

Commercial Ventures Executive Sub- Committee Agenda

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22 January 2020

To the Members of the **COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE**

Councillors:	T. Archer	Portfolio Holder for Investment and Companies
	T. Schofield	Deputy Leader and Portfolio Holder for Finance
	M. A. Brunt	Leader of the Council
	V. H. Lewanski	Portfolio Holder for Corporate Direction and Governance

For a meeting of the **COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE** to be held on **THURSDAY, 30 JANUARY 2020 at 6.30 pm** or on the rising of the Commercial Ventures Executive Sub-Committee, if later, in the Executive Meeting Room - Town Hall.

John Jory
Chief Executive

If you need this agenda in an alternative format, please refer to the information on the final page.

Notice is given of the Executive's intention to hold part of its meeting on Thursday, 30 January 2020 in private for consideration of reports containing "exempt" information

1. **MINUTES OF THE PREVIOUS MEETING** (Pages 5 - 8)

To approve the minutes of the previous meeting as a correct record.

2. **APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

3. **DECLARATIONS OF INTEREST**

To receive any declarations of interest.

4. **JOINT VENTURE - RAVEN HOUSING TRUST AND REIGATE AND BANSTEAD BOROUGH COUNCIL** (Pages 9 - 32)

5. **ACQUISITION OF PROPERTY IN EARLSWOOD AND WHITEBUSHES** (Pages 33 - 44)

6. **INVESTMENT AND COMPANY GOVERNANCE AND RESOURCING** (Pages 45 - 54)

7. **SHAREHOLDER ACTIONS - 30 JAN 2020**

8. **INVESTMENT OPPORTUNITIES - 30 JAN 2020**

9. **PROPERTY ACQUISITIONS AND DISPOSALS - 30 JAN 2020**

10. **LOANS, GRANTS AND DRAW DOWN AGREEMENTS - 30 JAN 2020**

11. **ANY OTHER BUSINESS**

To consider any other urgent business.

12. **EXEMPT BUSINESS**

RECOMMENDED that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- i. it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and
- ii. the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

13. **JOINT VENTURE - RAVEN HOUSING TRUST AND REIGATE AND BANSTEAD BOROUGH COUNCIL - EXEMPT**
14. **ACQUISITION OF PROPERTY IN EARLSWOOD AND WHITEBUSHES - EXEMPT**
15. **SHAREHOLDER ACTIONS - 30 JAN 2020 (EXEMPT)**
16. **INVESTMENT OPPORTUNITIES - 30 JAN 2020 (EXEMPT)**
17. **PROPERTY ACQUISITIONS AND DISPOSALS - 30 JAN 2020 (EXEMPT)**
18. **LOANS, GRANTS AND DRAW DOWN AGREEMENTS - 30 JAN 2020 (EXEMPT)**

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Commercial Ventures Executive Sub-Committee
5 December 2019

Minutes

BOROUGH OF REIGATE AND BANSTEAD

COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE

Minutes of a meeting of the Commercial Ventures Executive Sub-Committee held at the Executive Meeting Room - Town Hall on 5 December 2019 at 6.30 pm.

Present: Councillors T. Archer (Chairman), T. Schofield (Vice-Chair), M. A. Brunt (Leader) and V. H. Lewanski.

Also present: Councillors N. D. Harrison.

50. MINUTES

RESOLVED to approve the minutes of the meeting held on 7 November 2019 as a correct record.

51. APOLOGIES FOR ABSENCE

There were no apologies for absence. Councillor M Brunt joined the meeting at 1831.

52. DECLARATIONS OF INTEREST

There were no declarations of interest.

53. PROJECT BASEBALL

Councillor T Archer, Portfolio Holder for Investment and Companies, presented the report on Project Baseball and explained that full details of the project were set out in the exempt report in the Part 2 section of the agenda.

RESOLVED that:

- a) the Director of Place, in consultation with the Head of Legal and Governance, the Head of Finance & Assets, the Chair of the Commercial Ventures Executive Sub-Committee and the Executive Members for Place & Economic Prosperity, Finance and Neighbourhood Services be authorised to proceed with the next planned activities associated with the identified opportunity, as referred to in the Part 2 section of this agenda, as a strategic project to support the delivery of the Council's Corporate Plan objectives.
- b) the pursuance of the planned activities would be funded from the Corporate Plan Delivery Fund in order to support delivery of the Corporate Plan and Investment Strategy, as set out in the Part 2 section of this agenda.

Reason for decision: To support the Council's Corporate Plan objectives as set out in the exempt Part 2 section of this agenda.

Alternative options: To not authorise the pursuance of the project. This is not the recommended option as it would not support the Corporate Plan objectives.

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Commercial Ventures Executive Sub-Committee
5 December 2019

Minutes

54. SHAREHOLDER ACTIONS - 5 DEC 2019

There were no items to be considered.

55. INVESTMENT OPPORTUNITIES - 5 DEC 2019

There were no items to be considered.

56. PROPERTY ACQUISITIONS AND DISPOSALS - 5 DEC 2019

There were no items to be considered.

57. LOANS, GRANTS AND DRAW DOWN AGREEMENTS - 5 DEC 2019

There were no items to be considered.

58. ANY OTHER URGENT BUSINESS

None.

59. EXEMPT BUSINESS

RESOLVED that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- i. it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act; and
- ii. the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

60. PROJECT BASEBALL (EXEMPT)

RESOLVED that the exempt information in relation to Project Baseball be noted.

61. SHAREHOLDER ACTIONS - 5 DEC 2019 (EXEMPT)

There was no exempt business to be considered under this agenda item.

62. INVESTMENT OPPORTUNITIES - 5 DEC 2019 (EXEMPT)

There was no exempt business to be considered under this agenda item.

63. PROPERTY ACQUISITIONS AND DISPOSALS - 5 DEC 2019 (EXEMPT)

There was no exempt business to be considered under this agenda item.

64. LOANS, GRANTS AND DRAW DOWN AGREEMENTS - 5 DEC 2019 (EXEMPT)

There was no exempt business to be considered under this agenda item.

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Commercial Ventures Executive Sub-Committee
5 December 2019

Minutes

The Meeting closed at 6.43 pm

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Agenda Item 4



SIGNED OFF BY	Head of Legal and Governance
AUTHOR	Tom Borer, Policy Officer
TELEPHONE	Tel: 01737 276717
EMAIL	tom.borer@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 30 January 2020
EXECUTIVE MEMBER	Portfolio Holder for Housing and Benefits

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Joint Venture - Raven Housing Trust and Reigate and Banstead Borough Council
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RECOMMENDATIONS
(i) That the Head of Legal and Governance, in consultation with the Director of People and the members of the Commercial Ventures Executive Sub-Committee and Executive Member(s) with responsibility for Housing, be authorised to finalise terms for and establish a Joint Venture Limited Liability Partnership between Reigate and Banstead Borough Council and Raven Housing Trust, in line with the objectives set out in this report.
REASONS FOR RECOMMENDATIONS
The recommended action will facilitate effective future joint working between Reigate and Banstead Borough Council (the Council) and Raven Housing Trust (RHT) to deliver housing, particularly affordable housing, in the borough, thereby supporting the objectives of the Council's Corporate Plan and Housing Delivery Strategy.
EXECUTIVE SUMMARY
This report seeks authority for the Head of Legal and Governance to finalise terms for and establish a Joint Venture Limited Liability Partnership (LLP) between the Council and RHT. This Joint Venture is intended to facilitate effective joint working between the two organisations, to support the delivery of housing, particularly affordable housing, within the borough.

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The work of the Joint Venture is intended to align with the Council's current and emerging 5-Year Corporate Plan and Housing Delivery Strategy. To support this alignment, objectives for the work of the Joint Venture are set out in this report at paragraph 9. No specific projects for the Joint Venture have been identified at this time; potential schemes will be considered as they are identified. However, the Joint Venture will facilitate joint working through providing a pre-agreed framework for cooperation between the Council and RHT, allowing the organisations to collectively act more swiftly through the use of the LLP in response to opportunities. This is advantageous when operating in a commercial and time-sensitive market environment.

Having taken appropriate advice, an LLP is the preferred vehicle for the Joint Venture as it does not require the appointment of directors, therefore allowing decision making to take place through the member organisations' own existing governance structures without necessitating extra steps (such as decisions by committees instructing directors, and then additional decisions by directors to enact those same instructions), and is also the option expected to minimise the tax liability on the members of the Joint Venture.

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

STATUTORY POWERS

1. The Council has wide ranging powers to promote the economic, environmental and social wellbeing of the borough. These powers are derived from the Local Government Act 2000 and also include the powers of general competence under section 1 of the Localism Act 2011 to do anything that individuals with full capacity generally may do, subject to the provisions of the Act.
2. Supporting the delivery of housing, particularly affordable housing, within the borough, as part of schemes developed in line with local development policy, will support the economic and social wellbeing of the borough through making it easier for local people to access housing and through reducing costs for those who would otherwise be unable to access affordable housing. The provision of housing will also support local businesses through enhancing their access to local employees with required skills.
3. Limited Liability Partnerships are governed by the Limited Liability Partnerships Act 2000 and the Companies Act 2006.

BACKGROUND

4. Raven Housing Trust is a charitable Industrial and Provident Society and a registered social landlord operating in Surrey and Sussex. RHT operates much of the social housing stock previously owned by the Council and the organisations have worked closely together since the creation of RHT in 2002.
5. Housing affordability is a challenge for many households hoping to buy or rent a home within the borough. As identified in the Council's Housing Delivery Strategy (approved for publication and implementation by the Executive on 5 December 2019), the local median house price has increased from 7.6 times the median local income in 2009 to 10.8 times in 2017, putting the ratio of prices to income at well

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above the national level. Rental rates have similarly increased at above national levels, with the average rent rising by 29% in the same period.

6. In addition to the general benefits of local available housing, the Council has a duty to address homelessness, which was updated by the Homelessness Reduction Act 2017. As such, the Council has an ongoing need to secure housing for those facing homelessness, including many working households and has identified this as a key component of the new Corporate Plan for 2020-2025. To secure such housing, the Council currently relies on housing stock largely provided by housing associations, such as RHT. It is therefore especially important for the Council and the borough that the Council cooperates with providers such as RHT to support the supply of affordable housing. Such partnership working also forms a key component of the new Corporate Plan.

KEY INFORMATION

7. As identified, it is proposed that the Council enter into a Joint Venture, in the form of a Limited Liability Partnership, with Raven Housing Trust.
8. This Joint Venture is intended to facilitate effective joint working on future projects to increase the supply of homes in the area, with a particular focus on affordable housing.
9. As identified, the terms of the joint venture will be established to align with the objectives of the Council's current and emerging 5-Year Corporate Plans. On this basis, the Limited Liability Partnership Members' Agreement will have regard for the following objectives:
 - a) Creating developments to be proud of, that are embedded in the community and create a sense of place that brings people together;
 - b) Making the right provision for the residents where the market is not by:
 - i. Delivering affordable housing units on the developed land beyond that which would be required by the planning process which at completion will be sold to Raven Housing Trust or to another registered provider to be made available to the community;
 - ii. Increasing the supply of private market for sale properties in Reigate & Banstead;
 - c) Delivering a financial return to the Members if possible, but otherwise ensuring that the Joint Venture can meet its own costs of operation and development of the land.
10. The LLP structure is also considered to be advantageous in that, of the available options, it incurs the smallest tax burden on the members of the Joint Venture.
11. A draft of the Heads of Terms for the Joint Venture, subject to finalisation by the Head of Legal and Governance and consultation with the Commercial Ventures Executive Sub-Committee and Executive Member(s) with responsibility for Housing, is attached as Annex 1 to this report.
12. In addition, a draft of the Limited Liability Partnership Members Agreement, subject to finalisation by the Head of Legal and Governance and consultation with the Commercial Ventures Executive Sub-Committee, is attached to the accompanying

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private report set out in the Part 2 section of this agenda. This draft agreement is set out in private as it contains potentially commercially sensitive information, but is in line with the objectives set out here.

OPTIONS

13. **Option 1:** To authorise the Head of Legal and Governance, in consultation with the Director of People and the members of the Commercial Ventures Executive Sub-Committee and Executive Member(s) with responsibility for Housing, to finalise terms for and establish a Joint Venture Limited Liability Partnership between the Council and RHT, in line with the principles set out in this report. **This is the recommended option** as it will facilitate effective future joint working with RHT to deliver housing, particularly affordable housing, in the borough, thereby supporting the objectives of the Council's Corporate Plan and Housing Delivery Strategy.
14. **Option 2:** To authorise the Head of Legal and Governance to negotiate with RHT to establish a different delivery model. **This is not the recommended option as it is not the preferred way forward for RHT or the advised vehicle for joint working in this sector. It will also increase the administrative process and delay the project.**
15. **Option 3:** To not authorise the Head of Legal and Governance to finalise terms for and establish a Joint Venture Limited Liability Partnership between the Council and RHT. **This is not the recommended option** as it will not support the objectives of the Council's Corporate Plan and Housing Delivery Strategy.

LEGAL IMPLICATIONS

16. In entering into the LLP, the Council will be obliged to abide by the terms of the Members Agreement. As referenced above, the current draft of the agreement, subject to finalisation, is attached as Annex 1 to this report.
17. These obligations should not incur any substantive future liability on behalf of the Council, unless otherwise agreed, as future projects will be considered on a case by case basis. Please see the Financial Implications section below for additional information on financial obligations.

FINANCIAL IMPLICATIONS

18. There are minimal direct financial implications of the establishment of the proposed Limited Liability Partnership.
19. There are a number of administrative costs associated with the establishment and operation of the LLP. Set up costs will be charged to the Feasibility Studies Reserve that has been established to fund this type of expenditure. Thereafter a budget will be established for the Council's share of ongoing LLP administration costs.
20. The LLP Membership Agreement will be structured such that the Council has no obligation to make capital contributions to the LLP, except where agreed for specific projects. Similarly, the Council will not have any additional financial liabilities, except as regards its share of the LLP's administrative costs, unless otherwise agreed.

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21. Unless agreed on specific future projects the Council and RHT will make equal capital contributions to future projects and receive an equal share of any resulting profits.
22. LLPs are 'tax transparent' and do not themselves pay corporation tax but instead each partner pays tax on the profit allocated to them. As the Council does not pay corporation tax this reduces the overall tax liability on LLP activities.

EQUALITIES IMPLICATIONS

23. 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.
24. The three parts of the duty applies to the following protected characteristics: age; disability; gender reassignment; pregnancy/maternity; race; religion/faith; sex and sexual orientation. In addition, marriage and civil partnership status applies to the first part of the duty.
25. Whilst the establishment of the Joint Venture is not anticipated to have any direct equalities implications, as it does not in itself affect the public, the opportunity it provides to support housing provision in the borough may enhance the Council's capacity to support those with protected characteristics through ensuring that appropriate housing is available where required.
26. Where decisions are made regarding specific future schemes, the equalities implications of these decisions will be considered as part of the associated decision-making process in each case.

COMMUNICATION IMPLICATIONS

27. The Council will work with RHT to develop a coordinated response to any enquiries relating to future joint projects.
28. The Council will maintain regular communication with RHT to support effective joint working, and will have regard to any opportunities to improve future communications.

RISK MANAGEMENT CONSIDERATIONS

29. The establishment of a Joint Venture delivery vehicle does not in and of itself present risks to the Council, except as identified above, though risks are, of course, intrinsic to the developments that the delivery vehicle will bring forward. Such risks primarily relate to the economic viability of individual schemes. Thus, each scheme will be carefully appraised during its feasibility/viability stage to ensure that it is sufficiently robust and is able to weather many possible adverse scenarios.

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30. Moreover, the advantage of entering into a partnership with Raven Housing Trust is that risk exposure is shared and that additional access to the technical skills, development knowledge and experience needed to successfully develop schemes is available.
31. In considering potential future schemes, decision makers will have regard to risks around the housing sector, such as the costs of borrowing (including from the Public Works Loan Board) and the potential implications of government legislation.

ENVIRONMENTAL IMPLICATIONS

32. Where decisions are made regarding specific future schemes, the environmental implications of these decisions will be considered as part of the associated decision-making process in each case, and will have regard for the Council's emerging Environmental Sustainability Strategy.

CONSULTATION

33. RHT have been consulted extensively in the development of the LLP Members Agreement, as the proposed other party to the agreement.
34. The Executive Member for Housing and Benefits, the Director of Place and the Head of Housing have been consulted regarding the recommendation of this report.

POLICY FRAMEWORK

35. The recommendation of this report is compatible with the Council's Corporate Policy Framework and will support the objectives of the current and emerging 5-Year Corporate Plan.

HEADS OF TERMS

Joint Venture

SUBJECT TO CONTRACT

Parties ("Members")	<p>Raven Development Homes Limited (Company No: 10653135) whose registered office is at Raven House, 29 Linkfield Lane, Redhill, Surrey, England, RH1 1SS ("Raven")</p> <p>and</p> <p>Reigate and Banstead Borough Council of Town Hall, Castlefield Road, Reigate, Surrey RH2 0SH ("RBBC")</p>
Project description	<p>A joint venture to bring forward new schemes for private market and affordable residential development and disposal.</p>
JV Purpose and Objectives	<p>The Members agree that the purpose of the JV is:</p> <p>To build a long term relationship between the Members to their mutual benefit, drawing on the respective strengths of each to source, acquire, develop and dispose of land within the geographical area of RBBC with the objectives of:</p> <ul style="list-style-type: none">(a) Creating developments to be proud of, that are embedded in the community and create a sense of place that brings people together;(b) Making the right provision for the residents where the market is not by:<ul style="list-style-type: none">i. Delivering affordable housing units on the developed land beyond that which would be required by the planning process which at completion will be sold to Raven Housing Trust [or another registered provider] to be made available to the community;ii. Increasing the supply of private market for sale properties in Reigate;(c) Delivering a financial return to the Members if possible but otherwise ensuring that the JV can meet its own costs of operation and development of the land.
Project milestones	<p>The Members agree to dedicate such [reasonable] time and resource to ensure that the JV project meets the following timeline with each specific stage being completed, or agreement or arrangement being in agreed form by the indicative dates below:</p>

	<ol style="list-style-type: none"> 1) Finalised Heads of Terms: [date] 2) Business Case: [date] 3) Due diligence by the Members on each other and on the project: [date] 4) Business Plan: [date] 5) Funding Arrangements confirmed: [date] 6) LLP Governance Arrangements confirmed: [date] 7) Agree Initial Scheme: [date] 8) Initial Cash Flow Forecast: [date] 9) JV's services and resourcing requirements confirmed: [date] 10) Final Form legal documents: [date] 11) Member board / Cabinet approval of the joint venture: [date] 12) Formation of the corporate joint venture entity: [date] 13) Land Acquisition / Transfer: [date] 14) Bank account for LLP opened: [date] 		
Pre-completion Collaboration	<p>Prior to the formation and operation of the LLP, the Members will collaborate on the following:</p> <ul style="list-style-type: none"> - [Preparing and submitting outline planning applications and other pre-construction services] - [Sourcing third party funding] - [other] 		
Name of the joint venture	[to be agreed]		
Structure of JV	[The JV will take the form of a limited liability partnership (LLP). The Members will be the Parties listed above who will "own" the LLP in equal shares (50:50)]		
Legal documents agreements	<p>[XXXXXXX intend to produce the first draft of the following Agreements]:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">LLP Members' Agreement</td> <td style="width: 50%;">JCT Design and Build Contract</td> </tr> </table>	LLP Members' Agreement	JCT Design and Build Contract
LLP Members' Agreement	JCT Design and Build Contract		

	Loan Facility Agreement and Debenture	Pre-Construction Services Agreement
	Corporate Support Services Agreement	Architect and Consultants Appointment
	Employer's Agent/JV Monitoring Agreement	Sales & Marketing Agreement
	Project Appraisal	Business Plan and Cash Flow Forecast
	Land transfer agreements and other documents (e.g. promotion agreements etc)	Other?
Funding	<p>The total amount of funding required by the LLP from time to time will be contained in a [consolidated cash flow forecast OR funding profile] issued by the LLP and approved by the Members at regular intervals (monthly unless agreed otherwise).</p> <p>The funding needs of the LLP will be met by the Members [on an equal basis OR in the following proportions: [number:number]] or, if agreed by the Members, by sourcing external funding on appropriate commercial terms.</p> <p>[Both Members will provide their funding on identical terms and in equal amounts, advanced by way of [member capital [contributed in full on completion of the LLP Agreement OR drawn down by the LLP from Members in accordance with formal arms-length loan agreements with the LLP an agreed funding profile] OR Member loan drawn down by the LLP from Members in accordance with an agreed funding profile]</p> <p>Member funding (loan plus amounts contributed "in kind" and land value) will be secured by the Members over the LLP and its assets, and each Member will enter into an intercreditor deed with the other and the LLP to ensure that, subject to the above equalisation mechanism for any mismatched amounts, security ranks pari passu between the Members.</p>	
Profits and distribution	<p>The overarching principle is that profits will be shared equally between the two Members (50:50 split) or in line with the proportion to their share in the LLP.</p> <p>The Members will agree a profile for the distribution of profits which complies with good accounting practice. This may involve regular distributions subject to minimum sale rates and/or subject</p>	

	to repayment of an agreed proportion of Member loans and/or land value.
Section 106 (Affordable housing provision)	<p>As noted above, one of the key objectives of the JV is to deliver affordable housing units above that required by the planning process.</p> <p>Raven Housing Trust or another member of its Group will be given a first option to acquire any affordable housing to be constructed pursuant to planning obligations or as additionally agreed by the Members at a price to be agreed with the LLP.</p> <p>Any affordable housing constructed by the LLP, and not sold to Raven Housing Trust or its Group, will be sold on the open market to the highest RP bidder.</p>
Members' Agreement and representatives	<p>The day to day business of the LLP will be conducted and managed by a Management Board, which will meet no less frequently than [quarterly].</p> <p>The number of Representatives on the Management Board will be [four: two appointed by each Member].</p> <p>Each Representative has one vote.</p> <p>The quorum for any Management Board meeting is two: one Representative from each Member. If there is an inequity of Representatives from both Members at a Management Board meeting, each Member will have an equal number of votes apportioned between its Representatives present.</p> <p>Significant decisions regarding the LLP shall be made by the Members under a Member Decision protocol agreed between them. The nature and extent of these Member Decisions will be set out in the Members' Agreement, but it is anticipated they will include (but not be limited to) the matters set out in the Appendix to these Heads of Terms.</p> <p>If there is a conflict between the interests of a Member (or a member of its Group) and the LLP, the Member Representatives of the Member concerned shall step aside from participating in any discussion or decision on the matter in question on behalf of the LLP.</p>
Restrictions	[Neither Member will be prevented from entering in to joint venture arrangements with any other party, provided that this does not materially compromise the relevant Member's ability to meet its obligations under the Members' Agreement].

Exit	The Members' Agreement will set out milestones for the review of the performance of the LLP against its objectives (which will be linked to time, scale and delivery) with exit, termination and winding up provisions that the Members can trigger to bring the LLP to an end.
Transfer of membership	<p>Provisions for the transfer of membership will be set out in the Members' Agreement.</p> <p>Subject to the standard pre-emption rights in favour of each Member, and appropriate valuation mechanisms, on any transfer of any Members' membership (unless the Members agree otherwise) a typical position is as follows:</p> <ul style="list-style-type: none"> - A Member can transfer its Membership Interest voluntarily intra-group where the transferee Member either has sufficient strength of covenant in its own right to match that of the transferring Member, or the transferring Member will guarantee the obligations of the transferee Member. - A Member can only transfer its Membership Interest voluntarily (other than to a Group member above) with the consent of the other Member, [not to be unreasonably withheld or delayed]; - A defaulting Member can be compulsorily exited from the LLP by the remaining (non-defaulting) Member on terms to be specified. - A transferring Member will receive the repayment of its Member Capital and Member Loans at the point of exit [along with a OR excluding any] further amount reflecting accrued profits undistributed by the LLP at the point of exit. - The transferring Member shall immediately repay all loans, loan capital borrowing and indebtedness in the nature of borrowings outstanding to the LLP from that Member (together with any accrued interest on those sums); - The transferring Member shall procure the removal of all Representatives of the LLP appointed by it and shall indemnify the LLP and the other Members against any claim, loss, liability or cost arising in connection with such Representatives' loss of office; - The transferring Member shall co-operate by doing all such things and executing all such documents as the purchasing Member may reasonably require in connection with such transfer, including exercising its votes as Member in such manner as the purchasing Member may direct;

Employees	Unless the Members decide otherwise, the LLP will not have any employees. It will receive services from the Members (or members of their groups) under service level agreements and contracts.
Provision and commissioning of services	<p>The provision of services will be set out in a Services Agreement, which will include details of any and all fees applicable to the relevant Service, and also details of required timings for certain Services to be produced. Typical services required by the LLP will include:</p> <ul style="list-style-type: none"> • Company secretarial services • Financial management and administration • Development services; • Construction services; • Sales and Marketing Services; • [Other].
Administration arrangements	<ul style="list-style-type: none"> • The LLP's registered office will be [insert address]; • The LLP's books shall be maintained at the LLP's registered office; • A bank account in the name of the LLP shall be opened as soon as is reasonably practicable by the Members (as agreed between them); • The accounting reference date for the LLP shall be [as agreed by the Members] • The Members will appoint the accountants or auditors of, and the tax advisers to, the LLP and fix their remuneration
Insurance	<p>The LLP shall at its own expense maintain insurance (for the benefit of the Members of the LLP as appropriate) in such amounts as the members may determine in respect of:</p> <ul style="list-style-type: none"> - property of the LLP; and - public liability; and - Directors and Officers Insurance; and - as otherwise determined as necessary
Deadlock	Provisions for dealing with a deadlock situation will be included in a Schedule to the Members' Agreement.
Confidentiality	Confidentiality terms will be included in the Members' Agreement requiring both parties agree to keep information about the joint venture confidential.
Signed by	<p>_____</p> <p>For and on behalf of Raven Development Homes Limited</p>

	Date
Signed by	_____
	For and on behalf of Reigate and Banstead Borough Council

	Date

DRAFT

Appendix 1 – matters anticipated to require unanimous Member approval

FOR EXAMPLE:

- 1 Approval of the business plan and cash flow forecast.
- 2 Undertake any matters specifically which are stated in the Member Agreement as requiring Member Consent.
- 3 Admit another party as a Member of the LLP.
- 4 Make any alterations to this Agreement.
- 5 Assign or charge its rights or interest in the LLP or any other interest in the LLP or make any other person a partner with the LLP.
- 6 Make any decision to place the LLP into voluntary liquidation under the Insolvency Act 1986.
- 7 Make any decision for the LLP to make a proposal for a voluntary arrangement, scheme of compromise or arrangement with its creditors under the Insolvency Act 1986.
- 8 Make any decision for the LLP to apply for an administration order under the Insolvency Act 1986.
- 9 Make any decision for the LLP to appoint a liquidator under the Insolvency Act 1986.
- 10 Make any decision for the LLP to apply to the court to wind up the LLP under the Insolvency Act 1986.
- 11 Make any application to the court under section 994 of the 2006 Act.
- 12 The acquisition by the LLP of any land and/or buildings.
- 13 Make payments or transfers of monies out of any bank account held by the LLP which is not identified within the Approved Business Plan and such payment or transfer should be authorised in writing and signed by an authorised representative of each Member.
- 14 Approval of any Project Appraisal and to commence a new Project or materially vary an existing one.

Agenda Item 5



SIGNED OFF BY	Head of Legal and Governance
AUTHOR	Catherine Rose, Head of Corporate Policy
TELEPHONE	Tel: 01737 276766
EMAIL	Catherine.Rose@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 30 January 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	Y
WARDS AFFECTED	Earlswood & Whitebushes

SUBJECT	Acquisition of property in Earlswood & Whitebushes
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RECOMMENDATIONS

- (i) That, subject to satisfactory due diligence, the Head of Legal and Governance, in consultation with the Head of Finance and Assets and members of the Commercial Ventures Executive Sub-Committee, be authorised to:
- (a) Acquire the freehold/leasehold of the properties in Earlswood and Whitebushes as detailed in the exempt report in Part 2 of the agenda; and
 - (b) Fund the acquisition and supporting costs from the funding allocated within the approved capital programme for investment in capital schemes to support delivery of the Corporate Plan, Housing Delivery Strategy and Investment Strategy, as set out the Part 2 report

REASONS FOR RECOMMENDATIONS

To obtain authority to acquire the freehold/leasehold of the specified properties in Earlswood and Whitebushes, subject to due diligence, to assist in the achievement of the Council's place-shaping and commercial objectives as set out in the Council's five year Corporate Plan.

EXECUTIVE SUMMARY

This report seeks authority to acquire the freehold/leasehold of a number of properties in Earlswood and Whitebushes ward

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The acquisition of these properties would provide an immediate revenue income stream for the council, contributing to our corporate objective to become financially self-sustaining.

Acquisition would also help to enable the Council – in the longer term – to undertake redevelopment, contributing to the delivery of corporate place-shaping ambitions and priorities to invest in our towns and villages, drive continued economic prosperity and deliver new housing in the borough.

Additional details of how the acquisition will support these objectives is set out in Part 2 of the meeting agenda.

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

STATUTORY POWERS

1. The Council has wide ranging powers to promote the economic, environmental and social well-being of the borough. These powers are derived from the Local Government Act 2000 and also include powers of general competence under section 1 of the Localism Act 2011 to do anything that individuals with full capacity generally may do, subject to the provisions of the Act.

BACKGROUND

2. The vision set out in the Council's new five year Corporate Plan is to (amongst other things) deliver quality services and support, make the borough a great place to live, work in, do business in and visit, and to be flexible and sustainable.
3. To achieve this overall vision it sets a number of 'people' and 'place' objectives, including to:
 - Secure the delivery of homes that can be afforded by local people and which provide a wider choice of tenure, type and size
 - With our partners, invest in our town and village centres, so they continue to be places where people choose to live, work, do business and visit
 - Drive the continued economic prosperity of the borough, facilitate improved business infrastructure, and confirm the borough's reputation as a great place to do business; and
 - Ensure new development is properly planned and sustainable and benefits the borough's communities and the wider area.
4. The Corporate Plan also recognises that to achieve this vision and deliver these objectives the Council needs to become financially self-sustaining and to generate additional income to build its financial resilience through responsible and sustainable commercial activities.
5. The Council's Local Plan, including the recently adopted Development Management Plan, explains in more detail the Council's place-shaping ambitions for the borough.

KEY INFORMATION

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Sub heading

6. Details of the properties in question and financial information is set out in the exempt report in Part 2 of the agenda.
7. The acquisition will support the delivery of Corporate Plan objectives identified in paragraph 3 above, as well as providing an opportunity to generate an income stream for the Council. As such, it is consistent with the Corporate Plan reference to “invest in new property assets or development opportunities in our economic area where these will provide a reliable revenue income stream or longer term capital receipt”
8. The income received would contribute to the continued provision of high quality services by the Council.
9. The report recommendations are subject to a due diligence exercise (which will include legal, finance and environmental considerations) to confirm that the acquisition is sound.

OPTIONS

10. The options available to the Sub-Committee are:
11. Option 1: Authorise the acquisition of the property freeholds/leaseholds, associated delegations and the use of funding subject to satisfactory due diligence. This is the recommended option as it will contribute towards the achievement of a range of corporate objectives including financial sustainability, place-shaping, supporting towns and villages and promoting economic sustainability.
12. Option 2: Do not authorise the acquisition. This option is not recommended as it would represent a missed opportunity to deliver against a number of corporate people and place priorities and to generate income for the Council.

LEGAL IMPLICATIONS

13. As identified in paragraph 1, the Council has the power to acquire the freehold/leasehold of the properties, subject to the provisions of the Localism Act 2011.
14. There is no legal duty to consult the public on any commercial terms of the acquisition. These are matters for the authority. The Sub-Committee is entitled to determine them at its discretion, having considered the contents of this report.
15. Legal and valuation advice will be sought as necessary in undertaking due diligence in advance of any acquisition. The Council must at all times have regard to its fiduciary duties to Council taxpayers and to its best value duty.

FINANCIAL IMPLICATIONS

16. The current capital programme includes funding for investment in capital schemes to support delivery of the Corporate Plan, the Housing Delivery Strategy and Investment Strategy. This acquisition falls within the parameters of that element of the capital programme.
17. In acquiring the properties, consideration will be first given to whether the purchase can be funded without borrowing. It is, however, likely that the costs will be funded

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through prudential borrowing through the Council's treasury management arrangements. In this event provision will be made for the associated loan repayments in the revenue budget going forward.

18. The proposed acquisition in this report offers the potential to:
 - Generate a revenue income stream in the short to medium term
 - Generate a capital receipt or increased income stream from redevelopment in the medium to long term
19. Additional financial information is detailed in the exempt report set out in Part 2 of the agenda.
20. The financial risks associated with the acquisition are set out in paragraphs 24 to 27 below and the Part 2 report; Sub-Committee members should consider these in making their decision.

EQUALITIES IMPLICATIONS

21. The Council has a 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; to advance equality of opportunity between people who share protected characteristics and people who do not; and to foster good relations between people who share those characteristics and people who do not.
22. No direct equality implications have been identified associated with this acquisition opportunity. Any future development activity in relation to the properties in question would need to incorporate consideration – through an Equality Impact Assessment - of potential impact on people with protected characteristics and how potential negative impacts could be avoided and positive impacts enhanced.

COMMUNICATION IMPLICATIONS

23. No communications implications have been identified.

RISK MANAGEMENT CONSIDERATIONS

24. Any acquisition comes with an element of risk. The risks associated with this proposed acquisition are detailed in the Part 2 report. In summary:
25. Risks associated with property purchase: Legal and financial risks associated with the property acquisition process can be mitigated by undertaking appropriate due diligence in advance of the purchase, as provided for by the report recommendation
26. Risks associated with rental income streams: These risks can be mitigated by undertaking appropriate due diligence in advance of the purchase. However, it should be recognised that rental income can be interrupted due to tenant default or void periods between lettings. There is also always a risk of rental values falling due to fluctuations in the market.
27. Risks associated with future redevelopment activities: Redevelopment activities have inherent risks, such as unforeseen environmental or planning issues, changes in market circumstances, cost over-runs, and contracting delays. These risks can be managed through careful project management, comprehensive preparatory and

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investigative works, financial viability modelling and regular reporting. External advisors will be used where expertise does not exist 'in-house'.

CONSULTATION

28. The Leader and Executive Members with responsibility for Finance, Investment and Companies and Corporate Direction and Governance have been consulted as part of the preparation of this report.

POLICY FRAMEWORK

29. The proposed acquisition would support the delivery of objectives within the Council's Corporate Plan, as outlined elsewhere in this report.
30. The acquisition is also in line with the Council's Capital Investment Strategy 2019 and 2019/20 Capital Programme.

BACKGROUND PAPERS

1. Reigate & Banstead 2025: Our five year corporate plan www.reigate-banstead.gov.uk/rbbc2025
2. Reigate & Banstead Local Plan Part 2: Development Management Plan: www.reigate-banstead.gov.uk/dmp

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SIGNED OFF BY	Chief Executive
AUTHOR	John Jory, Chief Executive
TELEPHONE	Tel: 01737 276151
EMAIL	John.Jory@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 30 January 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Investment and Company Governance and Resourcing
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RECOMMENDATIONS	
(i)	That the Head of Legal & Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee, be authorised to establish a company, and undertake all necessary supporting actions, for the purposes of acting as a holding company to consider and commission commercial activities on behalf of the Council, including acquiring and establishing additional companies, consideration of business plans, and oversight of commercial governance arrangements.
(ii)	That shareholder consent be granted for the acquisition of the Council's existing stake in Greensand Holdings Limited and RBBC Limited by the new holding company to be established under recommendation (i) on behalf of Greensand Holdings Limited, RBBC Limited, and the new holding company once established, subject to approval of the terms of acquisition by the Head of Legal and Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee.
(iii)	That the Head of Legal and Governance be authorised to undertake necessary steps to recruit suitably qualified directors from the elected membership of the Council to serve on the Boards of the proposed holding company that she be authorised to recruit for suitably qualified directors for all existing and future

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- subsidiaries as set out in this report, such appointments to include non-executive directors.
- (iv) That the Commercial Ventures Executive Sub-Committee's support for additional staffing resources being provided for the Council's investment and commercial activities be noted.
 - (v) That the Employment Committee be asked to agree the creation of and recruitment to a new post of Commercial Director.

REASONS FOR RECOMMENDATIONS

It is essential this change to our organisation structure is made to ensure it remains fit for purpose and is capable of delivering the Council's vision and priorities. The recommendations are the logical next step on that journey now the Council has examined best practice at other authorities. These proposals ensure that the revised commercial governance structure will be transparent but also able to move at pace to take advantage of commercial opportunities that arise.

With the agreement of the Sub-Committee, it is recommended to ask the Employment Committee to recruit to the Commercial Director role.

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

STATUTORY POWERS

The Council has wide ranging powers to promote the economic, environmental and social well-being of the borough. These powers are derived from the Local Government Act 2000 and include the powers of general competence under section 1 of the Localism Act 2011 to do anything that individuals with full capacity generally may do, subject to the provisions of the Act.

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.

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.

Companies and the rights of shareholders are governed by the Companies Act 2006.

BACKGROUND

Strategic Context

On 16 January 2020, the Council approved a new five year plan 'Reigate and Banstead 2025'. It sets out the Council's vision and ambitions, and its priorities and commitments. These are:

1. Delivering quality services and support;
 - Providing value for money;

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- Making the borough a great place to live, work and visit;
- Being proactive about tackling climate change and reducing our environmental impact; and
- Being flexible and sustainable, responding to the needs and demands of our borough, residents, businesses;

The plan recognises that to achieve these things (in the absence of government funding) we will need to generate our own income through responsible and sustainable commercial activities.

The Council has published, via the Executive, at its meetings on 7 November 2019 and 30 January 2020 its Budget proposals to support the delivery of services in 2020/2021 onwards. These proposals set out how the Council intends to make a start on delivering its new Five-Year plan and have been reviewed by the Budget Scrutiny Panel and Overview and Scrutiny Committee in the established way. The final budget proposals will be recommended to the Council for adoption at its meeting on 13 February 2020.

The budget proposals for 2020/21 onwards are supported by the Council's Medium Term Financial Plan and recognise that the Council will need to:

- Ensure resources are aligned with the Five-Year plan priorities;
- Consider and take advantage of commercial and investment opportunities as they arise to deliver new income streams; and
- Maximise other potential income in setting fees and charges.

With the removal of the Central Government Grant and increasing pressures on local authority budgets, we are expecting a funding gap of £4m plus by 2021/22. A number of projects are being taken forwards by the Council, but these will not all be in place by 2021 therefore additional opportunities need to be pursued.

In terms of Capital Programme resources to deliver the Five-Year plan and new income streams, the service and financial planning proposals include the following provisions for 2020/2021:

- £50m for new development and investment opportunities; and
- £30m over three years for implementation of Housing Delivery Strategy projects.

This scale of funding is necessary to deliver the Council's ambitions and to ensure that a strategic approach to deal with the future funding gap is adopted to avoid continued drawdown from reserves to support the budget. Whilst the entire annual deficit of £4m plus will not be filled by investment and commercial activity alone, the intention is to identify opportunities that complement the work of the Council and make a significant impact on that figure. Clearly, the importance of that work is now critical to the future direction of travel of the Council.

KEY INFORMATION

The strategic landscape of the Council has changed with the adoption of the new Five Year Plan, Housing Strategy and draft ambitious service and financial plans supported by a large Draft Capital Programme. That context is set out below together with the implications for the Council's organisation structure. Given the importance of the Council's investment and commercial work, it is proposed that a dedicated role of running the Council's commercial activities is created and supported by appropriate external advisers (where appropriate).

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Experience Elsewhere

Members and Officers have sought to understand best practice within local government in how Councils run their traditional services well giving consideration to investment opportunities and running companies. Whilst there is no single approach, some common themes have emerged from the research and visits undertaken within the greater South East region. The common themes are:

- Senior members need to be at the centre of strategic decision making around the scale of resourcing investment and company activity, including approval of budgets and business cases, and commissioning activity. This currently occurs via the Executive and the Commercial Ventures Executive Sub Committee. Elsewhere, Councils have established a company structure with a holding company undertaking this strategic role on the commercial side of the governance framework. Acting as a commissioning body, the CVESC will work with the holding company to establish and commission subsidiary companies to act as delivery vehicles set up to achieve Council objectives, and where appropriate investment income.

Organisation Structure

An illustrative diagram of the proposed refreshed company structure is attached to this report.

A refreshed Organisation structure was introduced soon after the appointment of the Leader of the Council, Cllr Mark Brunt, to best align the organisation to continue to deliver the then 5 Year Plan (2015-2020). That structure has now been in operation for circa 18 months. In view of the adoption of the new 5 Year Plan (2020-2025) and the above context, with a greater emphasis going forward on commercial and investment activity, it is timely to review the structure of the Organisation to ensure that it mirrors the needs identified in the 5 Year Plan. The current structure has the Chief Executive supported by 3 Directors covering:

- Director of Place services focusing on transforming our towns and villages whilst maintaining a high quality environment;
- Director of People Services focusing on helping and supporting individuals and communities in need; and
- Director of Organisation focusing on supporting the Council services and taking forward the Council's commercial agenda.

It now appears that making the Director of Organisation role responsible for both: (i) running the supporting Council functions (such as HR, Finance etc); and (ii) driving forward the necessary commercial work to ensure delivery of the necessary company structure, is no longer appropriate. It is therefore proposed to split the roles of the current Director of Organisation post. Both roles form part of the Management Team with the Chief Executive and other Directors.

One role will focus on driving commercial work and working with the Management Team to ensure that the day to day running of the Council's investment opportunities and company activities is fit for purpose. This Commercial Director role is about working with the members of the Commercial Ventures Executive Sub-Committee at a strategic level to ensure:

- Investment opportunities and company activities make an increasing contribution to the financing of the Council's overall activities;

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- The Council's investment activities and companies operate effectively in service and governance terms;
- The delivery of an increasingly commercially focussed culture and relevant projects across the Council to increasingly deliver a self-sustainable organisation; and
- The provision of leadership and oversight to allocated services ensuring these functions are appropriately resourced, supported and delivered efficiently. This is particularly important given the need, through the Management Team, to manage risk within the Council, its investments and its companies in an integrated manner.

(The Commercial Director role is a post integrated within the overall Council mirroring the role functions of the Commercial Ventures Sub-Committee.)

The other role will focus on helping the Management Team with the day to day running of the Council. This more narrowly defined role of Director of Organisation provides strategic leadership to the organisation in collaboration with the Leader, Chief Executive and other Directors, and specifically to allocated core corporate services.

OPTIONS

The options available to the Commercial Ventures Executive Sub-Committee are set out below:

Option 1: Approve all the Recommendations set out in the report to allow the Council to progress its commercial activities, ensuring they are fit for purpose and are capable of delivering the Council's vision and priorities. This is the Recommended option to ensure that the revised commercial governance structure will be transparent but also able to move at pace to take advantage of commercial opportunities that arise.

Option 2: If after reviewing the Recommendations and supporting report, adjustments are required, the CVESC should request the necessary adjustments be made and approve the actions subject to those adjustments.

Option 3: Do not approve the Recommendations. This is not the recommended option.

LEGAL IMPLICATIONS

Where decisions are made which effect the Council's companies, the legal implications of these decisions will be considered as part of the decision making process in each case.

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).

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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.

FINANCIAL IMPLICATIONS

The budget proposals for 2020/21 onwards include the allocation of £50 million additional capital programme funding for investment in new development and commercial initiatives, funded primarily through prudential borrowing. When assessing new investment opportunities, the Council will need to take into account relevant guidance on investment for commercial purposes, including the guidance on 'borrowing in advance of need'.

Funds are available in the Feasibility Studies (Commercial Ventures) Reserves for investment in appropriate specialist advice and support when implementing the company changes referred to in this report.

EQUALITIES IMPLICATIONS

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.

The three parts of the duty applies to the following protected characteristics: age; disability; gender reassignment; pregnancy/maternity; race; religion/faith; sex and sexual orientation. In addition, marriage and civil partnership status applies to the first part of the duty.

There are no direct equalities implications of this report.

Where decisions are made which effect the Council's companies, the equalities implications of these decisions will be considered as part of the decision making process in each case.

The Commercial Ventures Executive Sub-Committee shall generally have regard to the obligations of the Equality Act (2010) in conducting its role as the representative of the Council as a shareholder or partner in companies owned or part-owned by the Council.

COMMUNICATION IMPLICATIONS

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 receive company specific information.

RISK MANAGEMENT CONSIDERATIONS

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All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee shall consider these as part of the decision making process for any future decisions relating to companies owned or part-owned by the Council.

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

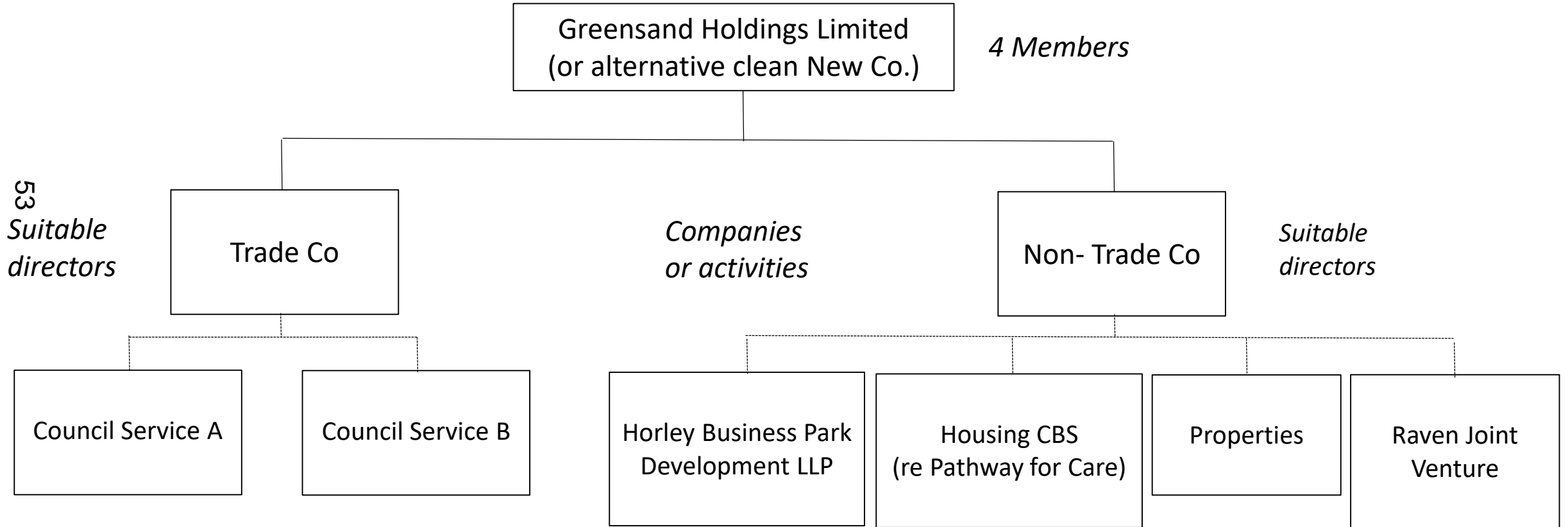
The Executive Member with responsibility for Investment & Companies have been consulted with regard to the recommendations of this report.

POLICY FRAMEWORK

The recommendations of this report are not in conflict with the Council's Policy Framework. 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.

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Commercial Governance Structure



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