**ESCG Extraordinary Board Meeting**

**MINUTES**

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| Date | 31 January 2022 | Time | 09.00 |
| Venue | Zoom | | |
| Chair | David Smith | | |
| **Membership**- David Smith (Chair), Rebecca Conroy, Mark Fisher, Ian Mehrtens, Gill Short, Marie Sangster, Steve Hedges, Graham Cook, Catherine Manning, Angela Smith, Alex Cheeseman, Priscilla Kendall, Averil Price, Becky Cooke, Nicola Taylor, Len Senior, James Cooper-Lloyd  In attendance – Tim Hulme, Martin Penny, Mark Wardle, Nicola Wakefield (Mazars); Sarah Connerty | | | |
| **Apologies:** Alex Cheeseman; Steve Hedges; Nicola Taylor, Tim Hulme | | | |

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|  | Item | Paper |
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| 1.1 | **Welcome, apologies and introductions**  The Chair welcomed colleagues and thanked them for attending extraordinary meetings outside of the calendar.  The Chair welcomed NW from Mazars who will report directly on the accounts which will be lodged with the Agency. The College asked for an extension from the national deadline from the 31 December.  It is also important to bring the Board up to speed on negotiation of sale of the Chalk Pit which is a key part of creation of funds to proceed with the estates strategy and help with the cash position.  There will be a formal report from AS and the ARaC on the Committee’s business during 2020-21.  The Chair welcomed Len Senior the new Student Governor who is an Eastbourne student studying Creative Media in the final year at Level 3. LS is a course rep and peer coach and is excited to see what the Board is like.  Apologies were received from AC and SH. JCL and TH did not attend the meeting. GS will arrive 10 minutes late and IM did not attend the meeting at the start. |  |
| 1.2 | **Declarations of Interest**  There were no declarations received. |  |
| 1.3 | **Written resolution: sign and seal** **of the documents relating to the sale of the Chalk Pit – Willingdon Road**  The Chair noted that the Board approved the use of the seal on the sale documents by written resolution.  [GC joined 09.09]  RC reported that the Chalk Pit is a piece of unused land with an advised value of £750-900k. ESCC have a 32% call on price received for the land. It went out to market and the College received a significant offer of £1.8m, and at the March 2021 meeting the Board approved to go forward with the sale and this was delegated to the (then)Transformation Committee to take forward. RC reported that the structure of the offer changed in November/December and the buyers have now offered a first payment of £1m followed by a second payment of up to £800k which the local authority have a 32% share of. There is more risk on this second payment and that is still in negotiations with the purchaser. There is a meeting with the College solicitor and agent to push this sale forward. The College want the land receipt and are dependent on that income to fulfil cash flow forecasts already made to Provider Market Oversight team.  RC noted that even if £1m is secured that represents good value as against original valuations received but it is important for the Board to be aware of the level of risk around the second payment. The solicitor refers to the second payment as overage but irrespective of this there is a level of risk. It was noted that IM as Chair of the CDB is not yet in attendance at the meeting to report.  GC reported that he understood it was a payment in two phases; phase one to acquire the site and phase two when the buyer received planning permission. RC noted that the level of risk was always greater on the second payment and that has shifted quite considerably in recent weeks. The level of risk on the second payment has not been sufficiently communicated with CBD. The solicitors’ point of view is that this is a deteriorating commercial position for the second payment. GC confirmed that CDB were not aware of this risk. The Chair noted that TH would normally be at this meeting but was not in attendance due to a family bereavement. The Board passed on their condolences to TH and the family.  RC noted that the view of the agent is it is much better value for money to go with the first payment and the risks around the second rather than going back out to market.  AS raised questions about process noting this should not have come out as an electronic resolution and it needs substantial assurance. If the confirmed offer of £1.8m was above market price that has all sorts of implications for the risks involved. AS thanked the Exec for bringing forward these issues and noted that all sorts of further thinking is needed for the land to be sold at a reasonable price but not at this point. AS noted that she withdrew her support for the electronic resolution. [After note: the electronic resolution is for use of the seal that remains in place as and when required. The prior resolution around approval for a sale of £1.8m passed by the Board in March 2021 requires further work from the Exec with a revised resolution on the sale price if necessary].  [IM joined 09.19].  MF confirmed that there was no understanding on this position by the Finance Committee and noted he was very concerned about moving forward.  GS asked where the market is now, is there another buyer that could be approached and could the College get planning permission itself.  The Chair provided an update for IM explaining that AS and MF are very concerned about the position on the Chalk Pit sale and GC and MF have noted that the CDB and Finance Committee were not aware of the risk around the second payment.  IM noted that there are two issues. Firstly, is the communication around the certainty of the second payment. That is a conversation for RC to have with TH to clarify. The second issue is the sale price and two payments and IM had a pragmatic position on the payments. The £1m exceeds the valuation of the property advisors. This would constitute due diligence and best value for the site. The College could go out to market but this will have implications on buyers and the sector. The advisors are saying that the College is unlikely to receive an offer more than £1m. IM noted that he is discounting the second payment of £800k now. The market for land is unsure. IM noted that the College could get planning permission to increase the value of the site but there would be significant cost.  IM noted that his view is still to push forward; the College needs the cash and is recommending doing the best deal for the College.  MP reported on the cash flow. There had always been £690k going into the cash flow as a likely sum to be received before the 31 March and MP had moved the second payment beyond the 31 March as it was not clear when the planning permission would be received. The £690k (the net of the £1m) is key and if it does not arrive before the 31 March 2022 the College will have to manage. There is a £2.5m revolving cash facility and a £1m overdraft but the College will manage creditors through this period. MP confirmed that adequate cash flow is not reliant on the sale. The masterplan submitted to PMO is reliant on the sale to feed into curriculum development and IT development. The sale would pay the consultant fees for the development plan and that is key for CDB and the capital project.  **ACTION**: RC noted that she would reflect on that agreement and ensure the PMO is kept up to date on the position when this is clarified.  BC noted that she was unsure on the detail of the risk around the £800k.  IM reported that the understanding is that the £800k is largely based on the developer getting approval to move trees to get more houses on the site. The survey the College had done did not identify any issues regarding rare or protected trees but this is not yet confirmed.  RC reported that the solicitors are still in negotiation. Their view is that the buyers are adding more clauses that raises the unlikelihood of the second payment. At this stage those negotiations are not finalised.  The Chair summarised that there is some sense that the Board believes that it was given reasonable comfort of £1m and a payment up to £1.8m. The Chair of ARaC and Finance Committee have given clear views at this meeting that the approval is not what was brought to the Board in March and therefore cannot be relied upon at this time. The Chair of CDB has given the strong argument that the College will already have secured best value for the site with the first payment of £1m.  **ACTION**: RC and MP will take forward the next stage of negotiations and come back with a firmer view.  The Chair noted that this would entail conversations with key committee chair members prior to wider scrutiny by the full Board. RC agreed to take this forward.  IM noted that the Board need to be prepared for a very swift conclusion. | RC  RC/  MP |
| 2.1 | **College year end audited accounts 2020-21 including financial statements and regularity auditor’s management letter**  The Chair reported that Mazars are in attendance in line with the revised position in the Audit Code of Practice for auditors to present findings to the full Board.  AS reported that a joint meeting of the Finance Committee and ARaC had taken place and a number of small changes were made to the financial statements and allowances made from the final audit work. All those changes have been made and the Committees recommended the Board to approve the accounts, financial statements and regularity auditor’s management letter.  A draft Audit Completion report came to the joint meeting and there are matters in there to follow through and a further joint meeting of the ARaC and Finance Committee is being scheduled. The ARaC felt this was a concern in relation to controls but not for signing of the accounts.  The IA report was positive and the controls of the College have improved over the year which is pleasing.  MF noted that is a good summary and asked for confirmation that all the changes requested have been put through.  MP noted the cover paper. There were detailed notes from the joint meeting and all the changes have been picked up with the exception of the item on risk which has been strengthened but no further detail was added as the details around risk are available through the Committee and monitoring. There is a new section on the Ofsted outcome. There are two big changes in the figures. The ESFA additional income is recognised in the accounts. The ESFA did try hard to provide more definitive figures but they have still not seen the PWC or PMO report. It was agreed with Mazars that there is not sufficient evidence to back up contingent liability for one of the clawback figures. The investigation is now in the third year and is an ongoing issue.  In terms of Financial Health, the College is graded as Good for 2020-2021.  The Chair noted that it is an ESFA requirement in regard to audit that the Board should hear directly from the auditors of the annual accounts asked NW to report.  NW reported that it has been a tricky process and it is appropriate to sign off today. There is a detailed report paragraph on difficulties encountered and Mazars will work through process and control points in more detail with the ARaC. In terms of the work being done, Mazars is now happy with the accounts and final items concluded since the ARaC. The audit completion report will be filed with the accounts as a summary around controls but not process.  The Chair summarised that that the Committees are recommending approval of the accounts and financial statements. A number of control points will be looked at by a further joint committee meeting. MP has given assurance that required updates from the Committees have been put into force. Mazars feel the statements and accounts represent an accurate picture, albeit taking longer than expected.  AP noted that there are many actions and asked for assurance that there is capacity in the Finance Team to address these. MP noted that a lot of the work is underway, the work around assets is now a completed action plan that the Finance team are taking forward with Estates. There is a full Finance team in place, many lessons have been learnt and the team are working on the actions.  AS reported that at the joint meeting it was felt the priority was to stop the meeting in order that the auditors and Exec could work on timescales for submission. Another joint meeting of ARaC and Finance will take place to consider the audit completion report and other items not covered. Due to circumstance, this will take place in late February/early March.  It was confirmed that the College had secured an extension for submission until the end of February but that Executive feel that it is possible to submit now.  **RESOLVED: The Board approved the** **College year end audited accounts 2020-21 including financial statements and regularity auditor’s management letter** |  |
| 2.2 | **Annual Report of the Audit, Risk and Compliance Committee**  AS reported that there has been a full schedule of meetings this year. Colleagues are invited to join the meeting as attendees. The ARaC is firm and collaborative, compliments when it can and criticizes when it must.  All Board members are aware of the importance of student recruitment, that is a significant risk, and the ARaC feels it needs to raise in the report the effectiveness of the actions from management.  VfM requires comment in the annual report. ARaC are not able to do that today because the report was not considered and is coming to a ‘to be scheduled’ joint meeting of Finance and ARaC Committees.  The overall opinion is mindful of the draft audit completion report and doesn’t change key (eg ‘going concern’) opinions. The apparent overspend on capital work is also noted in the report and did not alter the conclusions of the report.  The Chair passed on thanks for AS’s leadership of the ARaC and all the other members. The Chair noted that he has attended from time to time and this is a good description, at the standing invite of ARaC as it is not good practice for Chair of |Board to be a member of the ARaC and the Board is well advised by the Committee.  **RESOLVED: The Board approved the** **Annual Report of the Audit, Risk and Compliance Committee**  The Chair thanked NW for the support working through this process.  [NW departs: 09.55] |  |
| 2.3 | **Salix Fund- Proposed De-carbonisation Project**  **Approval of appointment of MCD as main contractor.**  RC noted that the College has received a significant grant.  The pressing nature is the timeline of the project. The spend needs to be committed by the end of March 2022.  The project will add enormous value for the green agenda and cost savings.  It was discussed in detail at the CDB last week.  IM reported that MCD were appointed under a competitive tender for previous works. There was a need for speed because of the grant funding. TH negotiated a rate with MCD. The Committee asked directly if that was within the Financial Regulations and MP confirmed it was.  GS questioned the reference in the paper to Wilmot Dixon and noted that they are not the confirmed developers, IM agreed and noted that the comment in the paper is an aspiration and covers the redevelopment proposals for the whole site. There has been a shift away from residential to commercial but the final plans have not yet been received. GS asked if the sentence will be redacted and IM confirmed that the statement can come out of the paper. It is a background to the whole project work but is unnecessary for the context of this item.  The Chair thanked GS for spotting this. It is not relevant to determination on the appointment of MCD but is an important sign of needing to get full Board assurance about the way the project is being handled. It is an example where there is cause for some doubt on matters coming to the Committee and Board.  AP asked how much of this money needs to be spent by the 31 March 2022 and how will this be achieved if planning permission is required. RC noted that there isn’t planning permission required for Salix. IM noted that the paper was presented to the CDB conflates a number of areas and this is about approval of a contractor to deliver a particular project. AP pointed to the comment in the paper about this. IM confirmed that the works are on College land and all the money has to be committed by the end of March. MP reported that all invoices have to be dated before the end of March to receive the funding.  The Chair noted that RC will speak to various members about getting clarification around the points in the paper.  AP agreed there are lots of questions in the report but was happy to approve the item.  **RESOLVED: The Board approved the appointment of MCD as the main contractor on the Salix grant de-carbonisation project**  [PK departs: 10.07] | TH  RC |
| 2.4 | **New Student Local College Board members:**  **Eastbourne**  Emily Clark  **Hastings**  Simone Jeal  Isabella Bennett  **Lewes**  Sam Warrington  Alastair Ewen  SC reported that the previous Director of Governance had commenced the process for appointment of student LCB members. Kate Edwards led the process promoting the student roles at the student council meetings, received expressions of interest and selected students for the Board to agree. LCB chairs confirmed they were delighted to welcome new students to their respective LCBs.  GS noted that Lewes already has two student LCB members so would request that three students sit on the Lewes LCB or the posts are staggered. SC noted that the roles are not governor roles and the terms of reference can be flexed for a limited period of time to support students and the student voice at the agreement of the LCB.  The Chair noted that the Board will need to work with LS. The Chair asked LS if it is going to be possible to build a relationship between student governors and student LCB members. LS noted that he has just started and is eager to learn. It would be easy to have a student network such as a google classroom forum and would like to take this on to ensure students are all on the same page.  The Chair reported that Belle Howard has been appointed and will work with the students to support this proposal.  GS noted that there is a student rep on C&S to be added into this group. The new student link governors could also be included. GS noted that the student voice is not quite joined up yet and this would be a good move forward.  **RESOLVED: The Board agreed the appointment of the student LCB members.** | BH  BH |
| 4.1 | **Search, Performance and Remuneration Committee minutes - 13 January 2022**  The Board noted the minutes. |  |
| 4.2 | **Governance arrangements and onboarding**  SC reported that the paper came to SPR Committee and is included to provide the Board with assurance on the Chair and Director of Governance onboarding.  The Board resolved that a robust handover in particular handing over relevant sector membership and networking from the Chair to the Chair Designate was undertaken. A meeting took place last Friday to take this work forward and the Chair has provided updates around these areas.  The Chair reported that CM has an important role in this process as Chair of the appointments panel and is leading on this work.  SC reported that the Board had asked that the Board leads by example by ensuring that the new Director of Governance is well supported and trained up particularly around the FE sector. This is being taken forward and BH has been proactive in looking at development opportunities. A meeting is taking place this Thursday with BH, the Chair, Vice Chair, CEO and SC.  The Chair noted that the arrangements in place means that a potentially volatile situation feels to be going reasonably smoothly.  IM noted that he and DS are planning a series of meetings to handover.  GS noted that the student voice has got a bit lost and the more opportunity the better to hear from our students. MW reported that the previous Director of Governance had set up theme meetings on top of the formal meetings for student voice. **ACTION:** MW agreed to have a think about how many meetings would be most effective and it was agreed to take a programme to C&S. | MW |
| 5.1) | **Any Other Business**  The Ofsted result is covered in the local press.  There were no other items raised. |  |
| 5.2) | **Meeting Evaluation**  Did the agenda and papers arrive 7 days in advance? Yes  Were the agenda and papers written with clarity? The agenda and a number of papers were. There were concerns about some of the papers.  Were the issues considered at the meeting appropriate? Yes  Did you have all the information you needed to fully participate in the discussion and decision? No (Chalk Pit item)  Was sufficient time available for thorough debate? Yes  Were you satisfied that the decisions were arrived at in a proper manner? Yes  Were you able to express your views? Yes  Was the meeting chaired effectively? Yes  The Chair thanked staff and officers for their contributions to the meeting and LS for his first meeting. LS noted that he is looking forward to working with the Board.  Staff and student governors and officers to depart for the Closed C section of the meeting. [10.23] |  |

Meeting closed: 10.40