LSBU business;
- there were any other “category A” risks that were not properly mitigated in the Board papers; and
- there were any additional conditions that needed to be met before the Board gave conditional authority to proceed.

4. Documents

The following documents were produced to the meeting:

- i. A strategic case for the Transaction prepared by Matthew Dunn;
- ii. the instrument and articles of government currently in place for Lambeth;
- iii. revised instrument and articles of government to be adopted by Lambeth on completion of the Transaction (the "**Instrument and Articles of Government**");
- iv. a draft collaboration agreement between LSBU and Lambeth setting out how the parties shall work together to achieve their common objectives (the "**Collaboration Agreement**");
- v. a legal due diligence report prepared by Veale Wasbrough Vizards LLP setting out the legal risks associated with the Transaction on the basis of information supplied by Lambeth and in accordance with the instructions given by LSBU;
- vi. a financial due diligence report prepared by PwC setting out the financial, VAT and other taxes, and pensions risks associated with the Transaction on the basis of information supplied by Lambeth and in accordance with the instructions given by LSBU;
- vii. a full business case prepared by PwC setting out the business case for entering into the Transaction;

- viii. an advice note prepared by Veale Wasbrough Vizards LLP on unwinding the Transaction should that be necessary in the future;
- ix. draft resignation letters to be signed by the current governors of Lambeth (with the exception of one staff governor and one student governor who will remain in office) effective from completion; and
- x. a final form governance agreement between LSBU and Lambeth setting out the terms of the Transaction (the "**Governance Agreement**") would be circulated to the Board;
together the "**Documents**".

5. **Transaction unit and "redlines" update**

The Board discussed the "redlines" as set out in the Board papers. In relation to redline 6 it was confirmed that the LPFA had indicated that there would be no cessation of LC pensions. Confirmation in writing was expected shortly.

The Board discussed mitigation of potential liabilities for LSBU governors serving on the Lambeth Board which would be addressed by Lambeth's Directors' and Officers' insurance. WV confirmed that LC governors would not incur personal liability for decisions taken before their appointment.

The Board agreed that the redlines had been adequately addressed with appropriate mitigations in place and confirmed that there were no additional conditions that needed to be met before proceeding with the Transaction.

The Board discussed the latest Ofsted report dated November 2016 for LC which graded the college as "requires improvement". The main challenges for Lambeth from the report were on culture, leadership and management. The Board noted the executive's assessment that these could be adequately addressed by LC in partnership with LSBU.

The Board noted LSBU staff concerns, which were principally about the association with FE and the impact on the LSBU brand. The Vice Chancellor reported that this would be addressed by maintaining Lambeth as a separate entity to deliver FE and developing the Lambeth College brand as separate but linked to the LSBU brand.

The Board discussed capacity in LSBU to facilitate LC's business recovery. It was agreed that as a strategic goal, it was appropriate for Executive members to devote an amount of time to the Project. The Board noted the Executive was ensuring there was a plan to manage LSBU capacity during the first three months of the Project.

The Board discussed LSBU's ability to "unwind" the Transaction if required as set out in legal advice from VWV. It was noted that in exercising its powers under the revised Instrument and Articles of Lambeth College, LSBU would have a duty to act in the best interests of Lambeth. LSBU would have no duty to act in the best interests in relation to termination of the Collaboration Agreement which would be on six months' notice by LSBU.

The Board emphasised the importance of a PR and communications strategy from Completion of the Transaction to mitigate any adverse press reporting if the Transaction was unwound in the future.

6. Project Larch full business case

The Board discussed the full business case which was divided into a strategic case, economic case, management case and financial case. The Board discussed scenario 2A from the case which assumed income growth of 50% and cost savings of 50% in Lambeth.

The Board noted the positive impact on LSBU group income without diluting LSBU's EBITDA or surplus.

The Board noted that the bid to the Transaction Unit (TU) would cover the £12m write off of debts to December 2017 and £13m cashflow requirement to 2020. A form of flexible, conditional grant rather than a loan had been requested in the application.

The Board approved the full business case.

7. Conclusions

In conclusion, the Board agreed that:

- it had confidence in the business plan as set out in the full business case (FBC);
- there was a fair prospect of LC's business recovery without materially diluting LSBU's business;
- the redlines had been adequately addressed with appropriate mitigations in place for the Transaction;
- subject to the outcome of the TU bid there were no other "category A" material primary risks apparent from the Board papers that were not properly mitigated; and
- the following additional conditions were required:

- an appropriate PR agency were engaged immediately and embedded in all future planning for the Project; and
- a plan to manage LSBU capacity in the first three months after completion was developed.

8. **Completion procedure**

After due and careful consideration of the Documents and the matters referred to in section 172 of the Companies Act 2006, it was resolved that the Transaction is expedient and in the best interests of LSBU (including its current and future beneficiaries).

It was further resolved that:

1. a sub-committee (the Committee) of Jerry Cope, Douglas Denham St Pinnock, Andrew Owen and David Phoenix be authorised to:
 - approve the terms of, and entry into the Governance Agreement and Collaboration Agreement (subject to any amendments that the Committee may in its discretion approve for and on behalf of LSBU) subject to (i) LC's board confirming that it is ready to complete; (ii) there being no material change to the redlines or the position of Lambeth; and (iii) the Committee keeping the Board updated;
 2. any two Governors (or any Governor in the presence of a witness) in the case of an agreement to be signed as a deed and any one Governor in the case of an agreement to be signed under hand are authorised to execute and complete the following for and on behalf of LSBU:
 - (a) the Governance Agreement;
 - (b) the Collaboration Agreement; and
 - (c) any other deeds, instruments, contracts or other documents necessary in order to give effect to the Transaction; and
- any Governor be authorised to take any other action that may be required (or authorise certain individuals to do so on the LSBU's behalf) as may be necessary or desirable to complete the Transaction for and on behalf of LSBU.

9. **Any other business**

In relation to the concerns raised by the FE Commissioner to LC executives on Monday 11 June 2017, LSBU executive is reviewing the level of resource allocated to joint activity prior to further clarification being received.

In addition, LSBU will develop the agreed joint strategic vision with LC about an innovation zone in LSBU's three local boroughs.

Date of next meeting
4.00 pm, on Thursday, 13 July 2017

Confirmed as a true record

..... (Chair)