

Signed off by	Director of Finance and Organisation
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To	Commercial Ventures Executive Sub-Committee
Date	Thursday, 23 June 2022
Executive Member	Portfolio Holder for Investment and Companies

Key Decision Required	N
Wards Affected	(All Wards);

Subject	Shareholder Actions - 23 June 2022: RBBC Limited
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Recommendations
The Commercial Ventures Executive Sub-Committee as shareholder representative for RBBC Limited, a company 100% owned by Reigate & Banstead Borough Council, are requested to receive RBBC Limited’s Directors’ Report and Unaudited Financial Statements for the year ended 30 September 2021 set out in Annex 1 attached to this agenda.
Reasons for Recommendations
<ol style="list-style-type: none"> The Commercial Ventures Executive Sub-Committee is asked to acknowledge receipt of the Directors’ Report and Unaudited Financial Statements for the year ended 30 September 2021 to allow the Committee to carry out its function as shareholder representative and monitor the activity of Reigate & Banstead Borough Council’s commercial entities. RBBC Limited’s Directors have approved the Directors’ Report and Unaudited Financial Statements for the year ended 30 September 2021 (‘the Accounts’) as required by Companies Act 2006.
Executive Summary
The Commercial Ventures Executive Sub-Committee is required to consider the actions set out in Recommendations above in its capacity as shareholder representative for RBBC

Limited. RBBC Limited will meet its statutory obligations under the Companies Act 2006 in respect of the Accounts and will lodge them with Companies House no later than 30 June 2022.

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.
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 companies which had the name RBBC Limited.
5. As approved at Commercial Ventures Executive Sub-Committee on 30 January 2020, it was intended to use RBBC Limited for the purposes of acting as a holding company for the Council's companies 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, changes to the local government borrowing regime and the inability to invest purely for yield, meant a group company structure was probably no longer appropriate for the Council so RBBC Limited has not been utilised but can remain should a future use be identified thus preserving the name.
7. RBBC Limited is 100% owned by the Council (100 £1 ordinary shares) and is entirely inactive therefore the Accounts have been prepared in accordance with the provisions applicable to companies subject to the small companies' regime.
8. For the year ending 30 September 2021, the company is entitled to exemption from audit under section 477 of the Companies Act 2006 as it is a small company and in accordance with Section 476 of the Companies Act 2006, the shareholder has not required the company to obtain an audit of its accounts as there has been no activity.

Options

- Option 1:** Approve the required action set out in Recommendations above in order the Committee carry out its function as shareholder representative and monitor the activity of Reigate & Banstead Borough Council's commercial entities and

allow RBBC Limited's Directors to meet the requirements of the Companies Act 2006 in respect of the Directors' Report and Unaudited Financial Statements for the year ended 30 September 2021. This is the recommended option to ensure RBBC Limited is governed correctly and meets the statutory requirements.

Option 2: If after reviewing the required action and the Accounts, adjustments are required, the Commercial Ventures Executive Sub-Committee should request the necessary adjustments be made and approve the actions subject to those adjustments, in order RBBC Limited is governed correctly and meet its statutory requirements.

Option 3: Do not approve the required action. This is not the recommended option as not filing accounts is a criminal offence and the Directors of RBBC Limited will not be able to carry out their statutory duties and will be in breach of the Companies Act 2006. The Directors can be personally fined in the criminal courts and the company struck off the Register of Companies if accounts are not lodged with Companies House.

Legal Implications

9. The Directors can be personally fined in the criminal courts and the company struck off the Register of Companies if accounts are not lodged with Companies House.
10. 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 a company for filing accounts late. The Registrar of Companies may also take steps to strike a company off the public record if these documents are delivered late.
11. 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

12. The RBBC Limited's Directors' Report and Unaudited Financial Statements for the year ended 30 September 2021 must be approved and lodged with the Registrar of Companies before 30 June 2022 in order to avoid late filing penalties as set out below.

Length of period

Private company penalty

(measured from the date the accounts are due)

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

13. This report does not have any direct financial implications for the Council. The Council's company investments are reported in its annual statement of accounts.

Equalities Implications

14. 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 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

15. 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.

16. As mentioned in Legal implications above, the Registrar of Companies may also take steps to strike a company off the public record if these documents are delivered late which could lead to substantial reputation damage as this information would be in the public domain.

Environmental Sustainability Implications

16. The Council is committed to taking action to address environmental sustainability and climate change issues. There are no environmental sustainability implications for this report.

Risk Management Considerations

17. 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.

18. As set out in Financial Implications above, if the accounts are not lodged with the Registrar of Companies on time, late filing fees are imposed.

19. 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.

Human Resources

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

Background Papers

21. None.