



<b>Signed off by</b>	Strategic Head of Legal & Governance
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<b>To</b>	Partner, Shareholder and Trustee Executive Sub-Committee
<b>Date</b>	Thursday, 22 June 2023
<b>Executive Member</b>	Portfolio Holder for Commercial & Community Assets

<b>Key Decision Required</b>	N
<b>Wards Affected</b>	(All Wards);

<b>Subject</b>	<b>Shareholder Actions - 22 June 2023: Board Appointments</b>
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<b>Recommendations</b>	
(i)	<b>The Partner, Shareholder and Trustee Executive Sub-Committee, as shareholder representative for Greensand Holdings Limited, a company 100% owned by Reigate &amp; Banstead Borough Council, is requested to endorse Cllr R Michalowski remaining as a Director of Greensand Holdings Limited following his appointment as a Member of the Executive and Portfolio Holder for Place, Planning and Regulatory Services;and</b>
(ii)	<b>The Partner, Shareholder and Trustee Executive Sub-Committee, as Partner Representative for Horley Business Park Development LLP, a company part-owned by Reigate &amp; Banstead Borough Council, is requested to:</b>

- (a) **Note the resignation of the existing Reigate & Banstead Borough Council Board Representatives to Horley Business Park Development LLP as set out in the exempt report in Part 2 of this agenda; and**
- (b) **Approve the appointment of a new Board Representative for Horley Business Park Development LLP, as set out in the exempt report in Part 2 of this agenda.**

### **Reasons for Recommendations**

Cllr R Michalowski remaining a Director to Greensand Holdings Limited is considered to be in the best interests of the company and the Council as Shareholder to the Company.

In accordance with the Members' Agreement, the Council is required to appoint Board Representatives to Horley Business Park LLP, therefore the Sub-Committee is asked to approve the proposed appointee as set out in the exempt report in Part 2 of this agenda.

### **Executive Summary**

The Partner, Shareholder and Trustee Executive Sub-Committee is required to consider the actions set out in the Recommendations above in its capacity as Shareholder and Partner Representative for the Council's owned or part-owned companies in order that the companies can meet their constitutional obligations in respect of any conflicts of interest and the appointment of Board Representatives.

**The Partner, Shareholder and Trustee 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. The Partnership Shareholder and Trustee Sub-Committee has been established for the purpose of monitoring the performance of, and taking decisions on, the Council's

existing and potential commercial ventures and other investments and reviewing the activities of the Council's charities, including monitoring their performance.

5. This includes undertaking all functions of the Council as a shareholder/partner under the Companies Act 2006 in relation to those companies or partnerships owned, or part owned by the Council.

## Key Information

### Conflicts of Interest

6. When voting as a Director or Board Representative on company matters, as set out in CIPFA's *'Local Authority Owned Companies: a good practice guide, 2022'*, the Council's representatives must have regard to the rules on declaring interests as set out in the Articles of Association for Greensand Holdings Limited ('the Company') and the Members' Agreement for Horley Business Park LLP ('the LLP') and on any restrictions on voting in certain circumstances.
7. The duty toward the company only applies when the individual is acting in this capacity. When at authority meetings or acting in their role as a local authority officer or elected member they must act in the best interests of the council, subject to confidentiality of information as required by the Company or the LLP.
8. When any decision relating to the Company or LLP is being considered by the Executive or the Partner, Shareholder and Trustee Executive Sub-Committee, Member Directors should, in accordance with the Lawyers in Local Government's *Code of Governance for Local Authority Interests in Companies* and Part 2(5)(3) of the Member Code of Conduct, declare such interest and not be party to making a decision of the Council affecting the company. They may provide evidence or advice to the Council on the Company or LLP's behalf when invited to do so.

## Options

- Option 1:** To approve the actions as set out in Recommendations above in order to ensure that the Company and the LLP meet the requirements of their constitution.
- This is the recommended option to ensure the Council's commercial entities are governed correctly.
- Option 2:** If, after reviewing the required actions and supporting information as set out in the Part 2 exempt section of this agenda, any amendments are required, the Committee should request the necessary changes and approve the recommendations subject to those amendments, in order to ensure that the Council's commercial entities are governed correctly.
- Option 3:** To not approve the required actions.
- This is not the recommended option as the Company and the LLP will not be governed correctly.

## **Legal Implications**

9. 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'.
10. 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. This includes the setting up of companies as alternative delivery vehicles to exercise its powers and duties.
11. 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**

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**

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.
14. The Partner, Shareholder and Trustee Executive Sub-Committee should therefore ensure that it has regard for these duties by considering them through the course of its work.

## **Communication Implications**

15. There are no direct communication implications arising from the recommendations of this report.

## **Environmental Sustainability Implications**

16. There are no direct environmental sustainability implications arising from this report.

## **Risk Management Considerations**

17. All commercial ventures and investment activities contain an element of risk, and the Partner, Shareholder and Trustee Executive Sub-Committee should consider these

as part of the decision making process for any decisions relating to commercial ventures and investment activities.

**Background Papers**

*Shareholder Actions - Board Appointments*, Exempt Report to Partner, Shareholder and Trustee Sub-Committee, 22 June 2023.