

Addendum

Partner, Shareholder and Trustee Executive Sub-Committee

Dear Councillor,

Partner, Shareholder and Trustee Executive Sub-Committee - Thursday, 14 September 2023, 6.30 pm

I enclose, for consideration at the meeting of the Partner, Shareholder and Trustee Executive Sub-Committee to be held on Thursday, 14 September 2023 at 6.30 pm, the following reports which were unavailable when the agenda was published.

Mari Roberts-Wood
Managing Director

4. Shareholder Actions: Greensand Holdings Limited(Pages 3 - 38)

To receive and approve the Shareholder Actions – Greensand Holdings Limited.

For enquiries regarding this addendum;

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Signed off by	Chief Finance Officer
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To	Partner, Shareholder and Trustee Executive Sub-Committee
Date	Thursday, 14 September 2023
Executive Member	Portfolio Holder for Commercial & Community Assets

Key Decision Required	N
Wards Affected	(All Wards);

Subject	Shareholder Actions - Greensand Holdings Limited
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<p>Recommendations</p> <p>That the Partnership, Shareholder and Trustees Executive Sub-Committee:</p> <ul style="list-style-type: none"> (i) Receive the Company's Directors' Report and Audited Financial Statements for the year ended 31 December 2022 as set out in the exempt Annex 1 at Part 2 of this agenda; (ii) Approve the re-appointment of Kreston Reeves LLP as auditor for Greensand Holdings Limited for the year to 31 December 2023; (iii) Authorise the Directors of the Company to fix the auditors' remuneration for the year to 31 December 2023 as set out in the exempt Annex 2 at Part 2 of this agenda; and (iv) Authorise the Portfolioholder for Commercial & Community Assets to sign, on behalf of the Council as shareholder, the Shareholder Ordinary Resolution as set out in the exempt Annex 3 at Part 2 of this agenda, confirming approval of recommendations (i) to (iii) above.
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Reasons for Recommendations
<p>The Partnership, Shareholder and Trustee Executive Sub-Committee, as the Council's shareholder representative for Greensand Holdings Limited ('the Company'), is required to acknowledge receipt of the Directors' Report and Audited Financial Statements for the year ended 31 December 2022 to comply with the Company's Shareholder Agreement.</p> <p>The shareholder representative is also required to approve the re-appointment of Kreston Reeves LLP as auditor for the Company for the year to 31 December 2023 to comply with Section 485 of the Companies Act 2006. The Company's Directors have confirmed they are happy to re-appoint Kreston Reeves LLP as they are satisfied with their performance.</p> <p>The shareholder representative is also requested to approve that the Company's Directors fix the auditors' remuneration for the year to 31 December 2023 to comply with Section 492 of the Companies Act 2006.</p>
Executive Summary
<p>The Partner, Shareholder and Trustee Executive Sub-Committee is required to consider the actions set out in the Recommendations in its capacity as shareholder representative for Greensand Holdings Limited in order that the Company can meet its statutory obligations.</p>
The Partner, Shareholder and Trustee Executive Sub-Committee has authority to approve the above recommendations.

Statutory Powers
<ol style="list-style-type: none">1. Section 1 of the Localism Act 2011 gives local authorities a general power of competence to do anything that individuals generally may do, where this is not prohibited by other legislation. This includes the power to set up alternative delivery vehicles to exercise its powers and duties.2. Section 4 of the Localism Act 2011 stipulates that where in the exercise of the general power a local authority acts for a purely commercial purpose, the authority must do so through a company.3. Companies and the rights of shareholders are governed by the Companies Act 2006.
Background
<ol style="list-style-type: none">4. At its meeting on 30 June 2016, the Executive authorised the creation of a local authority trading company, Greensand Holdings Limited and delegated the shareholder representative function to the relevant Committee.5. On 30 May 2019, the Executive authorised the creation of the Commercial Ventures Executive Sub-Committee (now the Partnership, Shareholder and Trustee Executive

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Sub-Committee) for the purpose of monitoring the performance of, and taking 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.

Key Information

Conflicts of Interest

6. When voting as a Director or Board Representative on company matters, the Council's representatives must have regard to the rules on declaring interests as set out in the Articles of Association for Greensand Holdings Limited ('the Company') and on any restrictions on voting in certain circumstances.
7. The duty toward the company only applies when the individual is acting in this capacity. When at authority meetings or acting in their role as a local authority officer or elected member they must act in the best interests of the Council, subject to confidentiality of information as required by the Company.
8. When any decision relating to the Company is being considered by the Executive or the Partner, Shareholder and Trustee Executive Sub-Committee, Member Directors should, in accordance with the Lawyers in Local Government's *Code of Governance for Local Authority Interests in Companies* and Part 2(5)(3) of the Member Code of Conduct, declare such interest and not be party to making a decision of the Council affecting the company. They may provide evidence or advice to the Council on the Company's behalf when invited to do so.

Options

The Partnership, Shareholder and Trustee Executive Sub-Committee has three options

Option 1: Approve the recommended actions in order that Greensand Holdings Limited can meet the requirements of the Companies Act 2006 in respect of the Directors' Report and Audited Financial Statements for the year ended 31 December 2022; appointment of auditors; and auditors' remuneration.

This is the recommended option to ensure Greensand Holdings Limited is governed correctly and meets the statutory requirements.

Option 2: If, after reviewing the recommendations and supporting documentation, changes are required, the Partnership, Shareholder and Trustee Executive Sub-Committee should request the necessary changes be made and approve the actions subject to those amendments.

Option 3: To not approve the recommended actions. This is not the recommended Option as it would delay filing of the Company's accounts.

Failure to file accounts is a criminal offence and the Directors of the Company will not be able to carry out their statutory duties and will be in breach of the Companies Act 2006 and the Shareholder Agreement. The Directors can be personally fined in the criminal courts and the company

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struck off the Register of Companies if accounts are not lodged with Companies House by the specified deadline.

Legal Implications

9. 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; ie 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).
10. The Company's Directors can be fined in the criminal courts and the company struck off the Register of Companies if accounts are not lodged with Companies House by the specified deadline
11. Failure to pay a late filing penalty can also result in enforcement proceedings. Criminal proceedings taken as a result of non-filing of company accounts is separate from, and in addition to, any late filing penalty imposed for filing accounts late. The Registrar of Companies may also take steps to strike a company off the public record if documents are delivered late.

Financial Implications

12. This report does not have any direct financial implications for the Council. The Council's company investments are reported in its annual statement of accounts.
13. The Company's Report and Audited Financial Statements for the year ended 31 December 2022 must be approved and lodged with the Registrar of Companies before 30 September 2023 in order to avoid late filing penalties.

Equalities Implications

14. The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
 - Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - Advance equality of opportunity between people who share those protected characteristics and people who do not;
 - Foster good relations between people who share those characteristics and people who do not.
15. The Partner, Shareholder and Trustee Executive Sub-Committee should therefore ensure that it has regard for these duties by considering them through the course of its work.

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Communication Implications
16. The Partner, Shareholder and Trustee Executive Sub-Committee should have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company specific information.
Environmental Sustainability Implications
17. There are no direct environmental sustainability implications arising from this report.
Risk Management Considerations
18. All commercial ventures and investment activities contain an element of risk, and the Partner, Shareholder and Trustee Executive Sub-Committee should consider these as part of the decision making process for any decisions relating to commercial ventures and investment activities.
Background Papers
None

Exempt Annexes

1. Greensand Holdings Limited - Draft Directors Report and Audited Financial Statements for the year ended 31 December 2022.
2. Greensand Holdings Limited - Kreston Reeves – Proposed Audit Fees 2023.
3. Greensand Holdings Limited - Shareholder Ordinary Written Resolution 2023.

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