

# Policy Committee

10 June 2024



**Reading**  
Borough Council  
*Working better with you*

<b>Title</b>	Reading Transport Limited – Change of Articles of Association
<b>Purpose of the report</b>	To make a decision
<b>Report status</b>	Public report
<b>Report author</b>	Michael Graham, Assistant Director of Legal and Democratic Services
<b>Lead Councillor</b>	Cllr Liz Terry, Leader of the Council
<b>Corporate priority</b>	Not applicable, but still requires a decision
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. That the Committee notes the reasons for, and the detailed changes to the Articles of Association as set out in this report and Appendix 1.</li><li>2. That the Committee in its capacity as sole shareholder for Reading Transport Limited adopt the revised articles shown at Appendix 3.</li><li>3. That the Committee gives its consent for the Articles of the RTL subsidiary companies to be altered in accordance with Appendix 4.</li><li>4. That the Shareholder Agreement between Reading Transport Limited and the Council is agreed as shown at Appendix 5 and that the Assistant Director for Legal and Democratic Services is authorised to sign the Agreement on behalf of the Council and agree any minor changes to the Agreement in Consultation with the Leader of the Council.</li><li>5. That the Committee notes that future suggested changes to the Shareholder Agreement will be referred to Policy Committee when the Company presents its annual report or half-yearly review.</li><li>6. That with regards to the Shareholder Agreement, the Assistant Director of Legal and Democratic Services and the Director of Finance are each delegated to perform those shareholder approvals allocated to them on behalf of the Council in consultation with the Leader of the Council and the Chief Executive.</li></ol>

## 1. Executive Summary

- 1.1. This report outlines the proposed changes to the Articles of Association of the Council's wholly owned bus company, Reading Transport Limited (RTL).
- 1.2. A company's Articles are rules, chosen by the company's members (the shareholders), which govern a company's internal affairs – its constitution. They form a statutory contract between the company and its members. The Articles of Association cover a number of elements including company purpose, its administrative structure, powers and duties of company directors and the awarding of dividends.

- 1.3. The goal of the changes outlined in this report is to modernise and adapt the governing document of RTL to better align with the overall governance structures of the Company and the Council. This alignment aims to enhance the Company's ability to serve the interests of the Council as the sole shareholder while ensuring effective and transparent governance. It also aims to ensure that the Company is best placed to continue its mission to serve the interests of Reading and the surrounding area to provide an excellent transport service.

## **2. Policy Context**

- 2.1. Since 1986, the Council has run a very successful municipal bus company. RTL is an intrinsic part of Reading life. Its brightly coloured buses are visible across the town and the Thames Valley region. The Company has won many awards for quality and innovation. It is one of a handful of bus companies in the UK that remains wholly owned by a local authority.
- 2.2. RTL has a significant role in securing the economic success and improved air quality of Reading and is therefore a key contributor to the Council's corporate priorities.
- 2.3. Having completed a governance review in 2021, and given the changing economic environment at that time, the Company set out on a new path to ensure future viability and sustainability. The Council's Policy Committee approved a new Board structure and new Board members in 2021.
- 2.4. To ensure the Company's future financial viability, its ongoing contribution to the Council's corporate priorities and to mitigate any risk to the Council's financial position, the Council needs to ensure the Company has a robust financial plan, is at the forefront of the move to zero carbon and promotes the growth of public transport in Reading. Reading has the second highest bus patronage outside of London. After the pandemic, there were significant challenges to bus patronage, but the Company has strived to recover its position, and has adapted its service offer in accordance with the Council's Bus Service Improvement Plan (agreed in October 2021).
- 2.5. Whilst the Council recognises that Reading Transport Limited has a strong track record, it also recognises that the Council and the Company need the skills and drive from a Board of Directors which is focused on future sustainability and innovation. The Company must deliver a comprehensive public transport system for the future which is affordable and attractive for residents, visitors and businesses. The Company must remain a going concern and its overall governance is therefore of importance to the success of the organisation itself, the Council and the wider Reading area.

## **3. The Proposal**

- 3.1. The Articles of Association are the Constitution of a Company. The Articles of Association were last reviewed by the Council in 2013 when the current Articles were adopted. They are bespoke Articles of Association which disapply the statutory "Model Articles" (a default template set of rules) and make provision for the unique circumstances of RTL as a council-controlled company which is also subject to the regulation of municipal bus companies through the Transport Act 1985.
- 3.2. The Committee will be aware that RTL is no longer a single entity. Due to previous acquisitions, it is a group of companies. Appendix 1 attached outlines the corporate structure and officers within the Group. RTL recognise that the current Articles of the Group are out of date. It was the intention of RTL to await this review of the main company Articles and then to review the Articles of the subsidiary companies at the same time. (Appendix 4 attached shows the proposed Articles for the subsidiary companies.) The adoption of these subsidiary articles is a reserved matter for Policy Committee.
- 3.3. The subsidiaries are not companies originally formed as municipal bus companies under the Transport Act 1985 – but the Transport Act still imposes restrictions on subsidiaries of municipal bus companies e.g. the power of borrowing is an important

restriction. In order to simplify the running of the Group it is proposed that the subsidiary companies are bound by the rules set out in the Articles of RTL.

3.4. Appendix 1 contains a detailed breakdown of the Articles and whether changes were required by the review. The changes which have been identified are marked up for reference in Appendix 2, or, the issue has been moved to the proposed new Shareholder Agreement. The provisions of the Articles are intended to be more permanent governance features. They can be changed, but it is not envisaged that they would be changed frequently. However, the new Shareholder Agreement (Appendix 5) contains matters which can be updated more frequently.

3.5. The main issues to draw to the Committee's attention are as follows:

### **Article 10**

3.6. A number of decisions currently require Council approval. Some of these decisions need to be reviewed as follows:

**Staffing** – Directors can change the establishment and T&Cs of the staff generally, but not their own establishment levels (i.e. number of Directors), removing directors or changing T&Cs of Directors.

**Dealing in assets** – at present the Company can only purchase or sell assets with the Council's approval. This includes land, buses and other vehicles.

**Buses.** There is a financial limit regarding buses, permission is only required when the purchase of buses is above £1m and outside of the annual fleet replacement plan.

**Land.** The Company needs the Council's permission to sell or acquire land.

3.7. The following amendments are proposed:

### **Staffing**

3.8. We have revised the Articles to have a clear distinction between the Executive and Non-Executive Directors.

3.9. Normal practice would be for the Board to specify and agree the roles and T&Cs of the Company's Executive Directors and notify the shareholder of any appointments. Article 25 sets out that the Board can decide on how many employee directors there should be.

3.10. The T&Cs of the executive directors is something which currently needs approval by the Council. It is unclear as to how this has been operationalised in the past and in practice it may have fallen out of use, since in recent years the Council has not provided or been asked to approve T&Cs for directors etc. An alternative would be to require that the Company operates a Remuneration sub-committee which is Chaired by a non-executive director (the Chair) and to which the executive directors are not members. Although this was not recommended in the Systra review it is a common way to ensure good governance and separation of roles over the determination of executive directors pay. The current check and balance in the articles is that the Council effectively takes the role of the remuneration sub-committee, but if this has not worked effectively then the issue should be addressed. We are now recommending that a Remuneration Committee is established by the Company to deal with Executive Directors pay, terms and conditions.

3.11. The shareholder will be involved with the roles and T&C's of the non-executive directors, and deciding how many there should be. The purpose of this is to ensure that the Company is not being run directly by the Council, but it does have the external oversight and scrutiny which non-executive roles can bring. The unified Board (execs and non-exec) are collectively accountable to the shareholder as a local authority controlled company. The Shareholder Agreement will set out more detail of how the non-executives are to be appointed.

## Buses

- 3.12. The annual fleet replacement plan (particularly the financial implications) is something which should be approved annually by the Shareholder since it is likely to substantially affect the Company's ability to repay loans, meet pension obligations, continue operating existing services, invest in services or pay a dividend. This should be reflected in the Articles. The fleet replacement strategy (more correctly the Fleet Development Plan) is currently approved by the Shareholder every year through the annual report, and it also references the subsidiary companies, so this good practice is already evident.
- 3.13. However, this rule in the Articles should also be applied to RTL's subsidiaries, so that the reports presented to the Council cover all the companies in the Group. A rule should also be applied to unforeseen purchases outside the Fleet Development Plan which are above a level of materiality which is agreed between the Shareholder and the Company. The Company needs an ability to fulfil its obligations or react to market conditions in a timely manner and the Shareholder recognises this.
- 3.14. The £1m limit was set in 1986 for a significantly smaller company with a turnover of £8.2m (i.e. 12.5% of turnover) and has not been adjusted for inflation or the growth in fleet size. It would, for example, have been sufficient to purchase at least 10 double deck buses, which was more than the normal level of annual fleet replacement, but now only covers 3 buses. Accounting for basic inflation a revised limit would be £2.85m, whilst 12.5% of current turnover would be £6.25m. After discussion between the Council's and Company's respective Directors of Finance the level of materiality is proposed to be £2.85m. This is now reflected in the proposed Shareholder Agreement.
- 3.15. The level of materiality will be a matter which is proposed in each annual review so that the Company can advise the Shareholder on the relevant market factors which may influence it. The Shareholder will then be able to agree any proposed increase. This is proposed as an effective way to keep this issue under review.

## Article 12

- 3.16. Currently there needs to be an annual review of:
- past performance
  - current operations and viability
  - company's plans for the future
- 3.17. There also needs to be an interim review six months after. We plan to keep these provisions. However, three things should be added to the list:
- 3.18. **Social Value** – as a Council owned Company there should be a programme of Social Value in terms of Environmental, Social and Governance measures which is ambitious for Reading, recognises the Council's Corporate Plan priorities, is clearly articulated, agreed by the Board and presented to the Shareholder for regular review on progress.
- 3.19. **Dividend Strategy** – the Company should have a plan to return a dividend to the Council or provide a plan for consideration by the Shareholder which articulates how the company will provide other returns to the Council. The Council decided to forgo dividends from the Company in 2005/06 to support investment in the Company, turning around a terminal decline in patronage with a younger fleet and more high-profile route branding. RBC continued capital investment in supporting measures like bus priority lanes, and offered attractive borrowing rates especially for the hybrid and gas vehicles. All of this created a virtuous circle that has allowed the Company to gradually take on services that were financially supported by RBC.
- 3.20. The situation has changed again post Covid, changes to local government funding and borrowing and in the context also of Bus Service Improvement Plans. Hence the need for a new strategy to be agreed between Council and Company.

- 3.21. **Risk strategy** – how the company sees its risks, and the risks for the subsidiary companies and how it intends to deal with them.

#### **Article 25**

- 3.22. **Number of Directors.** The Council can determine the maximum and minimum number of directors by ordinary resolution. There is a minimum of four and no maximum.
- 3.23. The rules about the number of directors in the category of “who are not full-time employees of the Company” have changed. It was listed to be no more than seven. In fact, this provision in the articles did not accurately reflect the then regulations.
- 3.24. These rules have been altered by the repeal of the relevant regulations. So we now have a free hand. The following changes are recommended:
- a) The number of EDs should be no less than two (CEO and FD) and no more than four without a decision from the Council.
  - b) There should be one employee representative which should sit in its own category. There should be a scheme to elect the employee representative which is fair, transparent and democratic and which is notified to the Council by the Company Secretary. The position should be open to all Group employees (including those of subsidiary companies).
  - c) There should be no less than five and no more than seven Non-Executive Directors. Five to be appointed by the Board and approved by the Council. Two to be reserved appointments which may be made by the Council. All appointments should be made on the basis that there is a spread of skills considered appropriate by the Board.
  - d) If the Council does not wish to appoint to the two reserves posts then the Company may be invited to appoint to them in consultation with the Council. The Shareholder Agreement will deal with the process of how these vacancies are notified, how advertisements are agreed, and how the appointments process will be run.
  - e) All appointments to be made on merit after proper advertising and transparent process.

#### **Appendix 2 - Proposed Articles of Association (track changes showing)**

- 3.25. As a result of the review, the current Articles have been marked up with the proposed changes. Members will note the original and proposed wording for the different elements of the Articles.

#### **Appendix 3 - Proposed Articles of Association to be adopted by the Council by way of shareholder special resolution for Reading Transport Ltd**

- 3.26. Appendix 3 incorporates the proposed changes. This is the clean copy of the new Articles which Members are asked to adopt. If these Articles are adopted then they will become binding immediately and they will subsequently be registered with Companies House.

#### **Appendix 4 - Proposed Articles of Association for group companies to be adopted by Reading Transport Limited by way of shareholder special resolution for those group companies**

- 3.27. These Articles effectively bind the subsidiary companies to follow the main Articles for RTL – this means that there is one set of rules for the Group.

#### **Appendix 5 - Proposed Shareholder Agreement between Reading Borough Council and Reading Transport Limited.**

- 3.28. A number of the changes identified in the Report at Appendix 1 refer to “Reserved Matters” which are decisions which the Company cannot make without reference to the Council. The nature of the decisions, and the material value of those decisions might

change over time as the Council and the Company review the governance arrangements (as is good practice). The Proposed Shareholder Agreement contains some of the practical details for those Reserved Matters and other governance issues.

#### **4. Contribution to Strategic Aims**

4.1. The Council's Corporate Plan has established three themes for the years 2022/25. These themes are:

- Healthy Environment
- Thriving Communities
- Inclusive Economy

4.2. These themes are underpinned by "Our Foundations" explaining the ways we work at the Council:

- People first
- Digital transformation
- Building self-reliance
- Getting the best value
- Collaborating with others

4.3. Full details of the Council's Corporate Plan and the projects which will deliver these priorities are published on the [Council's website](#). These priorities and the Corporate Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical.

4.4. The continued success of RTL is fundamental to the Council's wider strategic aims although company objectives are not specifically identified in the Corporate Plan.

4.5. All of the main themes for the Plan are evident in the work of RTL:

4.5.1. RTL actively promotes a healthy environment by seeking to remove car journeys and congestion from Reading.

4.5.2. Thriving communities are able to participate in the life of the borough when they have access to a sustainable and affordable public transport provider

4.5.3. An inclusive economy is promoted by the many travel to work and travel to school options facilitated by RTL

#### **5. Environmental and Climate Implications**

5.1. The Council declared a Climate Emergency at its meeting on 26 February 2019 (Minute 48 refers).

5.2. There are no environmental or climate implications arising from this report. It should be noted from the Shareholder Agreement that the Council has placed an obligation on the Company to outline its approach in an Annual Review to the Environmental, Social and Governance measures taken by the Company to support achievement of the Council's known priorities. This will allow the Council to scrutinise the plans of the Company with regards to Climate Change measures.

#### **6. Community Engagement**

6.1. No consultation or community engagement is required, or has been carried out voluntarily to assist the report author consider the views of external people in preparing the report.

#### **7. Equality Implications**

7.1. Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.2. An Equality Impact Assessment (EIA) is not relevant to this decision.

## **8. Other Relevant Considerations**

8.1. The Chief Executive of RTL was consulted during the review. The Board of RTL considered the draft amendments in March 2024 and subsequently provided comments via the Chief Executive to feed into the review.

8.2. Due to timing of Board meetings it is unlikely that there will be formal Board feedback before Policy Committee, however the Company Chief Executive is liaising with directors on this issue and it is believed that the Council and the Company have resolved all the points of discussion to present a mutually agreeable solution. If however there are any further comments, then it is proposed to have a delegation on the Shareholder Agreement to make any minor adjustments.

## **9. Legal Implications**

9.1. The Local Government and Housing Act 1989 makes provision for local authorities to have interests in companies. RTL is a local authority controlled company under the provisions of the Act.

9.2. The Secretary of State has made regulations as regards local authority controlled companies which cover a number of administrative matters. However, the Local Authorities (Companies) Order 1995, does not apply to a public transport company within the meaning of section 72 of the Transport Act 1985 (such as RTL).

9.3. The Council therefore has the powers under the Local Government and Housing Act and the Transport Act to make these changes to the Articles of Association.

9.4. Companies formed under the Companies Act have freedom to make such rules about their internal affairs as they see fit, subject to the qualification that if a company's Articles contain anything that is contrary to the provisions of the Act, or against the general law, then they will have no effect. It is believed that there is nothing in the proposed Articles which would be contrary to the Companies Act. The solicitors for the Company have assisted in this review to ensure that the proposed changes are lawful.

## **10. Financial Implications**

10.1. There are no financial implications arising from this report. The legal advice of the Company solicitors has been absorbed by RTL.

## **11. Timetable for Implementation**

11.1. If Policy Committee agrees the new Articles then they will become binding immediately.

11.2. The Shareholder Agreement will be signed by the Council and the Company as soon as possible.

11.3. RTL will adopt the new Articles for the subsidiary companies at the next available Board meeting.

## **12. Background Papers**

12.1. There are none.

**Appendices:**

1. Detailed report on changes to the Articles and a list of subsidiaries
2. Proposed Articles of Association (track changes showing)
3. Proposed Articles of Association to be adopted by the Council by way of shareholder special resolution for Reading Transport Ltd
4. Proposed Articles of Association for group companies to be adopted by Reading Transport Limited by way of shareholder special resolution for those group companies
5. Proposed Shareholder Agreement between Reading Borough Council and Reading Transport Limited.

