



Agenda

Partner, Shareholder and Trustee Executive Sub-Committee

Thursday, 1 February 2024 at 6.30 pm

New Council Chamber, Town Hall, Reigate



This meeting will take place in the Town Hall, Castlefield Road, Reigate. Members of the public, Officers and Visiting Members may attend remotely or in person.



Members of the public may observe the proceedings live on the Council's [website](#).

Members:

R. Biggs (Leader) and A. King (Chair)

V. H. Lewanski

R. Michalowski

Mari Roberts-Wood
Managing Director

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

1. Apologies for absence

To receive any apologies for absence.

2. Minutes of the previous meeting

(Pages 5 - 14)

To approve the minutes of the previous meeting on 14 December 2023 as a correct record.

To approve the Exempt minutes of the previous meeting on 14 December 2023 as a correct record.

3. Declarations of interest

To receive any declarations of interest.

4. Shareholder Actions - RBBC Limited

(Pages 15 - 20)

To receive and approve the recommended Shareholder Actions - RBBC Limited.

5. Shareholder Actions - Pathway for Care Limited

To receive a verbal update on Shareholder Actions – Pathway for Care Limited.

6. Insurance/indemnity for Council Company Member and Officer Directors/Board representatives (Pages 21 - 26)

To consider and approve insurance/indemnity for Council Company Member and Officer Directors/Board representatives.

7. Exempt business

RECOMMENDED that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- (i) It involves the likely disclosure of exempt information as defined in paragraph 3 and 4 of Part 1 of Schedule 12A of the Act; and
- (ii) The public interest in maintaining the exemption outweighs the public interest in disclosing the information.

8. Any other business

To consider any other urgent business.



Our meetings

As we would all appreciate, our meetings will be conducted in a spirit of mutual respect and trust, working together for the benefit of our Community and the Council, and in accordance with our Member Code of Conduct. Courtesy will be shown to all those taking part.



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Notice is given of the intention to hold any part of this meeting in private for consideration of any reports containing "exempt" information, which will be marked accordingly.

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BOROUGH OF REIGATE AND BANSTEAD

PARTNER, SHAREHOLDER AND TRUSTEE EXECUTIVE SUB-COMMITTEE

Minutes of a meeting of the Partner, Shareholder and Trustee Executive Sub-Committee held at the New Council Chamber - Town Hall, Reigate on 14 December 2023 at 6.30 pm.

Present: Councillors R. Biggs (Leader), V. H. Lewanski (Vice-Chair), A. King (Chair) and R. Michalowski.

Also present: Councillors J. C. S. Essex, M. S. Blacker, N. D. Harrison, J. P. King, M. Smith and S. T. Walsh.

24. APOLOGIES FOR ABSENCE

There were no apologies for absence.

25. MINUTES OF THE PREVIOUS MEETING

The minutes of the previous meeting on 14 September 2023 were approved as a correct record.

26. DECLARATIONS OF INTEREST

Councillor Michalowski declared a non-pecuniary interest in Item 5 – Companies Performance Update – Winter 2023 as a director of the company Greensand Holdings Limited.

Councillor Lewanski declared a non-pecuniary interest in Item 5 – Companies Performance Update – Winter 2023 as a director of the company, Pathway for Care Limited.

Both Members could stay in the Chamber and make representations to the committee but did not participate in any vote (Council's Code of Conduct – under the Code of Governance for Local Authority Interests in Companies and Part 2(5)(3) of the Member Code of Conduct.

27. CHARITABLE TRUSTS - TRUSTEE ANNUAL REPORTS AND ACCOUNTS 2022/23

The Executive Member for Commercial and Community Assets and Chair of the Sub-Committee, Councillor Andrew King, gave an overview of the Charitable Trusts – Trustee Annual Reports and Accounts 2022/23.

Charities registered in England or Wales must send an annual return to the Charity Commission or report their income and spending every year. The Council is sole trustee for seventeen charitable trusts as set out in the report. The Council's duties as trustee are also set out in the report.

Agenda Item 2

Partner, Shareholder and Trustee Executive Sub-Committee
14 December 2023

Minutes

The Trustee Annual Reports (TARs) and Annual Accounts for these charities for the financial year 2022/23 were appended to the report. The report sought authority for the Council's Finance Team to submit the TARs and Annual Accounts to the Charity Commission by 31st January 2024 which it legally must do each year.

There were no questions from Executive Sub-Committee Members.

Visiting Members raised questions in the following areas:

- Analysis of expenditure (Note 6) on page 33 of the report.
- Reigate Baths Fund – money remained despite the Baths no longer being operational. Suggestion to use for other local sporting clubs.

The Chief Finance Officer responded to the first question. The income represents the interest on the value of the trust asset which is credited to the trust and then donated to Council annually. The transactions are based on established accounting practice and represent the beneficial value to the charity in ownership of the asset.

The Monitoring Officer responded to the second question. The Council has successfully completed a review of the charities over the last year. This has provided a body of evidence and good governance, allowing the start of the second phase. This will mean engaging with the Charity Commission as regulator to seek their consent to using the trust assets in a different way. There is a meeting scheduled with the Chair of the Sub-Committee in January to discuss the next steps of the phase two review. Members with any other questions on this were invited to raise them with the Monitoring Officer.

- Members also asked further questions about when the outcome would be known and the trust assets might be available for alternative use. They also requested an update for the general public, including details of all the assets held in trust with a map of their location.

The Chair emphasised that the review was underway and this needed to be completed before further decisions could be made. Bringing the report to the Executive Sub-Committee demonstrated the trustees' commitment to see it through to a conclusion.

The Monitoring Officer stressed that the work to date was the first phase – to assemble the body of evidence needed to be able to progress to phase two which was to engage with the Charity Commission about alternative use of trust assets.

RESOLVED – that the Partner, Shareholder and Trustee Executive Sub-Committee:

- Approves the Council's Trustee Annual Reports (TARs) and Annual Accounts for 2022/23.**
- Authorises the Council's Finance Team to submit the TARs and Annual Accounts to the Charity Commission by 31st January 2024.**

28. COMPANIES PERFORMANCE UPDATE - WINTER 2023

The Executive Member for Commercial and Community Assets, Councillor Andrew King and Chair gave the Executive Sub-Committee introduced the Companies Performance Update – Winter 2023.

The report provided an overview of the performance of the companies currently owned, or part owned, by the Council. The current operational companies are Greensand Holdings Limited, Horley Business Park Development LLP and Pathway for Care Limited.

Considering these companies in turn:

- Preparations are underway in anticipation of Greensand Holdings Limited being dissolved in an orderly manner. The Council is continuing to work with the company's directors to ensure that the company's affairs are properly managed and to review its future strategy. The company's assets are continuing to be managed with options for their future use being reviewed.
- Horley Business Park Development LLP is on track to be dissolved by way of a Members Voluntary Liquidation, with a plan to resolve its financial affairs currently being implemented. Interest owed by the LLP to the Council is impaired in the Council's accounts to reflect the risk of credit loss.
- There is an ongoing commercially sensitive dialogue with the majority shareholder in Pathway for Care Limited, with it considered likely that the company will be forced into administration unless a negotiated settlement can be reached. The most recent company accounts received by the Council for the year to 31 December 2022 do not have a valid audit opinion and show that the company is technically insolvent. The redemption date of 23 April 2023 for the Council's £1.1 million of preference shares in the company has not been honoured.

More information on the details of these company arrangements was available in the confidential Part 2 section of the report.

Whilst the performance of these companies is not as was originally envisaged when they were created, and is in some cases markedly unsatisfactory, every effort is being made to ensure that current situations are effectively managed to secure best available value for the Council, the borough and its residents.

It was noted that the Council also owns RBBC Limited, created to preserve the company name in case of future need. Options for the future of this company are being developed for consideration by this Sub-Committee.

This report was considered by the Overview and Scrutiny Committee at its meeting on 7 December 2023. The Committee did not make specific observations for this Sub-Committee but asked that we take account of the discussion at the meeting the previous week.

There were no questions from Executive Members.

Agenda Item 2

Partner, Shareholder and Trustee Executive Sub-Committee
14 December 2023

Minutes

Visiting Members were invited to ask any questions. None were forthcoming in the public session. The Sub-Committee agreed to go into Part 2 Exempt session to discuss the Exempt report.

After discussion in Part 2, the Sub-Committee returned to public session, and it was agreed that:

RESOLVED – that the Partner, Shareholder and Trustee Executive Sub-Committee:

- (i) **Notes the Companies Performance Update, as set out in the report and the Exempt report and considers the observations from the Overview and Scrutiny Committee as set out in the Addendum Draft O&S Minute.**

29. PROPERTY PORTFOLIO PERFORMANCE QUARTER 2 2023/24

The Executive Member for Commercial and Community Assets, Councillor Andrew King, gave an overview of the Property Portfolio Performance Quarter 2 2023/24

The Exempt Annex to the report in Part 2 of the agenda comprised a report on the performance of the Council's commercial portfolio of retail office and industrial assets as at the end of Quarter 2 this financial year.

It was noted that the report now covered all of the commercial properties in the Council's portfolio. It included data on budgeted income broken down by sector, projected income streams over the next five years, and comparisons against comparable market sectors in terms of yields and void rates.

In addition, the report considered current and near-future portfolio-specific opportunities and threats, as well as wider market or legislative issues that have implications for the portfolio.

There were no further questions from Members of the Committee.

Visiting Members were invited to ask any questions. None were forthcoming in open session. The Sub-Committee agreed to go into Part 2 Exempt session to discuss the Exempt report and Annex.

After Part 2 discussions, the meeting then returned to public session and it was agreed:

RESOLVED – that the Partner, Shareholder and Trustee Executive Sub-Committee:

- (i) **Receives the Property Portfolio Performance Quarter 2 2023/24 Report and Exempt report and Annex and provides any feedback.**

30. EXEMPT BUSINESS

RESOLVED that members of the Press and public be excluded from the meeting for the following item of business under Section 100A(4) of the Local Government Act 1972 on the grounds that:

- (i) it involves the likely disclosure of exempt information as defined in paragraph 3 and 4 of Part 1 of Schedule 12A of the Act; and
- (ii) the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Exempt Part 2 discussion took place for Item 5 – Companies Performance Update – Winter 2023 and Item 6 – Property Portfolio Performance Quarter 2 2023/24 and are reflected in the Exempt Minutes.

31. ANY OTHER BUSINESS

There was no other business discussed.

The Meeting closed at 7.15 pm

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Signed off by	Chief Finance Officer
Author	Pat Main, Chief Finance Officer
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Email	pat.main@reigate-banstead.gov.uk
To	Partner, Shareholder and Trustee Executive Sub-Committee
Date	Thursday, 1 February 2024
Executive Member	Portfolio Holder for Commercial and Community Assets

Key Decision Required	N
Wards Affected	(All Wards);

Subject	Shareholder Actions - RBBC Limited
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Recommendation
<p>The Partner, Shareholder and Trustee Executive Sub-Committee as the Council's shareholder representative are requested to:</p> <ul style="list-style-type: none"> (i) Accept the recommendation of the directors of RBBC Limited to dissolve the company, because it has been dormant for a substantial period and there is no intention for it to resume trading; (ii) Instruct Council officers to take the necessary action to close the company and submit the final returns to Companies House.
Reasons for Recommendations
<p>RBBC Limited is a company 100% owned by Reigate & Banstead Borough Council.</p> <p>Having considered available options, the Directors of the company have written to the Council (copy at Annex 1) recommending that action is taken to dissolve the company because there is no further benefit, purpose or intention to resume trading activity.</p> <p>The Partner, Shareholder and Trustee Executive Sub-Committee is asked to accept the director's recommendation and instruct officers to proceed with closing the company and submit the final returns to Companies House.</p>

Agenda Item 4

Executive Summary

The Partner, Shareholder and Trustee Executive Sub-Committee is required to consider the Recommendation above in its capacity as shareholder representative for Reigate & Banstead Borough Council's owned and part-owned companies.

Having considered available options, the Directors of the company have written to the Council (copy at Annex 1) recommending that action is taken to dissolve the company because there is no further benefit or purpose in continuing to trade.

The Partner, Shareholder and Trustee 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.

Key Information

4. Reigate & Banstead Borough Council incorporated a company, RBBC Limited, on 30 September 2020 to preserve the name following the dissolution of one of its previous companies which traded under the name RBBC Limited.
5. It was originally intended to use RBBC Limited for the purpose of acting as a holding company for the Council's companies and 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.
6. As identified when the Commercial Strategy Part 2 was implemented in December 2021, changes to the local government borrowing regime and the inability to invest purely for yield, meant that a group company structure was less likely to be appropriate for the Council therefore RBBC Limited has not been utilised but has remained in place in case a future use was identified, thus preserving the company name.
7. RBBC Limited is 100% owned by the Council (100 £1 ordinary shares) and is entirely inactive. Annual Accounts have been prepared in accordance with the provisions applicable to companies subject to the 'small companies' regime.
8. Having now considered available options, and taking into account the administrative overhead of continuing to keep RBBC Limited in operation, the Directors have written to the Council (copy at Annex 1) recommending that action is taken to

Agenda Item 4

dissolve the company because there is no further benefit, purpose or intention to resume trading activity.

Options

- Option 1:** Approve the recommendations to accept the opinion of the Directors of RBBC Limited and instruct officers to close the company down because there is no further benefit, purpose or intention to resume trading activity.
- This is the recommended option, primarily to cease the administrative overhead of retaining the company where there is no foreseeable purpose for it.
- Option 2:** If after reviewing the recommendations, the Partner, Shareholder and Trustee Executive Sub-Committee may request further information before making a decision.
- Option 3:** To not approve the recommendations. This is not the recommended option as there is no benefit in retaining the company in operation as its anticipated purpose has ceased.

Legal Implications

9. 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).

Financial Implications

10. There are no specific financial implications from the recommendations in this report.
11. Administrative efficiencies will arise from no longer having to maintain company records and submit returns and accounts to Companies House.

Equalities Implications

12. There are no equalities implications arising from this report.

Communication Implications

13. There are no communication implications arising from this report.

Environmental Sustainability Implications

14. There are no environmental sustainability implications arising from this report.

Risk Management Considerations

Agenda Item 4

15. All commercial ventures and investment activities contain an element of risk, and the Partner, Shareholder and Trustee Executive Sub-Committee should consider these as part of the decision making process for any decisions relating to commercial ventures and investment activities.

Background Papers

None.

ANNEXES

1. Communication from the Directors of RBBC Limited – January 2024

5 January 2024

Cllr A King, Chairman
Partnership, Shareholder & Trustee Sub-Committee
Reigate & Banstead Borough Council

Closure of RBBC Limited

Dear Councillor A King,

As the Directors of RBBC Limited (company number 12915794), we are writing to you in your capacity as Chair of the Partnership, Shareholder and Trustee Executive Sub-Committee and, therefore, the appointed representative of Reigate & Banstead Borough Council as sole Shareholder in this company.

As you will know, RBBC Limited has existed as a 'dormant' company since its incorporation on 30 September 2020. The original intention behind setting up the company was to retain Council ownership of the trading name and to provide an easily activated corporate entity should it be required to support future commercial activities.

However, developments in the regulations pertaining to commercial activities undertaken by local authorities (including restrictions around the use of funds borrowed from the PWLB), alongside changes in the risk appetite of the Council, mean that it is no longer necessary for the company to be retained.

Keeping the company registered – even in its dormant state – carries cost for the company, including the provision administrative support, preparation of year-end accounts, filing statutory returns with Companies House and arranging board meetings. We do not feel that these costs can continue to be either justified or supported by a company that undertakes no trading activity and, therefore, generates no income.

As the sole Shareholder in the company, we are therefore requesting that Reigate & Banstead Borough Council confirms in writing that it supports our proposal to implement, without delay, the orderly closure of RBBC Limited.

Yours faithfully,

Mari Roberts-Wood - Director

Luci Mould - Director

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Agenda Item 6



Signed off by	Strategic Head of Legal and Governance
Author	Joyce Hamilton, Strategic Head of Legal & Governance
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To	Partner, Shareholder and Trustee Executive Sub-Committee
Date	Thursday, 1 February 2024
Executive Member	Portfolio Holder for Commercial and Community Assets

Key Decision Required	N
Wards Affected	(All Wards);

Subject	Insurance/indemnity for Council Company Member and Officer Directors/Board representatives
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Recommendations
<p>That the Partner, Shareholder & Trustee Sub-Committee:</p> <ul style="list-style-type: none"> (i) Note the report to this Sub-Committee on 23 March 2023 (Insurance / Indemnity for Council Company Member and Officer Directors / Board Representatives) at Annex 1; (ii) Approves the clarification of the indemnity and insurances available to Council Company Member and Officer Directors / Board Representatives, contained within this report.
Reasons for Recommendations
To provide further assurances and detail as to what risks are covered by the Council's indemnity and insurances in relation to the duties of Council appointed Directors and Board Representatives.
Executive Summary
It is widely accepted as best commercial practice for the Directors of companies (and

Agenda Item 6

Member Representatives in Limited Liability Partnerships) to be protected by indemnities and/or Directors Insurance policies.

It is important for the Partner, Shareholder & Trustee Sub-Committee to note that, in providing cover, the Council is fulfilling a duty of care to those it asks to take on these responsibilities on its behalf.

This Committee has authority to approve the above recommendations

Statutory Powers

1. Local authority power to grant indemnities to members or officers who serve as directors of a local authority-controlled company is provided for under the Local Authorities (Indemnities for Members and Officers) Order 2004 (SI No.2004/3082).
2. The Companies Act 2006 allows a company to take out insurance to cover any liability relating to negligence, default, breach of duty or breach of trust by the director or officer in relation to the company by which they are employed.

Background

3. The Council have conducted a review in conjunction with its insurer to ensure that the most appropriate and best value cover is sourced whilst also ensuring Directors are afforded appropriate indemnities by the Council.

Key Information

4. The companies referred to in this report are:
 - Greensand Holdings Ltd – wholly owned by RBBC with two Directors – Cllr R Michalowski and Derek Beck (external/independent);
 - Horley Business Park Developments LLP – a partnership with 2 private sector partners;
 - Pathway For Care Ltd – a joint venture with RBBC investment with one Council-appointed Director – Cllr V Lewanski;
 - RBBC Limited – wholly owned by RBBC with two Directors – M Roberts-Wood and L Mould.
5. This report is required to provide further assurances and clarification as to the risks covered by Council's indemnity and insurances in relation to the duties of Council appointed Directors/Board Representatives.
6. The Council confirms that the Council's indemnity and/or insurance would cover the following costs and liabilities relating to the duties of council appointed Directors/Board Representatives:
 - All costs (including legal costs).
 - All liabilities (including HMRC and those attributed to a Director/Board Representative personally)

Agenda Item 6

- All alleged wrongful acts including (but not limited to), breach of trust, breach of duty, neglect, error, misleading statements, and wrongful trading.

Options

7. The Sub-Committee has two Options:

OPTION 1: The members of PSTSC can approve the clarification of the indemnity and insurances available to Council Company Member and Officer Directors/Board Representatives.

This is the recommended option as it will provide protection to the Council appointed Directors/Board of Representatives.

OPTION 2: The members of PSTSC could not approve the clarification of the Council approved indemnity.

This is not the recommended option as it would expose the Directors to an unnecessary risk of personal liability.

Legal Implications

8. Section 112 of the Local Government Act 1972 enables the Council to appoint staff, and such officers "shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the authority appointing him think fit". Therefore, an implicit power to indemnify or insure them as part of their terms and conditions of employment.
9. Prior to the enactment of the Local Government Act 2000, the powers of local authorities to indemnify Members and officers in respect of claims brought against them personally were severely limited mainly because of the case of *Burgoigne -v- London Borough of Waltham Forest*. In this case, the High Court indicated that local authorities could not indemnify Members and officers against personal liability for acts committed outside the powers of the local authorities in question.
10. Section 101 of the Local Government Act 2000 changed that position by conferring power on the Secretary of State to make an Order to provide authorities with the ability to indemnify their members and officers in respect of personal liabilities incurred in connection with their service on behalf of their authority.
11. The Order; Article 5 is the key provision in the Order. It states that an indemnity may be provided in relation to any action, or failure to act, which is:
- (a) authorised by the authority or
 - (b) forms part of, or arises from, any powers conferred, or duties placed, upon a member or officer, as a consequence of any function being exercised by that member or officer
- (i) at the request of, or with the approval of the authority or
 - (ii) for the purposes of the authority.

Agenda Item 6

12. Article 5 also makes clear that an indemnity may be given whether or not, when exercising the function in question, the member or officer does so in his capacity as a member or officer of the authority. Therefore, an indemnity can apply to powers or duties being exercised by Members or officers when carrying out functions pertaining to outside bodies not connected with the Council, as long as the functions in question are being exercised at the request of, or with the approval of, the authority or for the purposes of the authority.
13. When a member or officer is acting in a fiduciary capacity as a member of an outside body, it is unlikely that his or her actions could be said to be undertaken at the “request” of, or for the “purposes” of the Council. However, the very fact that the member or officer will have been nominated to the outside body by the Council will mean that the action or failure to act will have been done whilst exercising powers or duties as a consequence of performing a function with the approval of the Council and so can be indemnified by the Council.
14. Article 6 of the Order prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing (but not the defence of) any action in defamation. An indemnity may, however, be provided in relation to the defence of criminal proceedings.
15. Article 7 makes clear that an indemnity can be given in relation to actions which are beyond the powers of an authority, provided that the member or officer in question believes that the action, or failure to act, is within the powers of the authority.
16. Article 8 conditions that any potential indemnity given against the costs of defending any criminal proceedings must contain provisions for the re-payment of sums expended by the authority or the insurer if the Member or officer has been convicted of a criminal offence and that conviction is not overturned following any appeal. It is anticipated that the decision as to whether it is appropriate to pay any sums upfront for the defence of criminal proceedings and recover the sums in the event of a conviction, or await the conclusion of such proceedings before making any payment will be on a case-by-case basis.

Financial Implications

17. The Chief Finance Officer has assessed the risk implications of granting this indemnity and is satisfied that it is appropriate for the Council to take this course of action.
18. The payment of annual insurance premiums (c£1,000 per policy, per annum) will be incurred as a revenue expense to the Council and can be accommodated within approved budgets.

Equalities Implications

19. There are no direct equalities implications arising from the recommendations of this report.

Communication Implications

20. There are no direct communities implications arising from the recommendations of this report.

Environmental Sustainability Implications

21. There are no direct environmental sustainability implications arising from the recommendations of this report.

Risk Management Considerations

22. There are no direct risk management implications arising from the recommendations of this report.

Procurement/Contract Management and Subsidy Considerations

23. There are no direct procurement/contract management implications arising from the recommendations of this report.

Consultation

24. The Council has consulted with its insurer and the relevant Council appointed Directors/Member Representatives.

Policy Framework

25. The recommendations of this report are consistent with the Council's Policy Framework.
26. All actions undertaken by the Council in respect of commercial activity (including company activity) will be undertaken for the purpose of contributing to the achievement of the 'Funding our Services' objective within the Council's Corporate Plan and supporting policy framework.

Background Papers

27. Partner Shareholder Trustee Committee Report dated 23rd March 2023, Item 6 [Agenda for Partner, Shareholder and Trustee Executive Sub-Committee on Thursday, 23rd March, 2023, 6.30 pm | Reigate and Banstead Borough Council \(moderngov.co.uk\)](#)

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