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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 - 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), a company part-owned by RBBC, are requested to:</p> <ol style="list-style-type: none">i. 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;ii. note the departure of John Jory as the RBBC Board Representative from the LLP;iii. 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.iv. 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;v. 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'

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

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.

BACKGROUND PAPERS
18. None.