



Reigate & Banstead
BOROUGH COUNCIL
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SIGNED OFF BY	Commercial and Investment Director
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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
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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> <ol 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

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

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

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.