

Agenda

Commercial Ventures Executive Sub- Committee

Thursday, 17 September 2020 at 6.30 pm

Remote meeting via video link



This meeting will be held **remotely**. Committee Members will be provided with the details of how to connect to the meeting one day before the meeting.

Members:

T. Archer (Chairman) and M. A. Brunt (Leader)

T. Schofield

V. H. Lewanski

Mari Roberts-Wood
Interim Head of Paid Service

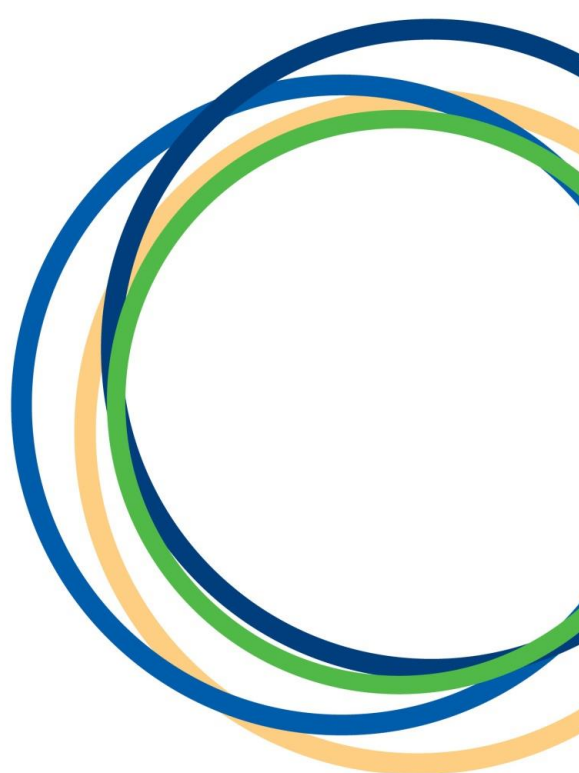
For enquiries regarding this agenda;

Contact: 01737 276182

Email: democratic@reigate-banstead.gov.uk

Published 15 September 2020

Reigate & Banstead
BOROUGH COUNCIL
Banstead | Horley | Redhill | Reigate



1. Apologies for absence

To receive any apologies for absence.

2. Declarations of interest

To receive any declarations of interest.

3. Minutes of the previous meeting (Pages 5 - 8)

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

4. Shareholder Actions - Greensand Holdings Limited (Pages 9 - 14)

To undertake actions on behalf of the Council with regard to shareholder functions for Greensand Holdings Limited.

5. Shareholder Actions - Horley Business Park Development LLP (Pages 15 - 20)

To undertake actions on behalf of the Council with regard to partnership functions for Horley Business Park Development LLP.

6. Shareholder Actions - Pathway for Care Limited (Pages 21 - 24)

To undertake actions on behalf of the Council with regard to shareholder functions for Pathway for Care Limited.

7. 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.

8. REDHILL, LEASE ARRANGEMENTS (To Follow)

9. Shareholder Actions - Greensand Holdings Limited - EXEMPT (Pages 25 - 56)

To consider the exempt information in relation to Shareholder Actions for Greensand Holdings Limited.

10. Shareholder Actions - Horley Business Park Development LLP - EXEMPT (Pages 57 - 80)

To consider the exempt information in relation to Shareholder Actions for Horley Business Park Development LLP.

11. Shareholder Actions - Pathway for Care Limited - EXEMPT (Pages 81 - 102)

To consider the exempt information in relation to Shareholder Actions for Pathway for Care Limited.

12. Any other business

To consider any other urgent business.



Our meetings

As we would all appreciate, our meetings will be conducted in a spirit of mutual respect and trust, working together for the benefit of our Community and the Council, and in accordance with our Member Code of Conduct. Courtesy will be shown to all those taking part.



Accessibility

The Council's agenda and minutes are provided in English. However, the Council also embraces its duty to anticipate the need to provide documents in different formats, such as audio, large print or in other languages. The Council will provide such formats where a need is identified prior to publication or on request.



Notice is given of the intention to hold any part of this meeting in private for consideration of any reports containing "exempt" information, which will be marked accordingly.

This page is intentionally left blank

BOROUGH OF REIGATE AND BANSTEAD

COMMERCIAL VENTURES EXECUTIVE SUB-COMMITTEE

Minutes of a meeting of the Commercial Ventures Executive Sub-Committee held at the Remote - Virtual Meeting on 2 July 2020 at 6.30 pm.

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

Also present: Councillors N. D. Harrison, S. T. Walsh, S. Sinden and R. Michalowski.

1. ELECTION OF CHAIRMAN

RESOLVED that Councillor T Archer be appointed Chair of the Commercial Ventures Executive Sub-Committee for the Municipal Year 2020/21.

2. ELECTION OF VICE-CHAIR

RESOLVED that Councillor V Lewanski be appointed Vice-Chair of the Commercial Ventures Executive Sub-Committee for the Municipal Year 2020/21.

3. APOLOGIES FOR ABSENCE

There were no apologies for absence.

4. DECLARATIONS OF INTEREST

There were no declarations of interest.

5. MINUTES OF THE PREVIOUS MEETING

RESOLVED that the minutes of the meeting held on 11 May 2020 be approved as a correct record and would be signed as soon as reasonably practical.

6. MARKETFIELD WAY UPDATE JULY 2020

Cllr Archer introduced the Property and Construction Consultant from Gardiner & Theobald.

Clerk's Note: The meeting moved to Part 2 section of the agenda to consider the exempt information before returning to Part 1.

The Council continued to make significant progress to bring forward Marketfield Way and was now in a position to enter into a formal building contract with Vinci Construction UK Ltd and a variation to a pre-sale agreement with Delph in accordance with the terms set out in the exempt Part 2 of the report.

The Council had acquired all land and property rights at the site and had achieved vacant possession. The public highway and car park had been closed. The enabling works had progressed which included the demolition of buildings, diversion of statutory services and commencement of piling.

Agenda Item 3

Commercial Ventures Executive Sub-Committee
2 July 2020

Minutes

The severe economic uncertainty that had been created by COVID-19 had affected the Council's ability to finalise terms with commercial tenants and the consideration of how the Council intended to mitigate against the effects of Covid-19 were set out in the exempt Part 2 of the report.

Cllr Brunt confirmed the project was an important investment for economic recovery for Redhill.

RESOLVED that:

- i) the significant progress that has been made to conclude stage 3 of the project since the last report to Executive in December 2019, was noted.
- ii) the Director of Place Services, in consultation with the Leader, Deputy Leader and Executive Member for Place and Economic Prosperity, be authorised to now enter into:
 - a building contract with Vinci Construction UK Ltd in accordance with the contract sum and terms provided in Part 2 of this agenda;
 - a deed of variation to a pre-sale agreement with Delph in accordance with the terms provided in Part 2 of this agenda
- iii) the Director of Place Services, in consultation with the Leader, Deputy Leader and Executive Member for Place and Economic Prosperity, be authorised to make any necessary changes to the terms or contract sums provided that they are within the financial parameters in part 2 of this agenda, before entering into the building contract and deed of variation;
- iv) following the CVESC noting the exempt information in Part 2 of the report and (ii) above, the Head of Place Delivery, now progresses stage 4 of the project, including the implementation and construction of the development, in accordance with the exempt information provided in Part 2 of this agenda.
- v) delegations previously authorised to the Head of Property in all previous reports to Executive, in relation to Marketfield Way, are now made by the Head of Place Delivery.

Reason for decision:

The Council had continued to make significant progress to bring forward Marketfield Way and was now in a position to enter into a building contract and a variation to a pre-sale agreement in accordance with the terms set out in Part 2 of this report.

Alternative Options:

- i) To complete the enabling works only and delay entering into a building contract until there is improved economy certainty. This was not the recommended option as it could effectively mothball the site for an undetermined period of time. This could result in a substantial delay in bringing forward the development and would lead to increased construction costs. It would also delay bringing forward a large and vacant site at the heart of the town centre, which would not bring confidence in Redhill as a place to invest and would lead to a loss of grant funding.

- ii) To complete the enabling works and dispose of the site which would result in a capital receipt being obtained for the site. This was not the recommended option as it would result in substantial delays in bringing the development forward as it was expected to take some time to secure an investor, who may wish to make substantial changes to the development. Disposing of interests in the site was likely to reduce the anticipated revenue income and potential capital receipt to the Council as set out in the exempt report in Part 2 of the agenda and limit the control of the Council in securing regeneration benefits for the town. The ability of the Council to help regenerate Redhill would also be lost. PostCovid-19, the opportunities to dispose of a mixed retail site were considered to be limited.

7. 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.

8. MARKETFIELD WAY UPDATE 2 JULY 2020 - EXEMPT

RESOLVED that the exempt information in relation to the Marketfield Way Update report be noted.

9. ANY OTHER BUSINESS

There was no other urgent business to consider.

The Meeting closed at 7.43 pm

This page is intentionally left blank

Agenda Item 4



SIGNED OFF BY	Commercial and Investment Director
AUTHOR	Kirsty Jane Hill, Democratic Services Officer
TELEPHONE	Tel: 01737 276749
EMAIL	Kirsty.J.Hill@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 17 September 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Shareholder Actions - Greensand Holdings Limited – September 2020
----------------	---

RECOMMENDATIONS
<p>The Commercial Ventures Executive Sub-Committee as shareholder representative for Greensand Holdings Limited (the Company), a company owned by RBBC, are requested to:</p> <ul style="list-style-type: none"> i. receive the Company's Directors' Report and Audited Financial Statements for the year ended 31 December 2019 set out in the exempt Part 2 section of this agenda; ii. approve the re-appointment of Kreston Reeves LLP as auditor for Greensand Holdings Limited for the year to 31 December 2020; iii. for the auditor appointed to Greensand Holdings Limited in (ii) above, approve the Directors of the Company to fix the auditors' remuneration for the year to 31 December 2020 as set out in the exempt Part 2 section of this agenda; iv. note the departure of John Jory as Director of the Company with effect from 31 July 2020; v. approve the appointment of the new Director of Greensand Holdings Limited and confirm the appointment in writing as set out in the exempt Part 2 section of this agenda; and

Agenda Item 4

- vi. authorise Councillor T Archer to sign on behalf of the shareholder, RBBC, the shareholder ordinary resolution confirming i. to v above as set out in the exempt Part 2 section of this agenda.

REASONS FOR RECOMMENDATIONS

- i. The Commercial Ventures Executive Sub-Committee, as shareholder representative for Greensand Holdings Limited (the Company), is asked to acknowledge receipt of the Directors' Report and Audited Financial Statements for the year ended 31 December 2019 to comply with the Shareholder Agreement between the Company and RBBC and keep the shareholder informed.

The Directors of the Company approved the Directors' Report and Audited Financial Statements for the year ended 31 December 2019 at its meeting on 8 September 2020;

- ii. The shareholder representative is asked to approve the re-appointment of Kreston Reeves LLP as auditor for Greensand Holdings Limited for the year to 31 December 2020 in order to comply with Section 485 of the Companies Act 2006.

The Company's Directors confirmed they were happy to re-appoint Kreston Reeves LLP as auditor for the Company for the year to 31 December 2020 at their meeting on 16 July 2020 as they were satisfied with their performance over the past financial period;

- iii. The shareholder representative, for the auditor appointed to Greensand Holdings Limited in (ii) above, is requested to approve the Directors of the Company to fix the auditors' remuneration for the year to 31 December 2020 to comply with Section 492 of the Companies Act 2006;

- iv. The shareholder representative is asked to note the departure of John Jory as a Director of Greensand Holdings Limited; and

- v. The shareholder representative is asked to approve the appointment of a new Director of Greensand Holdings Limited and confirm this appointment in writing to comply with the Shareholder Agreement between the Company and RBBC.

EXECUTIVE SUMMARY

The CVESC is required to consider all the actions set out in Recommendations above in its capacity as shareholder representative for Greensand Holdings Limited in order the Company can meet its statutory obligations under the Companies Act 2006 in respect of Directors' Report and Audited Financial Statements for the year ended 31 December 2019 and the appointment and remuneration of auditors.

In its capacity as shareholder representative for Greensand Holdings Limited, to comply with the provisions in the Shareholder Agreement between the Company and RBBC, the CVESC should consent to the appointment of a new Director.

Executive 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 to do anything that individuals generally may do, where this is not

Agenda Item 4

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

4. 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.
5. 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.

OPTIONS

Option 1: Approve all the required actions set out in Recommendations above in order Greensand Holdings Limited can meet the requirements of the Companies Act 2006 in respect of their Directors' Report and Audited Financial Statements for the year ended 31 December 2019; appointment of auditors; and auditors' remuneration; and meet the requirements of the Shareholder Agreement in respect of the Director's appointment. This is the recommended option to ensure Greensand Holdings Limited is governed correctly and meets the statutory requirements.

Option 2: If after reviewing the required actions and supporting documentation, adjustments are required, the CVESC should request the necessary adjustments be made and approve the actions subject to those adjustments, in order Greensand Holdings Limited is governed correctly and meet its statutory requirements.

Option 3: Do not approve the required actions. This is not the recommended option as the Directors of Greensand Holdings Limited 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 fined and the company struck off the Register of Companies if accounts are not lodged with Companies House.

LEGAL IMPLICATIONS

6. The Directors can be fined and the company struck off the Register of Companies if accounts are not lodged with Companies House.
7. Failure to file accounts is a criminal offence which can result in Directors being fined personally in the criminal courts. Failure to pay the late filing penalty can result in

Agenda Item 4

enforcement proceedings. Any criminal proceedings taken as a result of non-filing of accounts is separate from, and in addition to, any late filing penalty imposed against a company for filing accounts late. The Registrar may also take steps to strike a company off the public record if these documents are delivered late.

8. 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).

FINANCIAL IMPLICATIONS

9. The Greensand Holdings Limited's Directors' Report and Audited Financial Statements for the year ended 31 December 2019 must be approved and lodged with the Registrar of Companies ordinarily before 30 September 2020 in order to avoid late filing penalties as set out below. (However, this year due to Covid-19, The Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020 have allowed companies an extra 3 months to lodge their accounts.)

Length of period (measured from the date the accounts are due)	Private company penalty
Not more than 1 month	£150
More than 1 month but not more than 3 months	£375
More than 3 months but not more than 6 months	£750
More than 6 months	£1,500

10. 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.

EQUALITIES IMPLICATIONS

11. 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 Commercial Ventures Executive Sub-Committee should therefore ensure that it has regard for these duties by considering them through the course of its work.

COMMUNICATION IMPLICATIONS

12. There are no direct communication implications arising from the recommendations of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures 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.

HUMAN RESOURCES IMPLICATIONS

13. Where Council Officers are appointed as directors, it should be noted that this has resource implications.

RISK MANAGEMENT CONSIDERATIONS

14. 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 commercial ventures and investment activities.
15. As set out in Financial Implications above, if the Council's commercial entity's accounts are not lodged with the Registrar of Companies on time, late filing fees are imposed.
16. As set out in Legal Implications above, it should also be noted that failure to file accounts is a criminal offence which can result in directors being fined personally in the criminal courts. Failure to pay the late filing penalty can result in enforcement proceedings. Any criminal proceedings taken as a result of non-filing of accounts is separate from, and in addition to, any late filing penalty imposed against the company for filing accounts late. The Registrar may also take steps to strike the company off the public record if these documents are delivered late.

BACKGROUND PAPERS

None.

This page is intentionally left blank

Agenda Item 5



SIGNED OFF BY	Commercial and Investment Director
AUTHOR	Kirsty Jane Hill, Democratic Services Officer
TELEPHONE	Tel: 01737 276749
EMAIL	Kirsty.J.Hill@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 17 September 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Shareholder Actions - Horley Business Park Development LLP
----------------	--

RECOMMENDATIONS
<p>The Commercial Ventures Executive Sub-Committee as partner representative for Horley Business Park Development LLP (the Company), a company part-owned by RBBC, are requested to:</p> <ol style="list-style-type: none"> receive the Horley Business Park Development LLP's Annual Report and Financial Statements for the year ended 31 December 2019, set out in the exempt Part 2 section of this agenda; note the departure of John Jory as the RBBC Board Representative from the LLP; approve the appointment of two new Board Representatives for the LLP to replace John Jory and John Reed and confirm these appointments in writing to the Company. Councillor T Archer be authorised to sign a letter notifying the Company of these appointments as set out in the exempt Part 2 of this agenda. authorise the RBBC Board Representatives to approve the re-appointment of Moore Kingston Smith LLP as auditor for Horley Business Park Development LLP (the Company) for the year to 31 December 2019; for the auditor appointed to Horley Business Park Development LLP in (iv) above, authorise the RBBC Board Representatives of the Company to fix the auditors'

Agenda Item 5

remuneration for the year to 31 December 2020, as set out in the exempt Part 2 of this agenda.

REASONS FOR RECOMMENDATIONS

- i. The Commercial Ventures Executive Sub-Committee as the partner representative is asked to acknowledge receipt of the Horley Business Park Development LLP's Annual Report and Financial Statements for the year ended 31 December 2019 as required by the Members Agreement dated 24 March 2016.

The Board Representatives, Millhill Properties (Horley) Limited and Berwick Hill Properties Limited have agreed the Annual Report and Financial Statements for the year ended 31 December 2019 and the RBBC Board Representatives, when appointed, should be directed to approve the Annual Report and Financial Statements. The Annual Report and Financial Statements can be lodged with Companies House once the RBBC Board Representatives have agreed them.
- ii. As partner representative for the Company it should formally note the departure of John Jory as RBBC's Board Representative from the LLP.
- iii. In accordance with the Members Agreement dated 24 March 2016, RBBC are required to appoint two Board Representatives, therefore the partner representative is asked to approve these appointments to replace John Jory and John Reed and Councillor T Archer confirm these appointments in writing to the Company as required by the Members Agreement.
- iv. The partner representative is asked to authorise the Board Representatives appointed in (iii) above to approve the re-appointment of Moore Kingston Smith LLP as auditor for Horley Business Park Development LLP for the year to 31 December 2020 as Section 485 of the Companies Act 2006 as applied by Regulation 36 of the Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 requires the Members to appoint or re-appoint an auditor.
- v. For the auditor appointed to Horley Business Park Development LLP in (iv) above, the partner representative is asked to authorise the RBBC Board Representatives to fix the auditors' remuneration for the year to 31 December 2020 as Section 492 of the Companies Act 2006 as applied by Regulation 37 of the Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 requires the remuneration of an auditor appointed by the LLP to be fixed by the Members of the Company.

EXECUTIVE SUMMARY

The CVESC is required to consider all the actions set out in Recommendations above in its capacity as partner representative for Horley Business Park Development LLP in order it can meet its statutory obligations under the Companies Act 2006 and The Limited Liability Partnerships Act 2000 and its constitutional obligations in respect of the annual report and accounts; the appointment and remuneration of auditors; and the appointment of Board Representatives.

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 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 LLPs are governed by the Companies Act 2006; The Limited Liability Partnerships Act 2000; and The Limited Liability Partnerships Regulations 2001 (as amended principally by the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009).

BACKGROUND

4. At its meeting on 15 October 2015, the Executive authorised the formation of a Joint Venture Limited Liability Partnership (Horley Business Park Development LLP).
5. 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 included 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.

OPTIONS

- Option 1:** Approve all the required actions set out in Recommendations above in order the Company meets the requirements of the Companies Act 2006 in respect of their annual report and accounts; appointment of auditors; and auditors' remuneration; and meet the requirements of the Company's constitution. This is the recommended option to ensure the Council's commercial entities are governed correctly and meet their statutory requirements.
- Option 2:** If after reviewing the required actions and supporting documentation, adjustments are required, the CVESC should request the necessary adjustments be made and approve the actions subject to those adjustments, in order the Council's commercial entities are governed correctly and meet their statutory requirements.
- Option 3:** Do not approve the required actions. This is not the recommended option as the Members of the Council's part-owned commercial entity will not be able to carry out its' statutory duties and will be in breach of the Companies Act 2006 and the Company's constitution. The Members can be fined and the company struck off the Register of Companies if accounts are not lodged with Companies House.

LEGAL IMPLICATIONS

Agenda Item 5

6. The Board Representatives can be fined and the company struck off the Register of Companies if accounts are not lodged with Companies House.
7. Failure to file accounts is a criminal offence and in addition to penalties to which the LLP may be subject, late filing of accounts may also give rise to personal liability for the LLP's designated members (who are statutorily responsible for compliance with filing requirements) (regulation 3 and Schedule 1, Limited Liability Partnerships Regulations 2001).
8. Failure to deliver accounts on time is a criminal offence for which the designated members serving when the deadline is missed may be prosecuted and subject personally to a fine of up to £5,000 and, for continued contravention, a daily default fine of £500. There are also powers for the court to order them to comply with their filing duties.
9. The Registrar may also take steps to strike the company off the public record if these documents are delivered late.
10. 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 taxpayers and to the public law requirements to exercise the general power of competence for a proper purpose).

FINANCIAL IMPLICATIONS

11. The Horley Business Park Development LLP's Annual Report and Financial Statements for the year ended 31 December 2019 must be approved and lodged with the Registrar of Companies ordinarily before 30 September 2020 in order to avoid late filing penalties as set out below. (However, this year due to Covid-19, The Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020 have allowed companies an extra 3 months to lodge their accounts.)

Length of period (measured from the date the accounts are due)	Private company penalty
Not more than 1 month	£150
More than 1 month but not more than 3 months	£375
More than 3 months but not more than 6 months	£750
More than 6 months	£1,500

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.

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 Commercial Ventures Executive Sub-Committee should therefore ensure that it has regard for these duties by considering them through the course of its work.

COMMUNICATION IMPLICATIONS

12. There are no direct communication implications arising from the recommendations of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures 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.

RISK MANAGEMENT CONSIDERATIONS

13. 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 commercial ventures and investment activities.
14. As set out in Financial Implications above, if the Council's commercial entity's accounts are not lodged with the Registrar of Companies on time, late filing fees are imposed.
15. As set out in Legal Implications above, it should also be noted that failure to file accounts is a criminal offence which can result in designated members being fined personally in the criminal courts. Failure to pay the late filing penalty can result in enforcement proceedings. Any criminal proceedings taken as a result of non-filing of accounts is separate from, and in addition to, any late filing penalty imposed against the company for filing accounts late. The Registrar may also take steps to strike the company off the public record if these documents are delivered late.

HUMAN RESOURCES CONSIDERATIONS

14. Where Council Officers are appointed as Board Representatives, it should be noted that this has resource implications.

Agenda Item 5

BACKGROUND PAPERS
18. None.

Agenda Item 6



SIGNED OFF BY	Commercial and Investment Director
AUTHOR	Kirsty Jane Hill, Democratic Services Officer
TELEPHONE	Tel: 01737 276749
EMAIL	Kirsty.J.Hill@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 17 September 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Shareholder Actions - Pathway for Care Limited – September 2020
----------------	---

RECOMMENDATIONS

1. The Commercial Ventures Executive Sub-Committee, as shareholder representative for Pathway for Care Limited (the Company), review the Company's Annual Report and Unaudited Financial Statements for the year ended 31 July 2019, as set out in the exempt Part 2 section of this agenda, and request confirmation from Pathway for Care Limited that provision has been made for the repayment of the £1.1 million preference shares by April 2023;
2. To note the departure of John Jory as Director of the Company; and
3. The shareholder representative approve the appointment of a replacement for John Jory as Director of Pathway for Care Limited and authorise the appointment to be confirmed in writing to the Company as set out in the exempt Part 2 section of this agenda.

REASONS FOR RECOMMENDATIONS

1. The Commercial Ventures Executive Sub-Committee, as shareholder representative for Pathway for Care Limited (the Company), is asked to review the Company's Annual Report and Unaudited Financial Statements for the year ended 31 July 2019 and request confirmation from Pathway for Care Limited that provision has been made for

Agenda Item 6

the repayment of the £1.1 million preference shares by April 2023, to evaluate the Company's financial performance; and

2. The shareholder representative is asked to approve the appointment of a replacement for John Jory as Director of Pathway for Care Limited and confirm this appointment in writing pursuant to the Shareholder Agreement between the Company and RBBC.

EXECUTIVE SUMMARY

The CVESC is required to consider the actions set out in Recommendations above in its capacity as shareholder representative for Pathway for Care Limited in order the Council meets its obligations as set out in the Shareholder Agreement between the Council and the Company and, on behalf of the Council, exercise its fiduciary duty owed to its rate and local tax payers.

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 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

4. The creation of PFC was authorised by the Executive on 14 July 2016. In April 2018, Fairhome Group PLC became the major shareholder in the company.
5. In September 2019, Fairhome Care plc sold their shareholding in the Company to Paul Green. The majority shareholding in the Company is now held by Transforming Healthcare Group Limited (THG) and a shareholder of THG is Paul Green.
6. The Council has the right to appoint one director to the board of the Company.
7. 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.

8. In the Commercial Ventures Executive Sub-Committee's capacity as shareholder representative, there is no fiduciary duty on them as individuals save for the fact that they represent the Council and owe responsibilities back to the Council to demonstrate that they act reasonably in carrying out their duties as shareholder representative. In the ordinary course of events, shareholders would be entitled to rely on and trust the information provided by the directors of the Company.

OPTIONS

- Option 1:** In reviewing the accounts pursuant to Recommendation (1), the Commercial Ventures Executive Sub-Committee should acknowledge receipt of Pathway for Care Limited's Annual Report and Unaudited Financial Statements for the year ended 31 July 2019 and request confirmation from Pathway for Care Limited that provision has been and is being made for the repayment of the £1.1 million preference shares by April 2023 and approve Recommendations (2) and (3) in this report. This is the recommended option to ensure the Council meets the requirements of the Articles of Association and the Shareholder Agreement and the Council's fiduciary duty.
- Option 2:** Approve all of the Recommendations above without further enquiry. This is not the recommended option as the Council should be satisfied that provision has been and is being made for the repayment of the £1.1 million preference shares by April 2023.
- Option 3:** Do not approve the Recommendations. This is not the recommended option as the Council is required to appoint a Director to the Company by the Articles of Association and the Shareholder Agreement.

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).

FINANCIAL IMPLICATIONS

10. 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.

EQUALITIES IMPLICATIONS

11. 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;

Agenda Item 6

- 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.

12. The Commercial Ventures Executive Sub-Committee should therefore ensure that it has regard for these duties by considering them through the course of its work.

COMMUNICATION IMPLICATIONS

13. There are no direct communication implications arising from the recommendations of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures 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.

RISK MANAGEMENT CONSIDERATIONS

14. 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 commercial ventures and investment activities.

HUMAN RESOURCE IMPLICATIONS

15. Where Council Officers are appointed as directors, it should be noted that this has resource implications.

BACKGROUND PAPERS

None.