



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

SIGNED OFF BY	Chief Executive
AUTHOR	John Jory, Chief Executive
TELEPHONE	Tel: 01737 276151
EMAIL	John.Jory@reigate-banstead.gov.uk
TO	Commercial Ventures Executive Sub-Committee
DATE	Thursday, 30 January 2020
EXECUTIVE MEMBER	Portfolio Holder for Investment and Companies

KEY DECISION REQUIRED	N
WARDS AFFECTED	(All Wards);

SUBJECT	Investment and Company Governance and Resourcing
----------------	--

RECOMMENDATIONS
<p>(i) That the Head of Legal & Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee, be authorised to establish a company, and undertake all necessary supporting actions, for the purposes of acting as a holding company to consider and commission commercial activities on behalf of the Council, including acquiring and establishing additional companies, consideration of business plans, and oversight of commercial governance arrangements.</p> <p>(ii) That shareholder consent be granted for the acquisition of the Council's existing stake in Greensand Holdings Limited and RBBC Limited by the new holding company to be established under recommendation (i) on behalf of Greensand Holdings Limited, RBBC Limited, and the new holding company once established, subject to approval of the terms of acquisition by the Head of Legal and Governance, in consultation with the members of the Commercial Ventures Executive Sub-Committee.</p> <p>(iii) That the Head of Legal and Governance be authorised to undertake necessary steps to recruit suitably qualified directors from the elected membership of the Council to serve on the Boards of the proposed holding company that she be authorised to recruit for suitably qualified directors for all existing and future</p>

- subsidiaries as set out in this report, such appointments to include non-executive directors.
- (iv) That the Commercial Ventures Executive Sub-Committee's support for additional staffing resources being provided for the Council's investment and commercial activities be noted.
 - (v) That the Employment Committee be asked to agree the creation of and recruitment to a new post of Commercial Director.

REASONS FOR RECOMMENDATIONS

It is essential this change to our organisation structure is made to ensure it remains fit for purpose and is capable of delivering the Council's vision and priorities. The recommendations are the logical next step on that journey now the Council has examined best practice at other authorities. These proposals ensure that the revised commercial governance structure will be transparent but also able to move at pace to take advantage of commercial opportunities that arise.

With the agreement of the Sub-Committee, it is recommended to ask the Employment Committee to recruit to the Commercial Director role.

The Commercial Ventures Executive Sub-Committee has authority to approve the above recommendations.

STATUTORY POWERS

The Council has wide ranging powers to promote the economic, environmental and social well-being of the borough. These powers are derived from the Local Government Act 2000 and include the powers of general competence under section 1 of the Localism Act 2011 to do anything that individuals with full capacity generally may do, subject to the provisions of the Act.

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.

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.

Companies and the rights of shareholders are governed by the Companies Act 2006.

BACKGROUND

Strategic Context

On 16 January 2020, the Council approved a new five year plan 'Reigate and Banstead 2025'. It sets out the Council's vision and ambitions, and its priorities and commitments. These are:

1. Delivering quality services and support;
 - Providing value for money;

- Making the borough a great place to live, work and visit;
- Being proactive about tackling climate change and reducing our environmental impact; and
- Being flexible and sustainable, responding to the needs and demands of our borough, residents, businesses;

The plan recognises that to achieve these things (in the absence of government funding) we will need to generate our own income through responsible and sustainable commercial activities.

The Council has published, via the Executive, at its meetings on 7 November 2019 and 30 January 2020 its Budget proposals to support the delivery of services in 2020/2021 onwards. These proposals set out how the Council intends to make a start on delivering its new Five-Year plan and have been reviewed by the Budget Scrutiny Panel and Overview and Scrutiny Committee in the established way. The final budget proposals will be recommended to the Council for adoption at its meeting on 13 February 2020.

The budget proposals for 2020/21 onwards are supported by the Council's Medium Term Financial Plan and recognise that the Council will need to:

- Ensure resources are aligned with the Five-Year plan priorities;
- Consider and take advantage of commercial and investment opportunities as they arise to deliver new income streams; and
- Maximise other potential income in setting fees and charges.

With the removal of the Central Government Grant and increasing pressures on local authority budgets, we are expecting a funding gap of £4m plus by 2021/22. A number of projects are being taken forwards by the Council, but these will not all be in place by 2021 therefore additional opportunities need to be pursued.

In terms of Capital Programme resources to deliver the Five-Year plan and new income streams, the service and financial planning proposals include the following provisions for 2020/2021:

- £50m for new development and investment opportunities; and
- £30m over three years for implementation of Housing Delivery Strategy projects.

This scale of funding is necessary to deliver the Council's ambitions and to ensure that a strategic approach to deal with the future funding gap is adopted to avoid continued drawdown from reserves to support the budget. Whilst the entire annual deficit of £4m plus will not be filled by investment and commercial activity alone, the intention is to identify opportunities that complement the work of the Council and make a significant impact on that figure. Clearly, the importance of that work is now critical to the future direction of travel of the Council.

KEY INFORMATION

The strategic landscape of the Council has changed with the adoption of the new Five Year Plan, Housing Strategy and draft ambitious service and financial plans supported by a large Draft Capital Programme. That context is set out below together with the implications for the Council's organisation structure. Given the importance of the Council's investment and commercial work, it is proposed that a dedicated role of running the Council's commercial activities is created and supported by appropriate external advisers (where appropriate).

Experience Elsewhere

Members and Officers have sought to understand best practice within local government in how Councils run their traditional services well giving consideration to investment opportunities and running companies. Whilst there is no single approach, some common themes have emerged from the research and visits undertaken within the greater South East region. The common themes are:

- Senior members need to be at the centre of strategic decision making around the scale of resourcing investment and company activity, including approval of budgets and business cases, and commissioning activity. This currently occurs via the Executive and the Commercial Ventures Executive Sub Committee. Elsewhere, Councils have established a company structure with a holding company undertaking this strategic role on the commercial side of the governance framework. Acting as a commissioning body, the CVESC will work with the holding company to establish and commission subsidiary companies to act as delivery vehicles set up to achieve Council objectives, and where appropriate investment income.

Organisation Structure

An illustrative diagram of the proposed refreshed company structure is attached to this report.

A refreshed Organisation structure was introduced soon after the appointment of the Leader of the Council, Cllr Mark Brunt, to best align the organisation to continue to deliver the then 5 Year Plan (2015-2020). That structure has now been in operation for circa 18 months. In view of the adoption of the new 5 Year Plan (2020-2025) and the above context, with a greater emphasis going forward on commercial and investment activity, it is timely to review the structure of the Organisation to ensure that it mirrors the needs identified in the 5 Year Plan. The current structure has the Chief Executive supported by 3 Directors covering:

- Director of Place services focusing on transforming our towns and villages whilst maintaining a high quality environment;
- Director of People Services focusing on helping and supporting individuals and communities in need; and
- Director of Organisation focusing on supporting the Council services and taking forward the Council's commercial agenda.

It now appears that making the Director of Organisation role responsible for both: (i) running the supporting Council functions (such as HR, Finance etc); and (ii) driving forward the necessary commercial work to ensure delivery of the necessary company structure, is no longer appropriate. It is therefore proposed to split the roles of the current Director of Organisation post. Both roles form part of the Management Team with the Chief Executive and other Directors.

One role will focus on driving commercial work and working with the Management Team to ensure that the day to day running of the Council's investment opportunities and company activities is fit for purpose. This Commercial Director role is about working with the members of the Commercial Ventures Executive Sub-Committee at a strategic level to ensure:

- Investment opportunities and company activities make an increasing contribution to the financing of the Council's overall activities;

- The Council's investment activities and companies operate effectively in service and governance terms;
- The delivery of an increasingly commercially focussed culture and relevant projects across the Council to increasingly deliver a self-sustainable organisation; and
- The provision of leadership and oversight to allocated services ensuring these functions are appropriately resourced, supported and delivered efficiently. This is particularly important given the need, through the Management Team, to manage risk within the Council, its investments and its companies in an integrated manner.

(The Commercial Director role is a post integrated within the overall Council mirroring the role functions of the Commercial Ventures Sub-Committee.)

The other role will focus on helping the Management Team with the day to day running of the Council. This more narrowly defined role of Director of Organisation provides strategic leadership to the organisation in collaboration with the Leader, Chief Executive and other Directors, and specifically to allocated core corporate services.

OPTIONS

The options available to the Commercial Ventures Executive Sub-Committee are set out below:

Option 1: Approve all the Recommendations set out in the report to allow the Council to progress its commercial activities, ensuring they are fit for purpose and are capable of delivering the Council's vision and priorities. This is the Recommended option to ensure that the revised commercial governance structure will be transparent but also able to move at pace to take advantage of commercial opportunities that arise.

Option 2: If after reviewing the Recommendations and supporting report, adjustments are required, the CVESC should request the necessary adjustments be made and approve the actions subject to those adjustments.

Option 3: Do not approve the Recommendations. This is not the recommended option.

LEGAL IMPLICATIONS

Where decisions are made which effect the Council's companies, the legal implications of these decisions will be considered as part of the decision making process in each case.

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; ie 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).

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.

FINANCIAL IMPLICATIONS

The budget proposals for 2020/21 onwards include the allocation of £50 million additional capital programme funding for investment in new development and commercial initiatives, funded primarily through prudential borrowing. When assessing new investment opportunities, the Council will need to take into account relevant guidance on investment for commercial purposes, including the guidance on 'borrowing in advance of need'.

Funds are available in the Feasibility Studies (Commercial Ventures) Reserves for investment in appropriate specialist advice and support when implementing the company changes referred to in this report.

EQUALITIES IMPLICATIONS

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.

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.

There are no direct equalities implications of this report.

Where decisions are made which effect the Council's companies, the equalities implications of these decisions will be considered as part of the decision making process in each case.

The Commercial Ventures Executive Sub-Committee shall generally have regard to the obligations of the Equality Act (2010) in conducting its role as the representative of the Council as a shareholder or partner in companies owned or part-owned by the Council.

COMMUNICATION IMPLICATIONS

There are no direct communication implications as a result of this report. However, as identified in the Commercial Governance Framework, the Commercial Ventures Executive Sub-Committee shall have regard for the Local Authorities (Companies) Order 1995, which sets out the rights for authorities and individual Members to receive company specific information.

RISK MANAGEMENT CONSIDERATIONS

All commercial ventures and investment activities contain an element of risk, and the Commercial Ventures Executive Sub-Committee shall consider these as part of the decision making process for any future decisions relating to companies owned or part-owned by the Council.

In monitoring the performance of companies owned or part-owned by the Council, the Commercial Ventures Executive Sub-Committee has regard to the fiduciary duty the Council owes to its rate and local tax payers, to the public law requirements to exercise the general power of competence for a proper purpose, and the requirements of the Commercial Governance Framework which forms part of the terms of reference of the sub-committee.

CONSULTATION

The Executive Member with responsibility for Investment & Companies have been consulted with regard to the recommendations of this report.

POLICY FRAMEWORK

The recommendations of this report are not in conflict with the Council's Policy Framework. 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.

Commercial Governance Structure

