



SIGNED OFF BY	Chief Executive
AUTHORS	Tom Borer, Democratic Services Officer
TELEPHONE	01737 276114
EMAIL	tom.borer@reigate-banstead.gov.uk,
TO	Executive
DATE	Thursday, 30 May 2019
EXECUTIVE MEMBER	Leader of the Council

KEY DECISION REQUIRED	Y
WARDS AFFECTED	(All Wards);

SUBJECT	Commercial Governance: Changes to Executive Sub-Committees
----------------	--

RECOMMENDATIONS
<p>Dissolution of Existing Executive Sub-Committees</p> <ol style="list-style-type: none"> 1. The Property Executive Sub-Committee be dissolved. 2. The Health and Wellbeing Executive Sub-Committee be dissolved. 3. To note that powers previously delegated to the Property Executive Sub-Committee and Health and Wellbeing Executive Sub-Committee revert to the Executive, unless otherwise specified in the following recommendations. <p>Establishment of the Commercial Ventures Executive Sub-Committee</p> <ol style="list-style-type: none"> 4. A Commercial Ventures Executive Sub-Committee be established, with the remit and terms of reference as set out at Annex 1. 5. The shareholder function of the Council with regard to Greensand Holdings Ltd be delegated to the Commercial Ventures Executive Sub-Committee. 6. The shareholder function of the Council with regard to Pathway for Care Ltd be delegated to the Commercial Ventures Executive Sub-Committee. 7. The shareholder function of the Council with regard to RBBC Ltd be delegated to the Commercial Ventures Executive Sub-Committee.

- 8. The partnership function of the Council with regard to Horley Business Park Development LLP be delegated to the Commercial Ventures Executive Sub-Committee.**
- 9. The Commercial Ventures Executive Sub-Committee be authorised to agree the incorporation and the proposal of winding up of companies, subject to relevant shareholder agreements, by the Council, to be conducted in accordance with the requirements of the Commercial Governance Framework, as set out in the terms of references of the Executive Sub-Committee.**
- 10. The Commercial Ventures Executive Sub-Committee be authorised to agree the following arrangements as part of the establishment of companies by the Council, and in relation to companies, other commercial entities and partnerships thus established to the Council:**
 - The Articles of Association for the entity.**
 - The Shareholder Agreement between the entity and the Council, including the initial Business Plan.**
 - The appointment of Directors of the company, including Non-Executive Directors.**
 - Any Director Service Agreements**
 - The appointment of a Company Secretary and Auditor.**
- 11. The Commercial Ventures Executive Sub-Committee be authorised to undertake the shareholder function of the Council with regard to future companies established by the Council.**
- 12. The Commercial Ventures Executive Sub-Committee be authorised to agree write-off of debts owed by Companies established by the Council to the Council, in consultation with all Executive Members.**
- 13. The Commercial Ventures Executive Sub-Committee be authorised to agree Resourcing Agreements for commercial ventures established by, and being established by, the Council to use Council staff and facilities in furtherance of their business.**
- 14. The Commercial Ventures Executive Sub-Committee be authorised to agree all matters in relation to the following, in line with the priorities in the Council's Capital Investment Strategy:**
 - Loan, Grant, and Draw Down agreements with regard to commercial ventures established by, and being established by, the Council.**
 - Investment in properties.**
 - Other capital investments.**
 - Performance of investments.**

These matters to be agreed within a total limit of £25.0m for 2019/20, as allocated in the approved Capital Programme for 2019/2024 for investment in new capital schemes to support delivery of the Corporate Plan, Housing Strategy and Investment Strategy, and henceforth in subsequent financial years within limits to be set and reviewed each year during the service and

financial planning process, as subject to approval by Executive and Full Council.

Other Decisions and Delegations

- 15. It be recommended that a Property and Investment Contingency Fund be established, with a value of £1.0m, funded within the £25m that has been allocated in the approved Capital Programme 2019/2024 for investment in new capital schemes to support delivery of the Corporate Plan, Housing Strategy and Investment Strategy, and that principle (vii) should be added to Article 14.3.3 of the Constitution, with the following wording:

(vii) decisions on the use of resources from the Property and Investment Contingency Fund of a value of more than £500,000 should be regarded as significant, superseding principles (i) and (iii) for such decisions.**
- 16. It be recommended that the Director of Finance and Organisation be authorised to approve the use of resources from the Property and Investment Contingency Fund for commercial investments in cases where this is judged to be necessary to mitigate the risk of the Council incurring significant financial or reputational costs, in consultation with the Leader, the Chair of the Commercial Ventures Executive Sub-Committee and Executive Member(s) with responsibility for investments and property matters, and that the Officer Scheme of Delegation be updated accordingly.**
- 17. It be recommended that the Director of Finance and Organisation be authorised to approve the use of resources from the Property and Investment Contingency Fund for other capital investments in cases where this is judged to be necessary to mitigate the risk of the Council incurring significant financial or reputational costs, in consultation with the Leader, the Chair of the Commercial Ventures Executive Sub-Committee and Executive Member(s) with responsibility for investments and property matters, and that the Officer Scheme of Delegation be updated accordingly.**
- 18. The Director of Finance and Organisation be authorised to agree, in consultation with members of the Commercial Ventures Executive Sub-Committee, spending on feasibility studies of potential commercial and investment opportunities, having regard to the Commercial Governance Framework which forms appendix 1 to the terms of reference of the Executive Sub-Committee. These matters to be agreed within a total limit of £250k for 2019/20, funded within the approved 2019/20 revenue budget, and henceforth within subsequent financial years within limits to be set and reviewed each year during the service and financial planning process, as subject to approval by Executive and Full Council.**
- 19. All decisions of the Director of Finance and Organisation making determination on the use of resources from the Property and Investment Contingency Fund shall be reported to the Commercial Ventures Executive Sub-Committee at the next meeting where it is practical to do so.**
- 20. To note that the Constitution will be updated by the Monitoring Officer to reflect the dissolution of the Property Executive Sub-Committee and the**

Health and Wellbeing Executive Sub-Committee, as an administrative update.

- 21. To note that the Constitution will be updated by the Monitoring Officer to reflect the establishment of the Commercial Ventures Executive Sub-Committee and its agreed terms of reference as an administrative update.**

REASONS FOR RECOMMENDATIONS

The establishment of a Commercial Ventures Executive Sub-Committee will support the effective and efficient administration of the Council's commercial ventures and investments, in accordance with the Commercial Governance Framework adopted by the Council, following the Executive meeting of 18 March 2019 and following the recommendations of the Commercial Governance Review Member Task Group.

The Commercial Ventures Executive Sub-Committee will conduct all business which would previously have been conducted by the Property Executive Sub-Committee and the Health and Wellbeing Executive Sub-Committee. These Executive Sub-Committees are therefore no longer required.

The accompanying recommendations will support the effective decision making of the Executive Sub-Committee and implementation of decisions made, by allowing for supporting actions to be taken, within clearly defined limits to be set out each year.

EXECUTIVE SUMMARY

In 2016, the Council established a property company (Greensand Holdings Ltd) and a wellbeing and integrated support services company (Pathway for Care Ltd), and a corresponding Property Executive Sub-Committee and Health and Wellbeing Executive Sub-Committee respectively. Subsequent events lead Pathway for Care Ltd to split into the current Pathway for Care Ltd, in which the Council is a minority shareholder, and RBBC Ltd, which is wholly owned by the Council. The Council also entered into Horley Business Park Development LLP.

In 2018, a Member Task Group was commissioned by the Overview and Scrutiny Committee and Executive to undertake a review of the commercial arrangements the Council has established in recent years, particularly in relation to the companies described above.

The findings and recommendations of the task group were considered by the Executive on 18 March 2019, which noted the findings of the task group and agreed the adoption and implementation of the Commercial Governance Framework developed by the task group. The Executive agreed the recommendations of the Overview and Scrutiny Committee, and agreed that the comments of the internal auditors be considered by the Executive Sub-Committee once established.

This report seeks to implement new commercial governance arrangements, in accordance with the adopted framework. As set out in the framework, this report recommends the establishment of a Commercial Ventures Executive Sub-Committee, to exercise the shareholder function for all commercial ventures, to oversee the establishment of, and allocation of Council resources to, any such commercial ventures, in line with the requirements of the framework, and to oversee and decide upon the Council's wider

investment activities. The report also recommends supporting delegations be established to support the decisions of the Executive Sub-Committee and the Council's commercial ventures.

As identified in the reasons for recommendations, the recommended governance arrangements and establishment of a Commercial Ventures Executive Sub-Committee are thus intended to support the effective and efficient administration of the Council's commercial ventures and general investment activities, in accordance with the Commercial Governance Framework

Executive has authority to approve recommendations 1-14, and 18-21.

Council has the authority to approve recommendations 15-17.

STATUTORY POWERS

1. The Council has the power to set up alternative delivery vehicles to exercise its powers and duties, in keeping with Chapter 1 of the Localism Act 2011.
2. In keeping with Part 2 of the Local Government Act 2000, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, and the Localism Act 2011, the power to set up alternative delivery vehicles is not restricted from the Executive, and is thus an Executive function.
3. As per Procedure Rule 3.1.1.(ii) of the Council's Constitution, the Leader of the Council has responsibility for the discharge of all Executive functions and may delegate these functions to a formally constituted Sub-Committee of the Executive.
4. As per Procedure Rule 4.2 of the Council's Constitution, the allocation of capital is a function of the full Council.
5. Companies and the rights of shareholders are governed by the Companies Act 2006.

BACKGROUND

6. At its meeting of 15 October 2015, the Executive authorised the formation of a Joint Venture Limited Liability Partnership (Horley Business Park Development LLP).
7. At its meeting of 30 June 2016, the Executive authorised the creation of a local authority trading company (Greensand Holdings Ltd) and delegated the shareholder function of the Council with regard to this company to the Property Executive Sub-Committee, which was established for this purpose.
8. At its meeting of 14 July 2016, the Executive authorised the creation of a local authority trading company (Pathway for Care Ltd) and delegated the shareholder function of the Council with regard to this company to the Health and Wellbeing Executive Sub-Committee, which was established for this purpose.
9. At its meeting of 29 March 2018, the Executive authorised changes to the structure of Pathway for Care Ltd, leading to the Council becoming a minority shareholder in Pathway for Care Ltd, and the formation of a new digital monitoring company (RBBC Ltd) which was split from Pathway for Care Ltd. It was intended for the Council to also become a minority shareholder in RBBC Ltd, but in the absence of external

investment, the company became wholly owned by the Council.

KEY INFORMATION

Commercial Governance Review

10. In accordance with an Executive Resolution on 29 March 2018 (and following a similar request from the Overview and Scrutiny Committee on 7 December 2017), a Member Task Group was set up to undertake a review of governance of the commercial arrangements the Council has established in recent years.
11. 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 Development LLP.
12. The task group conducted an evidence led review, focussed on future learning and based on a documentary review of Council/Committee reports, supported by consultation with officers and Members. The findings of the review identified a number of areas of improvement for the Council's commercial governance arrangements, and informed the design of a Commercial Governance Framework. Consultation on the findings and recommendations of the task group was undertaken with the Overview and Scrutiny Committee and the Council's internal auditors.
13. The Executive considered the findings and recommendations of the task group on 18 March 2019, with regard to the comments of the Overview and Scrutiny Committee and the Council's internal auditors. The Executive noted the findings of the task group and the related comments, and agreed the adoption and implementation of the proposed Commercial Governance Framework. The Executive agreed the recommendations of the Overview and Scrutiny Committee, and agreed that the comments of the internal auditors be considered by the Executive Sub-Committee once established.

Changes to Executive Sub-Committees

14. This report therefore sets out recommendations for governance changes to support the Commercial Governance Framework. These include the establishment of a Commercial Ventures Executive Sub-Committee, delegation of powers to the Commercial Ventures Executive Sub-Committee to support its role in managing the Council's commercial ventures and investments, dissolution of the Property Executive Sub-Committee and Health and Wellbeing Executive Sub-Committee, whose roles will be superseded by the Commercial Ventures Executive Sub-Committee, and recording of these changes in the Council's Constitution.
15. The remit and terms of reference for the Commercial Ventures Executive Sub-Committee are set out at Annex 1 of this report. These terms of reference include the incorporation of the Commercial Governance Framework into the decision making process for the establishment of commercial ventures, and the monitoring of their performance, including the Initiation and Planning Checklist, and Execution and

Closure Checklist, along with the Executive Sub-Committee's role in agreeing the Council's wider investment activities.

16. The terms of reference for the Commercial Ventures Executive Sub-Committee also include information on the expected scheduling of its meetings, its membership, and the information to be reported to it.
17. The Council's shareholder function with regard to Companies owned by the Council, along with the Council's powers to establish companies as alternative delivery vehicles to exercise its powers and duties, fall within the Council's Executive functions. As such, these powers may be delegated by the Executive to a formally constituted Executive Sub-Committee.
18. In addition to the identified shareholder functions, additional powers are delegated to the Commercial Ventures Executive Sub-Committee to support the establishment of commercial ventures. These include the approval of Loan and Draw Down Agreements and Resourcing Agreements between the Council and any companies established, subject to the limitations identified in the recommendations.
19. To support the Executive Sub-Committee's role in managing the Council's investments, powers are also delegated to it to manage these investments in line with the Council's Capital Investment Strategy.
20. As identified above, the roles of the Property Executive Sub-Committee and Health and Wellbeing Executive Sub-Committee would be superseded by the new Commercial Ventures Executive Sub-Committee, and it is thus recommended that these be dissolved. Any powers previously delegated to these Executive Sub-Committees will thereby revert to the Leader and Executive, except where otherwise specified in the recommendations.

Other Delegations and Decisions

21. There are occasions where, in order to operate effectively in a commercial environment, the Council will need to act swiftly to secure or support its investments. As such, the recommended Property and Investment Contingency Fund, will allocate a level of contingency funding which may be used in such circumstances.
22. Power is therefore proposed to be delegated to the Director of Finance and Organisation to approve the use of this assigned funding, in consultation with the identified Members, in such circumstances where a clear expected benefit to the Council can be demonstrated.
23. It is also recommended that the Director of Finance and Organisation be authorised to approve the use of resources, within limits set out on an annual basis, to support the undertaking of feasibility studies on potential commercial and investment opportunities, to in turn support effective decision making with regard to such potential opportunities.

Authority to approve Recommendations

24. Changes to the Executive Sub-Committee arrangements, as detailed within Recommendations 1-14 are within the remit of the Executive as identified in procedure rule 3.1.1. of the Council's constitution.
25. Changes to the delegation of Executive Functions, and recording of these changes in the Constitution, as detailed within Recommendations 18-21, are within the remit of

the Executive as identified in article 4.2.1 of the Council's constitution.

26. The supporting updates to the Officer Scheme of Delegation and allocation of capital regarding the establishment and use of a Property and Investment Contingency Fund, as detailed with Recommendations 15-17, are subject to the approval of Council.

OPTIONS

27. Option 1 – Dissolve the Property Executive Sub-Committee and Health and Wellbeing Executive Sub-Committee, and establish the Commercial Ventures Executive Sub-Committee, with the identified terms of reference and associated delegations, so as to support the implementation of the Commercial Governance Framework, as adopted by the Executive on 18 March 2019. This is the recommended option as it will support the adopted framework.
28. Option 2 – Make no changes to Executive Sub-Committees and the Council's commercial governance arrangements. This is not the recommended option as it will not support the Commercial Governance Framework adopted by the Executive on 18 March 2019.
29. Options 3 – Request that alternative changes to the Council's commercial governance arrangements and/or Executive Sub-Committees and associated delegations be investigated. This is not the recommended option as these changes would not have received the degree of consultation and consideration as those recommended, and would be unlikely to support the Commercial Governance Framework adopted by the Executive on 18 March 2019.

LEGAL IMPLICATIONS

30. 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; i.e. 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).
31. The recommendation of the Commercial Governance Review Member Task Group, including the Commercial Governance Framework, 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 ongoing good governance of Council ventures.
32. Where future commercial ventures are established, the legal implications of these decisions will be considered as part of the decision making process in each case.

FINANCIAL IMPLICATIONS

33. The approved Capital Programme for 2019/20 to 2023/24 includes an allocation of £25M for investment in new capital schemes to support delivery of the Corporate

Plan, Housing Strategy and Investment Strategy. This report sets out proposals for use of those funds.

34. Where the proposed Commercial Ventures Executive Sub-Committee would make decisions regarding management of existing commercial ventures, establishment of new commercial ventures, Loan, Grant and Draw-Down Agreements, Resourcing Agreements, or management of investments, there would be financial implications which would be considered in each case, and funding decisions made within the limits of delegated authority as set out in this report.
35. Where decisions with financial implications are made, these will be made in accordance with the Council's policies and strategies. These will include the Council's Corporate Plan, Medium Term Financial Plan, Approved Budget and Capital Programme, Outline Capital Investment Strategy, and such updates to these policies and strategies as may be agreed by the Council.
36. For decisions taken with the 2019/20 financial year, the recommended spending limits are with regard to the money allocated in the Capital Programme for investment in new capital schemes to support delivery of the Corporate Plan, Housing Strategy and Investment Strategy, as identified in paragraph 33. In the case that resources are utilised for this purpose during this period, the remaining funding available for these purposes may therefore be reduced, and this will be reflected in the decision making process for any such decisions.

EQUALITIES IMPLICATIONS

37. 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.
38. 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.
39. The proposed 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

40. There are no direct communication implications as a result of this report. However, as identified in the Commercial Governance Framework, the proposed 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.
41. The Commercial Governance Framework identifies that in applying the

reasonableness test the Council will apply a presumption in favour of sharing relevant information with individual Members. The presumption (to be confirmed as part of the initial business case/approval should be that companies file full accounts to the Council and publicly (on a voluntary basis if other criteria require a lesser form of reporting).

42. In dealing with any future commercial partners, they should be made aware of the openness requirements of the Council as a Local Authority organisation, in advance of binding agreements being reached.

HUMAN RESOURCES IMPLICATIONS

43. There are no direct human resources implications as a result of this report. However, in making any future decisions, particularly regarding Resourcing Agreements, the proposed Commercial Ventures Executive Sub-Committee should have regard for any human resources implications and should consider these in each case.

RISK MANAGEMENT CONSIDERATIONS

44. All commercial ventures and investment activities contain an element of risk, and the proposed Commercial Ventures Executive Sub-Committee should consider these as part of the decision making process for any future decisions relating to commercial ventures and investment activities.
45. The Commercial Governance Framework requires risk to the Council to be assessed before agreeing to proceed with the setting up of a commercial organisation. The Commercial Governance Framework would form part of the terms of reference of the proposed Commercial Ventures Executive Sub-Committee, and this requirement should therefore limit risk to the authority.

OTHER IMPLICATIONS

46. It is expected that the Council's developing Corporate Plan will have regard to environmental considerations. Where the Council's policies and strategies identify the regard that should be given to the environment, this should be considered by the proposed Commercial Ventures Executive Sub-Committee as part of any decision making it undertakes.

CONSULTATION

47. The report results from the review of the Council's commercial governance arrangements, as conducted by the Commercial Governance Review Member Task Group. As part of this review process, the task group circulated information to and invited input from all Members.
48. The report of the task group was considered by the Overview and Scrutiny Committee on 14 February 2019, and the recommendations of the Committee were considered and supported by the Executive on 18 March 2019.
49. The report of the task group was considered the Council's internal auditors, who provided suggestions to the Executive. The Executive agreed that the comments of the internal auditors would be considered by the Executive Sub-Committee, subject to it being established.

POLICY FRAMEWORK

50. The recommendations of this report are not in conflict with the Council's Policy Framework.
51. All actions undertaken by the Council shall have regard to the objectives of the Council's Corporate Plan and supporting policy framework, unless otherwise specified by statute.

BACKGROUND PAPERS

52. None.