



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

<b>Signed off by</b>	Chief Finance Officer
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<b>To</b>	Partner, Shareholder and Trustee Executive Sub-Committee
<b>Date</b>	Thursday, 22 June 2023
<b>Executive Member</b>	Portfolio Holder for Commercial and Community Assets

<b>Key Decision Required</b>	N
<b>Wards Affected</b>	(All Wards);

<b>Subject</b>	Shareholder Actions - 22 June 2023: RBBC Limited
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<b>Recommendation</b>
<b>The Partner, Shareholder and Trustee Executive Sub-Committee as the Council's shareholder representative are requested to receive RBBC Limited's Annual Accounts for the year ended 30 September 2022 which are set out in Annex 1 attached to this agenda.</b>
<b>Reasons for Recommendations</b>
<ol style="list-style-type: none"><li>1. RBBC Limited is a company 100% owned by Reigate &amp; Banstead Borough Council.</li><li>2. The Partner, Shareholder and Trustee Executive Sub-Committee is asked to acknowledge receipt of RBBC Limited's Annual Accounts for the year ended 30 September 2022 to allow the Committee to carry out its function as shareholder representative and monitor the activity of Reigate &amp; Banstead Borough Council's commercial entities.</li><li>3. RBBC Limited's Directors have approved its' Annual Accounts for the year ended 30 September 2022 ('the Accounts') as required by Companies Act 2006.</li></ol>
<b>Executive Summary</b>

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.

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 2023.

**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 companies which had the name RBBC Limited.
5. As approved at the Partner, Shareholder and Trustee 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. 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 2022, 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 Recommendation 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 Annual Accounts for the year ended 30 September 2022.

This is the recommended option to ensure RBBC Limited is governed correctly and meets the statutory obligations.

**Option 2:** If after reviewing the Recommendation and the Accounts, adjustments are required, the Partner, Shareholder and Trustee Executive Sub-Committee should request the necessary adjustments be made and approve the Recommendation subject to those adjustments, in order RBBC Limited is governed correctly and meets its statutory obligations.

**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 RBBC Limited 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 any 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' Annual Accounts for the year ended 30 September 2022 must be approved and lodged with the Registrar of Companies before 30 June 2023 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 Partner, Shareholder and Trustee 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 Partner, Shareholder and Trustee 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**

17. 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**

18. 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.

19. 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.
20. 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.

### **Background Powers**

21. None.