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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; (ii) To agree the adoption and implementation of the Commercial Governance Framework</p>
<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>
<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 following consideration by the Overview and Scrutiny Committee on 14 February 2019

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. Any information arising from their review that is available will be provided to the Executive on 18 March 2019.

OPTIONS

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

LEGAL IMPLICATIONS

15. 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

16. 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

17. None

COMMUNICATION IMPLICATIONS

18. None

RISK MANAGEMENT CONSIDERATIONS

19. 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

20. None

CONSULTATION

21. This report was shared with the Council’s Overview and Scrutiny Committee at its meeting on 14 February and its comments have been taken into account. (set out summary of consultation response here)

POLICY FRAMEWORK

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

Background Papers:

None