

Agenda

Commercial Ventures Executive Sub- Committee



Monday, 26 September 2022 at 6.30 pm

New Council Chamber, Town Hall, Reigate



This meeting will take place in the Town Hall, Castlefield Road, Reigate. Members of the public, Officers and Visiting Members may attend remotely or in person.

All attendees at the meeting have personal responsibility for adhering to any Covid control measures. Attendees are welcome to wear face coverings if they wish.



Members of the public may observe the proceedings live on the Council's [website](#).

Members:

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

T. Schofield

V. H. Lewanski

Mari Roberts-Wood
Managing Director

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

1. Apologies for absence

To receive any apologies for absence.

2. Minutes of the previous meeting

(Pages 5 - 6)

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

3. Declarations of interest

To receive any declarations of interest.

4. Shareholder Actions - 26 September 2022 (a) Greensand Holdings Limited

(Pages 7 - 20)

To consider required Shareholder Actions for Greensand Holdings Limited for the accounts and auditor appointments.

5. Shareholder Actions - 26 September 2022 (b) Horley Business Park Development LLP

(Pages 21 - 32)

To consider required 'Shareholder Actions' as partner representative for Horley Business Park Development LLP for the accounts and auditor appointment.

6. 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.

7. 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.



Streaming of meetings

Meetings are broadcast live on the internet and are available to view online for six months. A recording is retained for six years after the meeting. In attending any meeting, you are recognising that you may be filmed and consent to the live stream being broadcast online, and available for others to view.



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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.

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Minutes of a meeting of the **Commercial Ventures Executive Sub-Committee** held at the **New Council Chamber - Town Hall, Reigate** on **Thursday, 21 July 2022 at 6.30 pm.**

Present: Councillors T. Archer (Chair), T. Schofield and V. H. Lewanski (Vice-Chair),

9 Apologies for absence

Apologies for absence were received from the Leader, Councillor Mark Brunt.

10 Minutes of the previous meeting

RESOLVED: the minutes of the previous meeting on 23 June 2022 were approved.

11 Declarations of interest

There were no declarations of interest.

12 Companies Performance Update - Spring 2022

Members reviewed the Companies Performance Update – Spring 2022 report. The report provided an overview of the performance of companies owned or part-owned by the Council, as of Spring 2022. It is prepared on a twice-yearly basis as part of the governance oversight of the Council's investments and was reviewed by the Overview and Scrutiny Committee on 16 June 2022. The Committee's observations were included in the report.

The Executive Member for Investment and Companies explained that there are currently three active companies which the Council owns, or part-owns. These are:

- Greensand Holdings Limited, a property investment and development company wholly owned by the Council, which owns an office building and a plot of development land;
- Horley Business Park Development Limited Liability Partnership, a joint venture to bring forward planning for and development of the proposed Horley Business Park. The Council is a partner of this LLP; and
- Pathway for Care Limited, a supported living provider, of which the Council is a minority (10%) shareholder.

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Commercial Ventures Executive Sub-Committee, Thursday, 21st July, 2022

The report contained information on these companies, the Council's financial involvement with them, and an overall view of their recent performance from the Council's perspective. The report also explained the Council's temporary relationship with another company, the Camelia Close Residents Management Company.

RESOLVED that: the Companies Performance Update – Spring 2022 which included observations from Overview and Scrutiny Committee meeting on 16 June 2022 be noted.

An Exempt report on the Companies Performance Update – Spring 2022, which contained additional commercially sensitive supporting information, was discussed in Part 2 of the meeting (Item 14 Exempt business) with Visiting Members asking questions and receiving responses from the Commercial Ventures Executive Sub-Committee Chair, Councillor Archer and officers present at the meeting.

RESOLVED: to note the Exempt report under Item 12 (Companies Performance Update – Spring 2022).

13 Shareholder Actions 21 July 2022 - EXEMPT

RESOLVED that: The Commercial Ventures Executive Sub-Committee acts in its capacity as shareholder/partner representative for the Council's owned or part-owned companies.

The Fully Exempt report and item was discussed in Part 2 of the meeting (Item 14 Exempt business).

RESOLVED: that the Heads of Terms as the shareholder for Reigate and Banstead Borough Council in relation to Horley Business Park Development LLP and its joint venture partners be approved.

14 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 12 A of the Act: and
- (ii) The public interest in maintaining the exemption outweighs the public interest in disclosing the information.

15 Any other business

There was no other business.

The meeting finished at 6.51 pm

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Signed off by	Head of Legal and Governance
Author	Kirsty Jane Hill, Democratic Services Officer
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To	Commercial Ventures Executive Sub-Committee
Date	Monday 26 September 2022
Executive Member	Portfolio Holder for Investment and Companies

Key Decision Required	N
Wards Affected	(All Wards);

Subject	Shareholder Actions – 26 September 2022 (a) Greensand Holdings Limited
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Recommendations
<p>The Commercial Ventures Executive Sub-Committee, as shareholder representative for Greensand Holdings Limited ('the Company'), is 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 2021 as set out in the exempt annex at Part 2 of this agenda; (ii) Approve the re-appointment of Kreston Reeves LLP as auditor for Greensand Holdings Limited for the year to 31 December 2022; (iii) Authorise the Directors of the Company to fix the auditors' remuneration for the year to 31 December 2022 as set out in the exempt annex at Part 2 of this agenda; (iv) Authorise the Portfolio Holder for Investment and Companies to sign, on behalf of the Council as shareholder, the shareholder ordinary resolution confirming approval of recommendations (i) to (iii) above as set out in the exempt annex at Part 2 of this agenda.
Reasons for Recommendations

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The Commercial Ventures Executive Sub-Committee, as the Council's shareholder representative for Greensand Holdings Limited ('the Company'), is required to acknowledge receipt of the Directors' Report and Audited Financial Statements for the year ended 31 December 2021 to comply with the Company's Shareholder Agreement.

The shareholder representative is also required to approve the re-appointment of Kreston Reeves LLP as auditor for the Company for the year to 31 December 2022 to comply with Section 485 of the Companies Act 2006. The Company's Directors have confirmed they are happy to re-appoint Kreston Reeves LLP as they are satisfied with their performance over the past financial period.

The shareholder representative is also requested to approve the Company Directors fix the auditors' remuneration for the year to 31 December 2022 to comply with Section 492 of the Companies Act 2006.

Executive Summary

The Commercial Ventures Executive Sub-Committee is required to consider all the actions set out in Recommendations in its capacity as shareholder representative for Greensand Holdings Limited in order that the Company can meet its statutory obligations under the Companies Act 2006 in respect of the Directors' Report and Audited Financial Statements and the appointment and remuneration of auditors.

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. At its meeting on 30 June 2016, the Executive authorised the creation of a local authority trading company, Greensand Holdings Limited and delegated the shareholder representative function to the Property Executive Sub-Committee, and subsequently to the Commercial Ventures Executive Sub-Committee.
5. On 30 May 2019, the Executive authorised the creation of the Commercial Ventures Executive Sub-Committee for the purpose of monitoring the performance of, and taking decisions on, the Council's existing and potential commercial ventures and other investments. This includes undertaking all functions of the Council as a shareholder under the Companies Act 2006 in relation to those companies or partnerships owned, or part-owned, by the Council, except as otherwise specified.

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Options

Commercial Ventures Executive Sub-Committee has three options

Option 1 Approve the required actions as set out in the Recommendations in order that Greensand Holdings Limited can meet the requirements of the Companies Act 2006 in respect of the Directors' Report and Audited Financial Statements for the year ended 31 December 2021; appointment of auditors; and auditors' remuneration.

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

Option 2: If after reviewing the required actions and supporting documentation, adjustments are required, the Commercial Ventures Executive Sub-Committee 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: To not approve the recommended actions. This is not the recommended option as failure to file accounts is a criminal offence and 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 personally fined in the criminal courts and the company struck off the Register of Companies if accounts are not lodged with Companies House.

Legal Implications

6. The Directors can be personally fined in the criminal courts and the company struck off the Register of Companies if accounts are not lodged with Companies House.
7. 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 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. 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.

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10. The Company's Report and Audited Financial Statements for the year ended 31 December 2021 must be approved and lodged with the Registrar of Companies before 30 September 2022 in order to avoid late filing penalties as set out below.

Length of period	Private company penalty (measured from date the accounts are due)
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

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.

Environmental Sustainability Implications

13. The Council is committed to taking action to address environmental sustainability and climate change issues. There are no environmental sustainability implications arising from this report.

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.

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Human Resources
15. Where Council Officers are appointed as directors, this has potential capacity implications.
Background Papers
16. None.

Exempt Annexes

- Shareholder Actions – 26 September 2022 (a) Greensand Holdings Limited EXEMPT
- Annex A Shareholder Actions – 26 September 2022 (a) Greensand Holdings Limited EXEMPT (Accounts)
- Annex B Shareholder Actions – 26 September 2022 (a) Greensand Holdings Limited EXEMPT (Auditors' remuneration)
- Annex B Shareholder Actions – 26 September 2022 (a) Greensand Holdings Limited EXEMPT (shareholder ordinary resolution)

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Agenda Item 5



Signed off by	Head of Legal and Governance
Author	Kirsty Jane Hill, Democratic Services Officer
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Email	Kirsty.J.Hill@reigate-banstead.gov.uk
To	Commercial Ventures Executive Sub-Committee
Date	Monday 26 September 2022
Executive Member	Portfolio Holder for Investment and Companies

Key Decision Required	N
Wards Affected	(All Wards);

Subject	Shareholder Actions - 26 September 2022 (b) Horley Business Park Development LLP
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Recommendations
<p>The Commercial Ventures Executive Sub-Committee, as Partner Representative for Horley Business Park Development LLP ('the Company'), is requested to:</p> <ul style="list-style-type: none"> (i) Note the Company's Annual Report and Financial Statements for the year ended 31 December 2021 as set out in the exempt annex at Part 2 of this agenda; (ii) Acknowledge receipt of the Company's Annual Report and Financial Statements for the year ended 31 December 2021 and direct the Council's Board Representatives to approve them; (iii) Authorise the Council's Board Representatives to approve the re-appointment of Moore Kingston Smith LLP as auditor for the Company for the year to 31 December 2022; and (iv) Authorise the Council's Board Representatives to fix the auditors' remuneration for the year to 31 December 2022, as set out in the exempt Part 2 of this agenda.
Reasons for Recommendations

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Following approval of recommendation (i) the Company's Annual Report and Financial Statements for the year to 31 December 2021 can be lodged with Companies House, subject to approval being received from the other Partners.

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 2021 as required by the Members Agreement dated 24 March 2016.

In accordance with the Members Agreement, all Board Representatives should approve the Company's Annual Report and Financial Statements. As the Partner Representative, Commercial Ventures Executive Sub-Committee is required to direct the Council's Board Representatives to approve the Annual Report and Financial Statements for the year to 31 December 2021;

The Partner Representative is asked to authorise Board Representatives to approve the re-appointment of Moore Kingston Smith LLP as auditor for the Company for the year to 31 December 2022. 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.

For the auditor appointed to the Company, the Partner Representative also asked to authorise the Board Representatives to fix the auditors' remuneration for the year to 31 December 2022. 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 Company to be fixed by the Members of the Company.

Executive Summary

The Commercial Ventures Executive Sub-Committee is required to consider the actions set out in the recommendations above in its capacity as Partner Representative for Horley Business Park Development LLP in order that the Company meets its statutory obligations under the Companies Act 2006, the Limited Liability Partnerships Act 2000 and its constitutional obligations in respect of the annual report and accounts, and appointment and remuneration of auditors.

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

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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

Commercial Ventures Executive Sub-Committee has three 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

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. Late filing of accounts may give rise to personal liability for the LLP's designated members who are responsible for compliance with filing requirements under Regulation 3 and Schedule 1 of the 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.

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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. 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.
12. The Company's Annual Report and Financial Statements for the year ended 31 December 2021 must be approved and lodged with the Registrar of Companies ordinarily before 30 September 2022 in order to avoid late filing penalties as set out below.

Length of period	Private company penalty (measured from the date the accounts are due)
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

Equalities Implications

13. 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

14. There are no direct communication implications arising from the recommendations of this report. As identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee should have regard for the Local

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Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company-specific information.

Environmental Sustainability Implications

15. The Council is committed to taking action to address environmental sustainability and climate change issues. There are no environmental sustainability implications for this report.

Risk Management Considerations

16. All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee should consider these as part of the decision-making process for any decisions relating to commercial ventures and investment activities.
17. If the Company's accounts are not lodged with the Registrar of Companies on time, late filing fees are imposed.
18. 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

19. Where Council Officers are appointed as Board Representatives, that this has capacity implications.

Background Papers

None

ANNEXES

- 4 Shareholder Actions - 26 September 2022 (b) Horley Business Park Development LLP
'Horley Business Park Development LLP: DRAFT Annual Report and Financial Statements For the year ended 31 December 2021'
- 5 Shareholder Actions - 26 September 2022 (b) Horley Business Park Development LLP
'Moore Kingston Smith LLP - Proposed Fees for 2022'

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