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TO	Executive
DATE	Monday, 18 March 2019
EXECUTIVE MEMBER	Leader of the Council

KEY DECISION REQUIRED	Yes
WARDS AFFECTED	(All Wards);

SUBJECT	Commercial Governance Review 2018
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<p>RECOMMENDATIONS:</p> <p>(i) To note the findings of the Commercial Review Member Task Group;</p> <p>(ii) To agree the adoption and implementation of the Commercial Governance Framework, subject to noting and determining where appropriate:</p> <ul style="list-style-type: none"> • Overview and Scrutiny Committee's recommendations set out at paragraphs 23 and 24 of the report; • the Internal Audit suggestions set out in paragraphs 13 - 15 of the report.
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<p>REASONS FOR RECOMMENDATIONS:</p> <p>This report sets out the findings of a review of the Council's commercial activities. It proposes the adoption of a good practice Framework and Checklist to guide future working and ensure lessons from past practice are implemented.</p>
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<p>EXECUTIVE SUMMARY:</p> <ul style="list-style-type: none"> • A Member Task Group was commissioned by the Overview and Scrutiny Committee to undertake a review of the commercial arrangements the Council has established in recent years. Councillors Ellacott, Harrison, Lynch, Parnall and Walsh sat on the Group and it was supported by John Jones (Interim Head of Legal and Governance) and Sandra Prail (external consultant) • The findings of the review are now presented to the Executive for approval. The Overview and Scrutiny Committee on 14 February 2019 considered the Member Task Group proposals and an extract of the Minutes of that meeting are attached at Appendix E.

- The findings of the Internal Audit review are attached at Appendix F and summarised in paragraphs 13 and 14 for the Executive's consideration.

Executive has authority to approve the above recommendations

STATUTORY POWERS

1. The Council has the power to set up alternative delivery vehicles to exercise its powers and duties.

BACKGROUND

KEY INFORMATION

Terms of Reference

2. In accordance with an Executive Resolution on 29 March 2018 (and following a similar request from the Overview & Scrutiny Committee on 7 December 2017) a Member Task Group was set up to undertake a review of the governance of the commercial arrangements the Council has established in recent years.
3. The review was led by the Interim Monitoring Officer assisted by an external consultant. The purpose of the review was to examine the experience of the Council's commercial activities to date, to identify lessons learnt to be applied to future commercial activities. The scope of the review was agreed to include Pathway for Care Ltd, RBBC Ltd, Greensand Holdings Ltd and Horley Business Park LLP.
4. The Leader of the Council appointed the following Councillors to sit on the Group - Councillor Ellacott (Chair), Harrison, Lynch, Parnall and Walsh.
5. A copy of the Terms of Reference of the Member Task Group is attached at **Appendix A**.

Methodology and Approach

6. The Task Group adopted an evidence led approach which focussed on future learning rather than a forensic examination of past working. The Group identified a series of key questions and lines of enquiry that would inform its review. These key lines of enquiry (KLOE) provided a structured and transparent framework for the review and can be found at **Appendix B (Annexes i-iii)** for Pathway for Care; Greensand Holdings and Horley Business Park). It also compiled a document library of sources of best practice.
7. Based on a documentary review of Council/Committee reports and minutes draft summaries of findings were produced for each venture. In the case of Pathway for Care Ltd additional evidence was sought from the Council's s151 Officer.
8. The draft findings were circulated to all members and those serving officers who were involved in the history of the arrangements. Eight members responded and the former Leader of the Council and the Chief Executive were invited to and attended a meeting of the Group. The Group reviewed their draft findings taking into account the additional evidence.
9. At **Appendix C (Annexes i-iv)** are the findings of the Group in relation to Pathway for Care Ltd, Greensand Holdings Ltd, Horley Business Park LLP and RBBC Ltd. Common themes include a lack of detailed performance measures against which to hold the venture to account, an absence of skills assessment in the appointment of individuals to roles and no agreed and regular reporting timetable to a formal shareholder body.

10. The findings from the review have informed the design of a Framework and Checklist to inform future working. The Framework is intended to represent best practice and to provide practical advice for future projects. It has been shared with the Council's auditors, RSM who have been asked to endorse its use as good practice.
11. The Framework can be found at Appendix D. In summary it comprises a checklist of issues and "golden rules" which it is proposed must be applied (or explicitly considered) whenever the Council proposes to set up a commercial venture. It is intended that the Framework will be applied to the existing commercial entities to the extent that this is practical and possible. The Executive will determine how and when to make the resulting changes to their governance.
12. It provides a routemap for decision making and a documented template for future projects. It ensures that an options appraisal informs the choice of commercial body; that a clear Business Plan is approved at outset as the basis on which any funds are advanced and to which the Directors can be held accountable; that the shareholder function is clearly delegated to a single Executive Sub-Committee which holds the venture to account against agreed key performance measures and milestones; and that the appointment of representatives is skills based to maximise the likelihood of success and to reduce the potential for conflict of interest.
13. The Internal Auditors have been requested to review the draft Framework. The report from the Auditors have made the following comment on the draft Framework:

"The proposed Commercial Governance Framework provides good high-level guidance on key areas of expected control. This prescriptive approach for determining areas for governance and the consideration of future commercial relationships with the Council ensures that a systematic and consistent methodology can be demonstrated. We have made some minor suggestions for improvement to the draft proposal as set out at Appendix A of this document."
14. The full report is attached at **Appendix F**. The suggested refinements/comments fall under three general headings and there are seven points in total. The Executive is asked to note these refinements.
15. It is recommended that that sub-committee of the Executive for Commercial Governance to be established, be tasked with considering these refinements/comments when implementing the Framework and finalising the version of the Framework to be adopted in the Constitution.

OPTIONS

16. The Executive can either adopt or reject the recommendations of the Task Group .

LEGAL IMPLICATIONS

17. The recommendation of the Task Group provides a robust process to follow in making decisions as to whether the Council should in the future enter into commercial arrangements and an effective means for assessing on-going good governance of Council ventures.

FINANCIAL IMPLICATIONS

18. There is no direct financial implications as a result of this report, although the key findings do refer to how financial transactions were dealt with regarding the Council's existing commercial arrangements.

EQUALITIES IMPLICATIONS

19. None

COMMUNICATION IMPLICATIONS

20. None

RISK MANAGEMENT CONSIDERATIONS

21. If the recommendation is adopted this will limit the risk to the authority as the proposed Framework requires risk to the Council to be assessed before agreeing to proceed with the setting up of a commercial organisation

OTHER IMPLICATIONS

22. None

CONSULTATION

23. This report was shared with the Council's Overview and Scrutiny Committee at its meeting on 14 February 2019. An extract of the Committee's minutes are attached at **Appendix E** from which it can be seen that the Committee gave full consideration to the proposals. In particular the Committee requested that the Executive:
- Consider changing the wording of the Framework in relation to the appointment of non-executive directors, particularly section 6.(viii), to clarify that appointment of non-executive directors be considered as part of the establishment of commercial ventures, as part of the associated Executive report, rather than at a later date and;
 - The proposed framework, if agreed by the Executive, be incorporated into the Council's constitution.
24. The Executive is requested to consider the recommendations of the Overview and Scrutiny Committee although in respect of the appointment non-executive directors it is not standard practice to appoint a non-executive director until after the initial incorporation of the company and therefore the recommendation is that such appointment be considered in the early stages of any company formation.

POLICY FRAMEWORK

25. The recommendation in this report is not in conflict with the Councils Policy Framework

Background Papers: None