



Reigate & Banstead
BOROUGH COUNCIL
Banstead | Horley | Redhill | Reigate

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| SIGNED OFF BY | Head of Legal & Governance |
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| TO | Commercial Ventures Executive Sub-Committee |
| DATE | Wednesday 17 July 2019 |
| EXECUTIVE MEMBER | Portfolio Holder for Investment and Companies |

| | |
|------------------------------|--------------|
| KEY DECISION REQUIRED | N |
| WARDS AFFECTED | (All Wards); |

| | |
|----------------|---------------------------------|
| SUBJECT | Shareholder Actions - July 2019 |
|----------------|---------------------------------|

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| RECOMMENDATIONS |
| <p>For Greensand Holdings Limited:</p> <ul style="list-style-type: none">(i) The shareholder representative (the Commercial Ventures Executive Sub-Committee 'CVESC') ratify the appointment of auditors for the year to 31 December 2018;(ii) The shareholder representative ratify the appointment of accountants for the year to 31 December 2018;(iii) The shareholder representative ratify the renewal of Management & Corporate Liability Blended insurance policy for the year to 19 December 2019;(iv) The shareholder representative review and note Greensand Holdings Limited's Directors' Report and Audited Financial Statements for the year ended 31 December 2018 set out in the exempt Part 2 section of this agenda;(v) The shareholder representative approve the re-appointment of Kreston Reeves LLP as auditor for Greensand Holdings Limited for the year to 31 December 2019;(vi) The shareholder representative, for the auditor appointed to Greensand Holdings Limited in (v) above, fix their remuneration for the year to 31 December 2019 as set out in the exempt Part 2 section of this agenda; and |

- (vii) The shareholder representative approve the appointment of Derek Beck as a Director of Greensand Holdings Limited.

For Horley Business Park Development LLP:

- (viii) The partner representative to review and note Horley Business Park Development LLP's Annual Report and Financial Statements for the year ended 31 December 2018 set out in the exempt Part 2 section of this agenda;
- (ix) The partner representative to approve the re-appointment of Kingston Smith LLP as auditor for Horley Business Park Development LLP for the year to 31 December 2019;
- (x) The partner representative, for the auditor appointed to Horley Business Park Development LLP in (ix) above, fix their remuneration for the year to 31 December 2019 as set out in the exempt Part 2 of this agenda; and
- (xi) To note Horley Business Park Development LLP to outsource the provision of its management accounting function, currently carried out by the Council's finance department, as set out in the exempt Part 2 section of this agenda.

REASONS FOR RECOMMENDATIONS

Greensand Holdings Limited (GH)

GH requires the following directors' actions ratified by the shareholders:

- (i) The shareholder representative ratify the appointment of auditors for the year to 31 December 2018
- Kreston Reeves LLP were appointed auditors and accountants for GH's first annual report and accounts for the period 2 December 2016 to 31 December 2017.
- Kreston Reeves LLP were re-appointed auditors for the following year to 31 December 2018. The shareholder representative is requested to ratify the appointment of Kreston Reeves LLP as auditor for the accounting period 1 January 2018 to 31 December 2018.
- (ii) The shareholder representative ratify the appointment of accountants for the year to 31 December 2018
- Kreston Reeves LLP were appointed as accountants to GH for the year to 31 December 2018 and the shareholder representative is requested to ratify the appointment of Kreston Reeves LLP as accountants to GH.
- (iii) The shareholder representative ratify the renewal of Management & Corporate Liability Blended insurance policy for the year to 19 December 2019
- GH renewed its Management & Corporate Liability Blended insurance for the year to 19 December 2019 and the shareholder is requested to ratify this decision.

Shareholder Review:

- (iv) The shareholder representative review and note Greensand Holdings Limited's Directors' Report and Audited Financial Statements for the year ended 31 December 2018, set out in Annex 1, 2 and 3 of the exempt Part 2 section of this agenda

The Directors of GH agreed the Directors' Report and Audited Financial Statements for the year ended 31 December 2018 at its meeting on 23 May 2019. The shareholder representative is asked to review and note GH's Directors' Report and Audited Financial Statements for the year ended 31 December 2018 to confirm they are satisfied with the Directors' Report and Audited Financial Statements. The Directors' Report and Audited Financial Statements can then be lodged with Companies House.

Shareholder Approval:

- (v) To approve the re-appointment of Kreston Reeves LLP as auditor for Greensand Holdings Limited for the year to 31 December 2019

GH's directors confirmed they were happy to re-appoint Kreston Reeves LLP as auditor for GH for the year to 31 December 2019 as they were satisfied with their performance over the past financial period. The shareholder representative is therefore requested to consider and approve the appointment of an auditor.

- (vi) The shareholder representative, for the auditor appointed to Greensand Holdings Limited in (v) above, fix their remuneration (see Annex 4 in the exempt Part 2 section of this agenda) for the year to 31 December 2019

Under Section 492 of the Companies Act 2006, the remuneration of an auditor appointed by the members (shareholders) of a company must be fixed by the members (shareholders). The shareholder representative is therefore requested to consider and approve the auditors' remuneration, as set out in Annex 4 in the exempt Part 2 section of this agenda.

Shareholder Consent:

- (vii) The shareholder representative approve the appointment of Derek Beck as a Director of Greensand Holdings Limited

Acting as shareholder representative, written consent is required for the appointment of Derek Beck as a Director of GH.

Horley Business Park Development LLP (HBPD LLP)

- (viii) The partner representative to review and note Horley Business Park Development LLP's Annual Report and Financial Statements for the year ended 31 December 2018, set out in Annex 5 and 6 of the exempt Part 2 section of this agenda

The Directors of HBPD LLP agreed the Annual Report and Financial Statements for

the year ended 31 December 2018 at its Executive Board meeting on 11 June 2019. The partner representative is asked to review and note HBPD LLP's Annual Report and Financial Statements for the year ended 31 December 2018, set out in the exempt Part 2 section of this agenda, to confirm they are satisfied with the Annual Report. The Annual Report and Financial Statements can then be lodged with Companies House.

- (ix) The partner representative to consider and approve the re-appointment of Kingston Smith LLP as auditor for Horley Business Park Development LLP for the year to 31 December 2019

HBPD LLP's partners confirmed they were happy to re-appoint Kingston Smith LLP as auditor for HBPD LLP for the year to 31 December 2019, as they were satisfied with their performance over the past financial period. Section 485 of the Companies Act 2006 as applied by Regulation 36 of the Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 requires the partnership's members (partners) to appoint or re-appoint an auditor. The partner representative is therefore requested to consider and approve the appointment of an auditor, or the re-appointment of Kingston Smith LLP.

- (x) The partner representative, for the auditor appointed to Horley Business Park Development LLP in (ix) above, fix their remuneration (see Annex 7 in the exempt Part 2 section of this agenda) for the year to 31 December 2019

Section 492 of the Companies Act 2006 as applied by Regulation 37 of the Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 requires the remuneration of an auditor appointed by the LLP to be fixed by the Members (partners). The partner representative is therefore requested to consider and approve the auditors' remuneration, as set out in Annex 7 in Part 2 of this agenda.

Partnership Review:

- (xi) To note HBPD LLP to outsource the provision of its management accounting function

RBBC has obtained a quote (see Annex 8 in the exempt Part 2 section of this agenda) for the provision of a full management accounting service in conjunction with the year end financial accounting and audit services for approval.

EXECUTIVE SUMMARY

The CVESC is required to consider all the actions set out in Recommendations above in its capacity as shareholder representative for Greensand Holdings Limited and partner representative for Horley Business Park Development LLP in order the companies can meet their statutory obligations under the Companies Act 2006 in respect of annual report and accounts and the appointment and remuneration of auditors.

In its capacity as shareholder representative for Greensand Holdings Limited, the CVESC should consent to the appointment of Derek Beck as a Director.

The CVESC should also consider the outsourcing of HBPD LLP's book-keeping function.

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 15 October 2015, the Executive authorised the formation of a Joint Venture Limited Liability Partnership (Horley Business Park Development LLP).
5. At its meeting on 30 June 2016, the Executive authorised the creation of a local authority trading company (Greensand Holdings Limited) and originally delegated the shareholder function of the Council with regard to this company to the Property Executive Sub-Committee, and subsequently to the Commercial Ventures Executive Sub-Committee.
6. Following the dissolution of the Property Executive Sub-Committee and the Health and Wellbeing Executive Sub-Committee at its meeting on 30 May 2019, the Executive authorised the creation of a Commercial Ventures Executive Sub-Committee for the purpose of monitoring the performance of, and take 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

7. **Option 1:** Approve all the required actions set out in Recommendations above in order the Council's owned or part-owned companies meet the requirements of the Companies Act 2006 in respect of their annual report and accounts; appointment of auditors; and auditors' remuneration; and meet the requirements of the companies' constitutions. This is the recommended option to ensure the Council's commercial entities are governed correctly and meet their statutory requirements.
8. **Option 2:** If after reviewing the required actions and supporting documentation, adjustments are required, the CVESC should request the necessary adjustments be made and approve the actions subject to those adjustments, in order the Council's commercial entities are governed correctly and meet their statutory requirements.

9. **Option 3:** Do not approve the required actions. This is not the recommended option as the directors/partners of the Council's owned or part-owned commercial entities will not be able to carry out their statutory duties and will be in breach of the Companies Act 2006 and the companies' constitutions. The directors/partners can be fined and the company struck off the Register of Companies if accounts are not lodged with Companies House.

LEGAL IMPLICATIONS

10. The directors/partners can be fined and the company struck off the Register of Companies if accounts are not lodged with Companies House.
11. Failure to file accounts is a criminal offence which can result in directors being fined personally in the criminal courts. 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 the company for filing accounts late. The Registrar may also take steps to strike the company off the public record if these documents are delivered late.
12. 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).

FINANCIAL IMPLICATIONS

13. The Greensand Holdings Limited's Directors' Report and Audited Financial Statements for the year ended 31 December 2018 must be approved and lodged with the Registrar of Companies before 30 September 2019 in order to avoid late filing penalties as set out below.
14. The Horley Business Park Development LLP's Annual Report and Financial Statements for the year ended 31 December 2018 must be approved and lodged with the Registrar of Companies before 30 September 2019 in order to avoid late filing penalties as set out below.

| Length of period (measured from the date the accounts are due) | Private company penalty |
|---|--------------------------------|
| 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

15. 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.
16. 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

17. 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.

HUMAN RESOURCES IMPLICATIONS (if applicable)

18. Where Council Officers are appointed as directors, it should be noted that this has resource implications.

RISK MANAGEMENT CONSIDERATIONS

19. 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.
20. As set out in Financial Implications above, if the Council's commercial entity's accounts are not lodged with the Registrar of Companies on time, late filing fees are imposed.
21. As set out in Legal Implications above, it should also be noted that failure to file accounts is a criminal offence which can result in directors being fined personally in the criminal courts. 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 the company for filing accounts late. The Registrar may also take steps to strike the company off the public record if these documents are delivered late.