

Agenda Item 7a



SIGNED OFF BY	Head of Legal and Governance
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TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 7 November 2019
EXECUTIVE MEMBER	Other, Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Greensand Holdings Limited Shareholder Consent Matter - 7 November 2019
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RECOMMENDATIONS
<p>(i) That the Commercial Ventures Executive Sub-Committee, in its capacity as the Council's shareholder representative for Greensand Holdings Limited (the Company), approve the increase in Greensand Holdings Limited borrowing limit by signing the shareholder written resolution, as set out in the accompanying exempt report in the Part 2 section of this agenda.</p>
REASONS FOR RECOMMENDATIONS
<p>The Commercial Ventures Executive Sub-Committee are asked to consent to the increase in the Company's borrowing limit and sign the shareholder written resolution, in order to be compliant with Clause 15.1 and Schedule 1, (5) of the Shareholder Agreement dated 6 April 2017 between the Council and the Company. The borrowing limit was increased following the Executive approving, on 19 September 2019, a loan of funds to the Company</p> <p>This will support the good governance of the Council-owned company and the Council's commercial activities.</p>
EXECUTIVE SUMMARY
<p>Following receipt of approval at the Executive Committee on 19 September 2019 for a loan of funds to the Company, the Company borrowed from the Council in line with the loan</p>

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agreement which was signed on 25 October 2019.

Schedule 1, (5) of the Company's Shareholder Agreement, dated 6 April 2017, requires shareholder consent to take any borrowing outside of the limits specified in the Business Plan. Clause 15.1 of the Shareholder Agreement requires shareholder consent to be in writing and the Commercial Ventures Executive Sub-Committee are therefore being asked to approve the shareholder written resolution set out in the accompanying exempt report in the Part 2 section of this agenda, in their capacity as shareholder representative.

The Commercial Ventures Executive Sub-Committee has authority to approve the above recommendations.

STATUTORY POWERS

1. Section 1 of the Localism Act 2011 gives local authorities a general power of competence that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation. Section 4 of the same Act directs that anything which is done for purely commercial purposes should be done through a company structure.
2. Companies and the rights of shareholders are governed by the Companies Act 2006.

BACKGROUND

3. At its meeting on 30 June 2016, the Executive authorised the creation of a local authority trading company, Greensand Holdings Limited, and originally delegated the shareholder function of the Council with regard to this company to the Property Executive Sub-Committee, and subsequently to the Commercial Ventures Executive Sub-Committee.
4. Following the dissolution of the Property Executive Sub-Committee and the Health and Wellbeing Executive Sub-Committee at its meeting on 30 May 2019, the Executive authorised the creation of a Commercial Ventures Executive Sub-Committee for the purpose of monitoring the performance of, and take decisions on, the Council's existing and potential commercial ventures and other investments. This includes undertaking all functions of the Council as a shareholder under the Companies Act 2006 in relation to those companies or partnerships owned, or part owned, by the Council, except as otherwise specified.
5. At the Executive Committee meeting on 19 September 2019 it was agreed, subject to due diligence which has been provided to Councillors Brunt and Archer by the Head of Legal and Governance, The Head of Legal and Governance, in consultation with the Head of Finance and Assets, the Leader of the Council, the Members of the Commercial Ventures Executive Sub-Committee, and the Executive Member for Place and Economic Prosperity were authorised to finalise and enter into a loan agreement with Greensand Holdings Limited.

OPTIONS

6. **Option 1:** To approve the increase in the Greensand Holdings Limited borrowing limit by signing the shareholder written resolution, as set out in the accompanying exempt

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report in the Part 2 section of this agenda. **This is the recommended option** in order to comply with the requirements of the Shareholder Agreement between the Council and the Company and support the good governance of the Council-owned company;

7. **Option 2:** To not approve the increase in the borrowing limit by not signing the shareholder written resolution, and to do nothing. **This is not the recommended option** as it would be in breach of the Shareholder Agreement and would not support the good governance of the Council-owned company.

LEGAL IMPLICATIONS

8. As set out in the Statutory Power section of this report, Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the 'general power of competence'. A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others; i.e. this includes the setting up of companies as alternative delivery vehicles to exercise its powers and duties. In exercising this power, a local authority is still subject to its general duties (such as the fiduciary duty it owes to its rate and local tax payers and to the public law requirements to exercise the general power of competence for a proper purpose).
9. Companies and the rights of shareholders are governed by the Companies Act 2006.
10. The recommended actions are within the requirements of the relevant legislation and there are therefore no direct legal implications of this report.

FINANCIAL IMPLICATIONS

11. As identified above, the local authority is subject to its fiduciary duty to its rate and local tax payers, and this should be considered when undertaking any commercial activities.
12. As identified, the Head of Legal and Governance was authorised to finalise and enter into a loan agreement with the Company on 19 September 2019. The identified financial implications of this agreement were set out in the report supporting this decision, and there are not considered to be any further direct financial implications of this report.
13. Additional financial information is set out in the accompanying exempt report in the Part 2 section of this agenda.

EQUALITIES IMPLICATIONS

14. There are no direct equalities implications of the recommendation and it will have no negative or discriminatory effects upon any individuals with protected characteristics.

COMMUNICATION IMPLICATIONS

15. There are no direct communication implications as a result of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee shall have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to

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receive company specific information.

RISK MANAGEMENT CONSIDERATIONS

16. All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee should consider these as part of the decision making process for any decisions relating to companies owned or part-owned by the Council.
17. In monitoring the performance of companies owned or part-owned by the Council, the Commercial Ventures Executive Sub-Committee has regard to the fiduciary duty the Council owes to its rate and local tax payers, to the public law requirements to exercise the general power of competence for a proper purpose, and the requirements of the Commercial Governance Framework which forms part of the terms of reference of the sub-committee.

CONSULTATION

18. The Members of the Commercial Ventures Executive Sub-Committee are consulted on an ongoing basis as to the performance and actions of companies owned or part-owned by the Council, along with other Members of the Executive or wider Council where appropriate.

POLICY FRAMEWORK

19. The recommendations of this report are not in conflict with the Council's Policy Framework.
20. All actions undertaken by the Council shall have regard to the objectives of the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute.