

Meeting: Overview and Scrutiny and Cabinet **Date:** 10th April and 17th April 2024

Wards affected: All Wards

Report Title: Governance and Commissioning Review of Local Authority Company - SWISCo

When does the decision need to be implemented? 1st April 2024

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1. Purpose of Report

1.1 This report presents the findings and recommendations of a review of the Councils governance and commissioning arrangements in relation to the Councils wholly owned and controlled company SWISCo.

2. Reason for Proposal and its benefits

2.1 The recommendations in this report will help us to deliver the Councils Corporate and Community Plan 2023 – 2043 priorities of Community and People, Pride in Place and Economic Growth, with a particular emphasis on delivering the Pride in Place ambitions of:

- Draw investment into our towns and breathe life into our town centres,
- Maximise heritage and cultural opportunities for the enjoyment and benefit of residents and visitors
- Ensure the effective operation of SWISCo to have resources to reinvest in Torbay
- Protect and enhance our lived, built and natural environments, including our green spaces

3. Recommendation(s) / Proposed Decision

3.1 That the council adopts and implements with immediate effect and to commence from 1st April 2024 the recommendations as set out in Appendix 1 of this report (Sections 7 and 8)

- 3.1.1 The Financial Strategy of SWISCo should be reviewed by the Shareholders, and a clear purpose and mission statement established and reflected consistently in the Articles of Association, Commissioning Agreement and Company Business Plan including financial targets for service delivery and commercial trading to provide a clear basis for future formal reviews.
- 3.1.2 The Directors of the SWISCo Board and Shareholder Panel should ensure the SWISCo Business Plan is aligned with the Councils' Corporate and Community Plan 2023-2043 and Annual Business Plans before ratification.
- 3.1.3 An Annual Review of the objectives within the SWISCo Business Plan to ensure alignment with the Councils Corporate objectives should be programmed each year as part of the SWISCo Annual Performance Reporting processes and include appraisal by the Councils Overview and Scrutiny Board and Cabinet.
- 3.1.4 The terms of reference of the SWISCo Shareholder Panel and SWISCo Board should be reviewed (in line with the Councils draft Operating Policy for Wholly Owned Companies) to provide detail on roles, responsibilities and decision-making authority and where necessary membership should be amended to reflect the Councils draft Local Operating Policy for Wholly Owned Companies.
- 3.1.5 The Shareholder terms of reference should include:
- A clearly designated council shareholder role (or function)
 - The role of the shareholder
 - A list of reserved matters (to be updated as required and reflect changes as they arise)
 - Formal periodic shareholder, Board Chair and Managing Director meetings to inform company Board meetings.
- 3.1.6 A Shareholder Agreement and Management Agreement should be developed and adopted as part of the governance of SWISCo as a wholly owned company of Torbay Council.
- 3.1.7 The content of future Annual Review Reports provided by SWISCo to the Council should include content in line with the best practise guidance and include. and should include:
- A description of the use of its resources
 - A value for money statement
 - A description of key achievements, deliverables, outcomes.
 - A list of Key Performance Indicators, targets and performance data
 - A forward plan, strategy and investment plan
- 3.1.8 The current Commissioning Agreement should be reviewed and amended by 1st April 2024 to ensure the document and service level agreements contain:
- Clear definitions of the objectives the Council is seeking the company to achieve
 - Specifications for standards and quality for each service area

- Key Performance Indicators that are adequate to assess performance against the agreement
- Protocols for performance monitoring of day to day activities
- Communication and ways of working protocols
- Fair processes for SWISCo to submit a business case for any changes to the support services provided by the Council.

3.1.9 Standardised forms are used by Council officers commissioning works from SWISCo outside the scope of the Commissioning Agreement and/or used to clarify expectation of works included in the Commissioning agreement by providing additional detail.

3.1.10 Outcomes of performance review meetings between the Lead Commissioner and Managing Director of SWISCo are recorded and these should include recording of new and/or escalating risks.

3.1.11 Performance Dashboards should be shared in a format agreed with Council's Lead Commissioner to be agreed annually by the Lead Commissioner, the Managing Director of SWISCo and the Chair of the SWISCo Board.

3.1.12 Audits should be scheduled annually to give assurance of consistent compliance with financial and procurement regulations across SWISCo services and activities.

Appendices

Appendix 1: Governance and Commissioning Review of the Councils Local Authority Trading Company SWISCo

Background Documents

[SWISCo Business Plan 2021-2023](#)

[SWISCo Annual Report 23/24](#)

[Overview and Scrutiny Board Comments on Annual Report](#)

Supporting Information

1. Introduction

- 1.1 This report summarises the findings of a review of the Council's Governance and Commissioning of SWISCo, a trading company wholly owned and controlled by Torbay Council.
- 1.2 Torbay Council established SWISCo in 2020 as a wholly owned company of Torbay Council.
- 1.3 The commissioning agreement of SWISCo spanning the five-year period 2020 to 2025 sets out that both parties shall undertake a review at the end of years 2, 5 and 10 of this agreement to ensure that governance arrangements and commissioning processes are robust and effective and provide sufficient direction for the management of SWISCo.
- 1.4 The commissioning agreement also specifies that a review must be carried out on or before 31st March 2024 to inform any extension of the agreement for a further 5 years.
- 1.5 It is not the purpose of this review to scrutinise SWISCo's annual business plan or performance against the Commissioning Agreement or Service Level Agreements pertaining to specific services delivered by SWISCo on behalf of the Council. However, it is expected that this review will inform how the business planning and performance management frameworks operate to ensure that the Council manages this effectively.
- 1.6 It is the purpose of this review to provide recommendations relating to the Governance and Commissioning of SWISCo as a wholly owned company of the Council and to make a recommendation on any extension to the commissioning agreement from 1st April 2025 for a further 5 years.

2. Options under consideration

- 2.1 The report in Appendix 1 sets out a range of findings and recommendations in relation to how the council governs and commissions SWISCo. The recommendations are based on best practise guidance and take into account consequences of not adopting these recommendations.
- 2.2 Comments from the Overview and Scrutiny Board and consideration of alternative options are welcomed.

3. Financial Opportunities and Implications

- 3.1 There are no direct financial requests within this report.
- 3.2 The recommendations in this report are intended to safeguard and maximise the Councils return on its financial contributions to SWISCo in relation to the delivery of key services on behalf of the Council and to support the Council in delivering its corporate and community objectives and improve the execution of service delivery in terms of efficiency and effectiveness of the services.
- 3.3 Members are asked to consider the Councils financial commitment to extend the commissioning agreement with SWISCo for a further 5 years to deliver key services and ensure inclusion of this within the Councils Mid Term Financial Plan.

4. Legal Implications

- 4.1 If the recommendations in this report are adopted by Cabinet the Commissioning Agreement, Articles of Association and Terms of Reference for Boards and Panels will be amended, at which point appropriate legal advice will be sought to ensure these legally compliant.
- 4.2 Advice will also be sought from the Councils Governance Team to ensure that changes are appropriately implemented into the Councils governance structures and if appropriate within the Councils constitution.

5. Engagement and Consultation

- 5.1 The Governance and Commissioning Review has been completed in consultation with internal stakeholders as listed in the report, the Managing Director of SWISCo, the SWISCo Shareholder Panel and include consideration of the comments of the Overview and Scrutiny Board (10th January 2024).

6. Purchasing or Hiring of Goods and/or Services

- 8.1 SWISCo as a wholly owned company of the council is commissioned in line with teckal exemptions through the mechanism of a commissioning agreement which is monitored by the Councils Lead Commissioner for council wholly owned companies.

8.2 If the recommendations in this report are adopted by Cabinet the SWISCo commissioning agreement will be extended in line with procurement regulations, the councils contracts and procurement protocols and the councils financial regulations, taking into account specific arrangements for procurement under Teckal exemptions and in consultation with the Councils Procurement Team.

9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

9.1 The recommendations in this report will ensure that the Councils Governance and Commissioning arrangements relating to SWISCo are strengthened to maximise the return on investment into the key services delivered on behalf of the Council and enable SWISCo to achieve the council and the company's objectives with improved direction, clarity of expectation and appropriate quality controls over the delivery of key services. Overall, all this strengthening of arrangements is likely to have a positive benefit for all residents in Torbay through SWISCo's continued execution of service improvements and efficiencies.

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people	Positive Impact		
People with caring Responsibilities	Positive Impact		
People with a disability	Positive Impact		
Women or men	Positive Impact		
People who are black or from a minority ethnic background (BME) (Please note Gypsies / Roma are within this community)	Positive Impact		
Religion or belief (including lack of belief)	Positive Impact		
People who are lesbian, gay or bisexual	Positive Impact		
People who are transgendered	Positive Impact		

People who are in a marriage or civil partnership	Positive Impact		
Women who are pregnant / on maternity leave	Positive Impact		
Socio-economic impacts (Including impact on child poverty issues and deprivation)	Positive Impact		
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)	Positive Impact		

10. Cumulative Council Impact

- 10.1 There is no identified cumulative impact of this decision and any other decision or activity being carried out by the Council.

11. Cumulative Community Impacts

- 11.1 There is no identified cumulative impact of this decision and any other decision or activity carried out by the Council on the wider community.