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<b>TO</b>	Commercial Ventures Executive Sub-Committee
<b>DATE</b>	Thursday, 18 November 2021
<b>EXECUTIVE MEMBER</b>	Portfolio Holder for Investment and Companies

<b>KEY DECISION REQUIRED</b>	N
<b>WARDS AFFECTED</b>	(All Wards);

<b>SUBJECT</b>	Companies Performance Update - Autumn 2021
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<b>Recommendations</b>
<b>1. To note the Autumn 2021 Companies Performance Update, and the observations of the Overview &amp; Scrutiny Committee, as set out in the report.</b>
<b>Reasons For Recommendations</b>
To consider the performance of companies owned or part-owned by the Council, as of Autumn 2021
<b>Executive Summary</b>
<p>This report provides an overview of the performance of the companies currently owned, or part-owned, by the Council.</p> <p>The operational companies currently consist of Greensand Holdings Limited, Horley Business Park Development LLP, and Pathway for Care Limited.</p> <p>Two additional companies, RBBC Limited and RBBC Housing – Independent Living (the Council’s Community Benefit Society) are inactive.</p> <p>A new company, Camelia Close (Tadworth) Residents Management Company was established in May 2021. This company is not a Council-owned company, however it relates to a council project therefore is included in this report for completeness.</p> <p>Greensand Holdings is considered to be performing in line with expectations, Horley Business Park Development LLP is not currently considered to be performing in line with</p>

expectations, and judgement is pending on the performance of Pathway for Care Limited. It is as yet considered to be too soon to offer a judgement Camelia Close Residents Management Company due to its recent establishment, but there are not anticipated to be any issues at this time.

The Overview & Scrutiny Committee considered this report at its meeting of 21 October 2021, and its observations are set out below.

Additional commercially sensitive supporting information is detailed in the exempt report set out in the Part 2 section of this agenda.

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

## **Statutory Powers**

1. Section 1 of the Localism Act 2011 gives local authorities a general power of competence that enables them to do anything that a private individual is entitled to do, as long as it is not expressly prohibited by other legislation. Section 4 of the same Act directs that anything which is done for purely commercial purposes should be done through a company structure.
2. 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 and Community Benefit Societies are also governed by Co-operative and Community Benefit Societies Act 2014.

## **Background**

3. Local Authorities face ongoing financial challenges in recent years, due to a combination of reductions in central government funding, and increasing demand on services in many areas. Whilst Reigate and Banstead Borough Council has maintained a generally strong financial position, it remains essential for the Council to generate income in addition to its statutory share of business rates and council tax funding, if it is to continue to deliver and maintain the high level of services it currently provides and has planned to continue to provide as part of the Corporate Plan 2020-2025.
4. Whilst the Council pursued commercial activities before 2019, there was a Commercial Governance Review in 2018. Following that review, the activities have been overseen by the Commercial Ventures Executive Sub-Committee, and integrated within the Council's wider Service and Financial Planning.
5. These activities take place within financial limits set out as part of the Council's approved revenue budget and capital programme.
6. The Council's holdings in companies represent one element of this commercial and investment activity, governed by the established commercial framework, along with relevant company regulations.
7. To support good governance of the Council's companies, the Overview and Scrutiny Committee and the Commercial Ventures Executive Sub-Committee receive regular updates on the performance of these companies.

8. The last full update was considered in Spring 2021.

### **Key Information**

9. As identified in the Executive Summary, the Council currently owns or part-owns, or has an interest in four operational companies. These are Greensand Holdings Limited, Horley Business Park Development LLP, Pathway for Care Limited, and Camelia Close (Tadworth) Residents Management Company Limited.
10. Greensand Holdings Limited is currently considered to be performing overall in line with the Council's objectives and expectations. Additional information is currently being sought from Pathway for Care Limited and the decision on the adequacy of its performance is undetermined, pending receipt of that information. Horley Business Park Development LLP is not currently considered to be performing in line with the Council objectives due to activity being limited by matters currently being resolved with the joint venture partners. No assessment has been undertaken on the performance of Camelia Close (Tadworth) Residents Management Company due to its recent establishment and the expectation that the Council's involvement will be short term.
11. More detail of the current status and performance of the Council's interest in each company is set out below.

### **Greensand Holdings Limited**

12. Greensand Holdings Limited is a property investment and development company, established to facilitate the Council's property investment activities. It is wholly owned by the Council. The creation of the company was authorised by the Executive on 15 September 2016.
13. The company was initially funded through a loan from the Council. It generates an income from one of its property holdings and provides an income stream to the Council through the payment of interest on the loan.
14. As of 31 March 2021, the company had received £13.258m in loan funding from the Council comprising
- £2.270m in 2016/17 for the purchase of office premises; and
  - £10.988m in 2019/20 for the purchase of a plot of land for development.
15. The office building provides a rental income sufficient for the company to pay interest on the loan to the Council.
16. The development land provides a negligible income stream; £1.152m loan interest has been accrued as of 31 March 2021 pending a decision on its future development. This sum is impaired in the Council's accounts to reflect uncertainty regarding timing of loan repayment.
17. The current Directors of the company are William Pallett, Derek Beck and Councillor R. Michalowski.
18. The company, from a shareholder perspective, is currently performing in line with the Council's objectives. The performance of the investment in the development site will be dependent on future decisions made regarding said development.
19. The draft Directors' Report and Audited Financial Statements for the year ended 31

December 2020 for Greensand Holdings Limited are provided as Annex 1 to this report, pending final auditor signature at time of writing.

20. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

### **Horley Business Park Development Limited Liability Partnership**

21. Horley Business Park Development LLP is a joint venture which was set up to bring forward planning, and subsequent development, of employment land in the Horley area. The creation of the company was authorised by the Executive on 15 October 2015, and a joint venture with Millhill Properties (Horley) Limited and Berwick Hill Properties Limited was established in 2016.
22. The partnership is funded through loans from the Council and its partners. It does not currently generate a profit, but is working towards the future development of the proposed Horley Business Park as a long term project.
23. As of 31 March 2021, the company had received £0.602m in loan funding from the Council (plus £0.276m accrued interest) to fund set up and working capital expenses. This sum is impaired in the Council's accounts to reflect uncertainty regarding timing of loan repayment.
24. The Council is currently working to resolve a number of matters regarding its relationship with the partners to the LLP with regard to both parties' engagement with the joint venture. In order to ensure we do not prejudice the current discussions we cannot publish additional information, but an update will be provided once it is possible to do so.
25. As identified in the Spring 2021 report, following the felling of a number of trees without the Council's knowledge on land owned by Millhill the Council is continuing to enforce the Tree Preservation process, and cooperate with the relevant authorities.
26. Due to the limitations placed on the joint venture's operation by the matters we are working to resolve, the company is not currently considered to be performing in line with Council objectives. Once a resolution is reached, an approach will be agreed for how to move forward in a way which aligns with the Council's objectives.
27. The draft Annual Report and Financial Statements for the year ended 31 December 2020 for Horley Business Park Development LLP are provided as Annex 2 to this report. Due to these accounts not yet being confirmed, they are presented as a confidential annex at this time.
28. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

### **Pathway for Care Limited**

29. Pathway for Care Limited provides supporting living facilities and support for their residents at a number of sites in the borough and surrounding areas. The creation of a predecessor company was authorised by the Executive on 14 July 2016; the current company was subsequently established in April 2018.
30. The Council is a minority shareholder in the company, with the majority shareholding held by Transforming Healthcare Group Limited. The Council has the right to appoint a director to the board of the company.

31. The Council currently holds £1.1m redeemable preference shares in the company, redeemable in April 2023, which were converted from a £1.1m loan to the predecessor company in 2018. When redeemed, these will provide a capital receipt for the Council, subject to the company holding sufficient funds to honour the redemption at that time.
32. The Council also stands to receive income from any dividends paid by the company. Total dividends are stipulated to be 50% of net profits generated by the company, subject to cash flow. Since 2018 the company has been investing in growing its services, and during 2020/21, it reported that it had reduced voids, revised its operating model, and consistently generated a monthly profit. However, it has not yet declared a dividend income to the Council or any tangible plans for redemption of the preference shares.
33. During 2020 Pathway for Care Limited changed its accounting reference date from 31 July to 31 December and lodged Financial Statements for the period ended 31 December 2020 with Companies House, see attached Annex 3.
34. The current Directors of the company are Mr. Oleksandr Vrublevskiy, Mr. James Ford; and Councillor V. Lewanski, the Council appointed Director. Mr. Paul Green and Mr. Warren Richards were previously directors of the company but resigned as of 6 October 2021.
35. The Council is currently awaiting information the company's most recent accounts and internal performance measures, and a judgement on the performance of the company is therefore subject to this information being received.
36. Additional details are available in the exempt report set out in the Part 2 section of this agenda.

#### **RBBC Limited**

37. RBBC Limited was incorporated on 30 September 2020 following the dissolution of the original RBBC Limited. It was created for the purpose of preserving the name to allow the Council to use the company name in the future. The directors, appointed for incorporation purposes, are the Director of People and the Director of Place. The company is inactive and has not undertaken any activity in the current year.

#### **RBBC Housing – Independent Living**

38. This company is currently inactive, and has not undertaken any substantive activity in the current year.
39. The company is currently being dissolved, as approved by the Commercial Ventures Executive Sub-Committee.

#### **Camelia Close (Tadworth) Residents Management Company Limited**

40. This company was incorporated in May 2021, as a company limited by guarantee. It is not a Council owned company however its directors are Richard Robinson, the Council's Head of Housing and Penny Craig, the Council's Senior Development Manager.
41. The company was established to ensure that the ownership and management of the freehold can successfully be passed over to the residents upon the sale of the last

property, reducing the Council's longer-term liability. It is a requirement that any Resident Management Company (RMC) is set up prior to the first sale. At the point of final property sale, the Council officers will resign their appointments.

42. In line with the company's Memorandums and Articles, following the granting of the lease of the last flat, or transfer of the last house on the scheme, RBBC, as Developer, will transfer the freehold of the remainder of the site to the RMC. A specialist resident management company is currently appointed to handle all aspects of leasehold management (estate cleaning services, service charge collection etc.), and upon transfer to the RMC, the residents can choose to continue this appointment, choose another company, or run the estate management themselves. 22 out of the 25 homes on the site have been reserved or sold, and all units are anticipated to be sold by the end of this year/early next.

### Forthcoming Business

43. The Council is currently developing Part 2 of its Commercial Strategy. This will help set out the Council's approach to future commercial activity, including regarding its interests and objectives around companies.
44. In April 2021, the Commercial Ventures Executive Sub-Committee reviewed and noted the approach to the implementation of investment and company governance agreed in January 2020. As further matters relating to companies are considered and agreed, these will be reported in line with the agreed performance reporting approach.
45. Where future arrangements regarding the Council's interests in companies emerge from this strategy, these will be reflected in future reporting on company performance.
46. Work is also currently underway to explore the opportunity for the establishment of a housing company.

### Observations of the Overview & Scrutiny Committee

47. The Overview & Scrutiny Committee considered this report at its meeting of 21 October 2021. Questions, observations and responses provided were captured in the minutes of the meeting, and are set out below for the awareness of the Commercial Ventures Executive Sub-Committee.
48. Members asked questions and made the following observations:
- **Business rates collection** – it was identified that long-standing proposals to reform business rates were still under consideration by the Government. The Council received around £50m through business rates and retained approximately £2m. *Note: since the meeting of the Committee, additional updates to business rates were announced in the Autumn 2021 national budget.*
  - **Gatwick Airport 'strategic gap'** – this was identified to be Surrey County Council-owned land between the proposed Horley Business Park development site and the M23 spur road. The emerging plans presented by Gatwick Airport proposed that some of this land be used as a site compound temporarily to aid with other proposed construction work at the airport.

- **Greensand Holdings Limited rental income** – Members asked for clarification on rental income and loan interest. It was confirmed that modest rental income was received on land owned by the company at Fishers Farm (part of the Horley Business Park development land). A loan to the company accrued loan interest of £1.152m as of 31 March 2021. The office building held by the company provided rental income sufficient for the company to pay interest on the loan to the Council.
- **Replanting trees** – as set out in the Companies Performance Update report to the Committee on 18 March 2021, a number of trees on land owned by Millhill Properties were felled in November 2020 without the knowledge or approval of the Council. Members asked about replanting oak woodland and Tree Preservation Orders. It was confirmed that this was land not owned by the Council and was subject to an ongoing investigation by the Forestry Commission.
- **Pathway to Care Ltd** – Members asked about income from this company. It was confirmed that majority shareholder, Transforming Healthcare Group, had not yet declared a dividend income to the Council.

49. The Commercial Ventures Executive Sub-Committee is requested to consider and note these observations.

### Options

50. **Option 1:** To note the Autumn 2021 Companies Performance Update, and the observations of the Overview and Scrutiny Committee. **This is the recommended option** as it will support the effective consideration of the performance of companies owned, or part-owned, by the Council as of Autumn 2021.
51. **Option 2:** To not note the Autumn 2021 Companies Performance Update, and the observations of the Overview and Scrutiny Committee. **This is not the recommended option** as it will not support the effective consideration of the performance of companies owned, or part-owned, by the Council as of Autumn 2021.

### Legal Implications

52. There are no direct legal implications arising from this report.
53. Where decisions are made which effect the Council's companies, the legal implications of these decisions will be considered as part of the decision making process in each case.

### Financial Implications

54. There are no direct financial implications arising from this report. The Council's annual statement of accounts incorporates the financial position of its companies as part of its group financial statements.
55. Where decisions are made which impact the Council's companies, the financial implications of these decisions will be considered as part of the decision making process in each case.

## **Equalities Implications**

56. 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.
57. The three parts of the duty applies to the following protected characteristics: age; disability; gender reassignment; pregnancy/maternity; race; religion/faith; sex and sexual orientation. In addition, marriage and civil partnership status applies to the first part of the duty.
58. There are no direct equalities implications of this report, however an awareness of the Council's obligations with respect to these duties should form part of the consideration of this report.
59. Where decisions are made which effect the Council's companies, the equalities implications of these decisions will be considered as part of the decision making process in each case.
60. The Commercial Ventures Executive Sub-Committee shall generally have regard to the obligations of the Equality Act (2010) in conducting its role as the representative of the Council as a shareholder or partner in companies owned or part-owned by the Council.

## **Communication Implications**

61. There are no direct communication implications as a result of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee shall have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company specific information.

## **Risk Management Considerations**

62. All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee shall consider these as part of the decision making process for any future decisions relating to companies owned or part-owned by the Council.
63. In monitoring the performance of companies owned or part-owned by the Council, the Commercial Ventures Executive Sub-Committee has regard to the fiduciary duty the Council owes to its rate and local tax payers, to the public law requirements to exercise the general power of competence for a proper purpose, and the



requirements of the Commercial Governance Framework which forms part of the terms of reference of the sub-committee.

### **Environmental Sustainability Considerations**

- 64. There are no direct environmental sustainability implications arising from this report.
- 65. Where decisions are made which effect the Council's companies, the environmental implications of these decisions will be considered as part of the decision making process in each case.

### **Policy Framework**

- 66. The recommendations of this report are consistent with the Council's Policy Framework.
- 67. All actions undertaken by the Council in respect of commercial activity (including company activity) will be undertaken for the purpose of contributing to the achievement of the 'Funding our Services' objective within the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute.