



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

<b>SIGNED OFF BY</b>	Head of Legal and Governance
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<b>TO</b>	Commercial Ventures Executive Sub-Committee
<b>DATE</b>	Thursday 30 September 2021
<b>EXECUTIVE MEMBER</b>	Portfolio Holder for Investment and Companies

<b>KEY DECISION REQUIRED</b>	N
<b>WARDS AFFECTED</b>	(All Wards);

<b>SUBJECT</b>	Shareholder Actions - RBBC Housing – Independent Living re AGM
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<b>RECOMMENDATIONS</b>
<p>The Commercial Ventures Executive Sub-Committee are asked, as shareholder representative for Reigate and Banstead Borough Council, in respect of RBBC Housing – Independent Living, to:</p> <ol style="list-style-type: none"><li>1. Note that an annual general meeting (AGM) for RBBC Housing – Independent Living is required to be held within six calendar months after the close of its financial year and consent to short notice of that AGM and authorise the Portfolio Holder for Investment and Companies to sign on behalf of Reigate &amp; Banstead Borough Council, the Consent to Short Notice letter (Annex A);</li><li>2. To vote in favour of the following resolutions being proposed at RBBC Housing – Independent Living’s AGM, as set out in Notice of AGM (Annex B):<ol style="list-style-type: none"><li>(i) In light of RBBC Housing – Independent Living’s zero turnover and assets, to exercise the power under section 84 of the Co-operative and Community Benefit Societies Act 2014 (the Act) to disapply section 83 of the Act and remove the duty to appoint an auditor for the financial year ended 31 March 2021.</li><li>(ii) To receive and adopt RBBC Housing – Independent Living’s unaudited Financial Statements for the period ended 31 March 2021 (Annex C).</li></ol></li></ol>

- (iii) To receive and adopt the Directors' report on the affairs of RBBC Housing – Independent Living (Annex D).
  - (iv) To consider the dissolution of RBBC Housing – Independent Living.
  - (v) THAT, pursuant to and in accordance with Article G12 of the RBBC Housing – Independent Living's rules and Section 119 of the Co-operative and Community Benefit Societies Act 2014 ("the Act") approve the instrument of dissolution in the format prescribed by the FCA and containing all information required by section 119(2) of the Act to be further endorsed by at least three fourths of the Members to testify their consent to the dissolution of the Association (ANNEX E set out in the Exempt part of this report); and
3. To appoint Portfolio Holder for Investment and Companies as the Corporate Representative for Reigate and Banstead Borough Council to attend and vote on the above resolutions at the RBBC Housing – Independent Living AGM.

### REASONS FOR RECOMMENDATIONS

The Commercial Ventures Executive Sub-Committee are asked, as shareholder representative for Reigate and Banstead Borough Council, in respect of RBBC Housing – Independent Living, to:

1. Note that an annual general meeting (AGM) for RBBC Housing – Independent Living (Community Benefit Society) is required to be held within six calendar months after the close of its financial years and consent to short notice of that AGM is therefore required. The Portfolio Holder for Investment and Companies is to be authorised to sign the consent to short notice on behalf of Reigate & Banstead Borough Council to allow compliance with the statutory requirements as set out in the Community Benefit Society (CBS)'s Rules.
2. Authorise the Corporate Representative to vote in favour of the following resolutions being proposed at RBBC Housing – Independent Living's AGM:
  - (i) In light of RBBC Housing – Independent Living's zero turnover and assets, to exercise the power under section 84 of the Co-operative and Community Benefit Societies Act 2014 to disapply section 83 of the Act and remove the duty to appoint an auditor for the financial year ended 31 March 2021 as the CBS has been inactive with only £4 share capital;
  - (ii) To receive and adopt the Association's unaudited Financial Statements for the period ended 31 March 2021 to comply with the statutory requirements as set out in the CBS's Rules;
  - (iii) To receive and adopt the Directors' report on the affairs of the Association to comply with the statutory requirements as set out in the CBS's Rules;
  - (iv) To consider the dissolution of RBBC Housing – Independent Living as the reason it was established was not pursued and it has therefore been inactive. Any further ambition to utilise RBBC Housing – Independent Living has not been identified and the statutory and regulatory requirements require a multitude of Council resources which, if dissolved, would be avoided.
  - (v) To approve the instrument of dissolution in order this can be sent to the FCA to effect the dissolution.

**The 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.

## **BACKGROUND**

Following approval for the creation of a Community Benefit Society at the Commercial Ventures Executive Sub-Committee on 7 November 2019, the CBS was incorporated on 7 October 2020 with the intention to manage housing, including Social Housing, housing management services, associated facilities and amenities to prevent or relieve poverty and the relief of aged, disabled (whether physically or mentally) or chronically sick people and own and provide housing, including Social Housing to prevent or relieve poverty and the relief of aged, disabled (whether physically or mentally) or chronically sick people.

The CBS has remained inactive.

## **KEY INFORMATION**

Commercial Ventures Executive Sub-Committee is required to consider the Recommendations set out above in its capacity as shareholder representative for Reigate & Banstead Borough Council in order that RBBC Housing – Independent Living can meet its statutory obligations under the Companies Act 2006 in respect of Directors' Report and Audited Financial Statements for the year ended 31 December 2020 and the appointment and remuneration of auditors.

## **OPTIONS**

- Option 1:** Approve all the Recommendations above in order RBBC Housing – Independent Living can meet the requirements of the Co-operative and Community Benefit Societies Act 2014 and the CBS's Rules. This is the recommended option to ensure that RBBC Housing – Independent Living is governed correctly and meets the statutory requirements and is no longer utilising Council resources.
- 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 that RBBC Housing – Independent Living is governed correctly and meet its statutory requirements and is no longer utilising Council resources.
- Option 3:** Do not approve the required actions. This is not the recommended option as not filing accounts and the annual return can mean that the Financial Conduct Authority can prosecute the CBS, and the Directors of RBBC Housing – Independent Living will not be able to carry out their statutory duties and will be in breach of the Co-operative and Community Benefit Societies Act 2014.

## **LEGAL IMPLICATIONS**

1. 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**

2. The Council is required to pay for the accountant's services to the CBS and the legal fees relating to work associated with the AGM and the CBS's dissolution. These costs can be accommodated within existing approved budgets.

## **EQUALITIES IMPLICATIONS**

3. 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.
4. 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**

5. 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.

## **RISK MANAGEMENT CONSIDERATIONS**

6. 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.
7. The Financial Conduct Authority can prosecute the CBS if it does not submit its Accounts and Annual Return.

<b>HUMAN RESOURCES</b>
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8. Where Council Officers are appointed as directors, it should be noted that this has resource implications.
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<b>BACKGROUND PAPERS</b>
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None.
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