



<b>Signed off by</b>	Head of Legal and Governance
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<b>To</b>	Commercial Ventures Executive Sub-Committee
<b>Date</b>	Thursday, 15 September 2022
<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>	Shareholder Actions – 15 September 2022 (a) Greensand Holdings Limited
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<b>Recommendations</b>
<p><b>The Commercial Ventures Executive Sub-Committee, as shareholder representative for Greensand Holdings Limited ('the Company'), is requested to:</b></p> <ul style="list-style-type: none"> <li><b>(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;</b></li> <li><b>(ii) Approve the re-appointment of Kreston Reeves LLP as auditor for Greensand Holdings Limited for the year to 31 December 2022;</b></li> <li><b>(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;</b></li> <li><b>(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.</b></li> </ul>
<b>Reasons for Recommendations</b>

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.

## 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.

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.

<b>Length of period</b>	<b>Private company penalty</b> (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.

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

Exempt Annexes

- Shareholder Actions – 15 September 2022 (a) Greensand Holdings Limited EXEMPT
- Annex A Shareholder Actions – 15 September 2022 (a) Greensand Holdings Limited EXEMPT (Accounts)
- Annex B Shareholder Actions – 15 September 2022 (a) Greensand Holdings Limited EXEMPT (Auditors' remuneration)
- Annex B Shareholder Actions – 15 September 2022 (a) Greensand Holdings Limited EXEMPT (shareholder ordinary resolution)