

Governance and Commissioning Review of Local Authority Trading Company SWISCo

Author: Lisa Tuck, Lead Commissioner of Torbay Council Local
Authority Companies

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1 Introduction

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.

Torbay Council established SWISCo in 2020 as a wholly owned company of Torbay Council.

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.

The commissioning agreement also specifies that a review must be conducted on or before 31st March 2024 to inform any extension of the agreement for a further 5 years.

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 relationship effectively.

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 Review Methodology

2.1 Tests

The review is informed by two key guidance documents "Local Authority Owned Company Good Practise Guide 2022" (Chartered Institute of Public Finance and Accountancy) and "Local Authority Company Review Guidance Toolkit 2023" (Local Partnerships).

The guidance outlines a range of tests to establish whether the council has sufficient control to ensure that its investment is protected, appropriate returns on investment are being obtained and that the wholly owned company continues to meet its original purpose and is aligned with the strategic objectives of the Council. This report summarises the findings of these tests.

The best practise review guidance states that "The governance arrangements for council-owned entities should seek to ensure that:

- the entity should have sufficient freedoms to achieve its objectives
- the council should have sufficient control to ensure that its investment is protected, appropriate returns on investment (in relation to the purpose set out in the articles of

association of the company) can be obtained and that the activities of the entity are aligned with the values and strategic objectives of the council

- the entity continues to be relevant and required (in its existing form) and if not, appropriate steps are taken (for example, amending constitutional documents, changing form, or terminating the vehicle)”

2.2 Review Group

The following officers of the Council have provided input into the review

- Divisional Director, Economy, Environment and Infrastructure
- Director of Pride in Place
- Managing Director, SWISCo
- Commercial Business Partner (Pride in Place), Commercial Services
- Head of Commercial Services
- Finance Supervisor (SWISCo Lead), Financial Services
- Head of Governance Support

3 Purpose and Alignment with Council Objectives

3.1 Tests

- What problem does the company solve and is this company still relevant and required (in its existing form)?
- Does the company’s business plan contribute to the authority’s strategic objectives?
- Are activities being undertaken in line with SWISCo’s vision statement?
- Are SWISCo objectives reviewed by the Council annually?

3.2 What problem does the company solve is the company still relevant and required (in its existing form)?

The original purpose of establishing SWISCo as a wholly owned company of the Council is identified in the company’s Articles of Association as follows:

The objects of the Company are to operate the services and operations of and to help improve the economy, efficiency and effectiveness of the execution of non-hazardous waste services, cleaning services and other related business support services and any other operation or service ...which is within the capability and capacity of the Company, for the benefit of the Shareholder.

The Commissioning Agreement defines the objectives of SWISCo as:

To deliver the services of interest to the Torbay community in respect of parks and green infrastructure, waste and recycling and to deliver an essential part of the Council's objectives (Appendix A sets out the commissioned services in more detail).

SWISCo was established to deliver essential services and activities on behalf of Torbay Council, the budget available for the delivery of the services is established at the beginning of each fiscal year, and a commissioning fee is paid to SWISCo to deliver these services, to provide a break-even position at year-end. The Articles of Association do not specify that the financial purpose of SWISCo should be anything other than a break-even position, and do not specify the company should seek to make surpluses to be paid as dividends to the Shareholder or reinvested into the business. The financial strategy for SWISCo adopted by the Council (confirmed by the Council's finance team) has been to seek a break-even outturn at the end of each fiscal year. Any change to the financial purpose of SWISCo would require an amendment to the company's Articles of Association.

It is important to note there are additional objectives outlined in the Commissioning Agreement as follows:

- General activities to increase and safeguard employment in Torbay
- Increase in turnover and surpluses from commercial activities to support the provision of the Commissioned Services
- Delivery against an agreed maintenance programme for the Council's fleet and licenced assets
- Effective maintenance of the Council sites/buildings, which SWISCo occupy under a lease
- Effective provision of Health & Safety requirements and Risk Management for SWISCo employees and associated assets

The company was established to deliver key services on behalf of the Council and to support the Council in delivering its corporate and community objectives and to improve the execution of service delivery in terms of efficiency and effectiveness of the services from the point it was established. The objective regarding increasing turnover and surpluses from commercial activities to support the provision of commissioned services conflicts with the adopted breakeven strategy of SWISCo and its Articles of Association.

It is clear from the annual review reports, feedback from customers, community groups and members, and the significant reduction in recorded complaints against the services (baselined from the year prior to its establishment) that the company has improved the execution of the services on behalf of Torbay Council.

It is also clear from the financial outturn reports of SWISCo (summarised in Appendix B) that the operating profit/loss of the Company has achieved a least a break-even position over the previous two fiscal years.

It can be concluded that SWISCo is achieving the financial purpose for which it was established.

Local Authorities have seen a significant decrease in the amount of Government Grants to deliver statutory and key services to the public, this has led to the need for Councils to consider alternative income streams and diversification. In addition, the increase in demand from a growing population and community needs and expectations increase the financial demands on Local Authorities. Over

recent years the Covid-19 pandemic, cost of living crisis, inflation, increased energy costs and costs of business are increasing the pressure on Local Government finances.

When setting fees and charges for services Local Authorities may only set these at a rate that will cover the costs of the provision of those services. As such a Local Authority is limited in attracting commercial income to cover its expenses or to close gaps where required expenditure exceeds income.

A wholly owned company of the Council with the potential to generate commercial income to support budget challenges is therefore still relevant, where this is the objective of the company.

3.3 Recommendations

The Financial Purpose 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.

3.4 Does the company's business plan contribute to the authority's strategic objectives? Are activities being undertaken in line with SWISCo's vision statement? Are SWISCo objectives reviewed by the Council annually?

The current SWISCo Business Plan spans 2021 to 2023. The current business plan is aligned with the Council's strategic priorities (as set in 2021).

The company's Business Plan (2024 – 2026) is under development and will consider any findings and recommendations of this review and the priorities and objectives of Torbay Council's new Corporate and Community Plan 2023-2043.

As detailed in this report there are variations within the Articles of Association and Commissioning Agreement of the purpose of SWISCo and a lack of a clear vision statement from the perspective of Torbay Council as Shareholders. This is addressed in the recommendations of this report.

The current SWISCo Business Plan does include an employee focussed Mission Statement for everyone in the Company to "Make Torbay the best place to live, work and play" and sixteen strategic objectives in support of the Council's Corporate Plan priorities, these are detailed in Appendix C.

SWISCo Business Plan objectives are reviewed on at least an annual basis by the Shareholder Panel. The objectives have not been amended since first developed in 2021, however, the SWISCo Board and Shareholder Panel minutes provide evidence of oversight of the delivery of the objectives and provision of direction on their delivery.

The SWISCo Business Plan 2021 – 2023 supports, and is aligned with, the Council's strategic objectives as outlined in the Council's Community and Corporate Plan 2020-2024.

In the absence of a Vision or Purpose Statement, it is not possible to assess whether the Business Plan reflects the Vision or Purpose Statement. However, it can be concluded from SWISCo's annual report to the Council and minutes of Board and Shareholder meetings that activities are being delivered in line with SWISCo Business Plan objectives which align with the Council's Corporate and Community Plan objectives and the purpose set out in the Commissioning Agreement.

This review recommends that Purpose and Vision statements for SWISCo be incorporated into SWISCo's business plan to provide a clear test in future reviews.

The Council, through the authority it delegates to the Shareholder Panel, reviews SWISCo objectives at least annually.

3.5 Recommendations

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.

An Annual Review of the objectives within the SWISCo Business Plan to ensure alignment with the council's Corporate objectives should be programmed each year as part of the SWISCo Annual Performance Reporting processes.

4 Governance Arrangements

4.1 Tests

- Is the membership of the Shareholder Panel and Board membership in line with best practise?
- Is there a clear decision-making structure?
- Are roles clearly defined?
- Are conflicts of interest managed effectively?
- Are key governance documents in place such as articles of association, shareholder's agreement, members' agreement, or any financial agreements?
- Does the entity have sufficient freedoms to achieve its objectives?
- Does the council have sufficient control to ensure public funds are protected, returns on investment can be obtained and activities are aligned to council objectives? Is there an opportunity for Scrutiny of SWISCo's performance?
- Does the Shareholder agreement provide the Council with sufficient oversight and influence over the day-to-day activities of SWISCo to meet the Teckal tests?

4.2 Is the membership of the Shareholder Panel and Board membership in line with best practise? Is there a clear decision-making structure? Are roles clearly defined? Are conflicts of interest managed effectively? Are key governance documents in place such as articles of association, shareholder's agreement, members' agreement, any financial agreements?

There should be evidence that the council and senior management recognise the importance of establishing appropriate and proportionate governance arrangements for the oversight of entities. The process for appointing shareholders should be set out in the Councils constitution.

The findings within this report are tested against the draft Local Operating Policy and Best Practise guidance for Local Authority wholly owned companies.

Best practise guidance states that an informal Shareholder Advisory Board or Panel may be established, the panel would not have decision making power and decisions would remain with the person or body delegated authority to exercise the shareholder function. Guidance also states that those advising the shareholder should not also be involved in advising the company or making company decisions. Therefore, members of the wholly owned company shareholder panel should not also be members of the Wholly Owned Company Board.

Although key governance documents are in place to guide governance of the SWISCo Board and Shareholder Panel they are not sufficiently detailed and do not sufficiently clarify roles of members, decision making requirements or define processes to manage conflicts of interest.

Best practise recommends that a Shareholder Agreement and Management Agreements are in place. This is advised within the draft Local Operating Policy of Wholly Owned Companies and should be established and adopted for SWISCo.

The Wholly Owned Company Guidance states that the Council should have a clear framework for overseeing its wholly owned companies to ensure public funds are protected, returns on investment can be obtained and activities are aligned to council objectives. This should also include an opportunity for Overview and Scrutiny of SWISCo's performance. This framework is set out in the draft Local Operating Policy for Wholly Owned Companies.

The Council should undertake a regular assessment of how the business supports its policies and strategies.

4.3 Recommendations

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.

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.

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.

4.4 Does the entity have sufficient freedoms to achieve its objectives? Does the council have sufficient control to ensure public funds are protected, returns on investment can be obtained and activities are aligned to council objectives? Is there an opportunity for Scrutiny of SWISCo's performance? Does the Shareholder agreement provide the Council with sufficient oversight and influence over the day-to-day activities of SWISCo to meet the Teckal tests?

The SWISCo Board and Shareholder Panel meet regularly with standard agendas that meet the requirements of best practise protocols including management of the business plan, financial reporting, performance management and risk management. These meetings provide sufficient oversight of the Council for the day to day activities of SWISCo while still enabling the company to have freedoms in the way in which it delivers its business functions and day to day activities.

The use of the Teckal exemption is complex and subject to challenge, therefore the council and the wholly owned company must ensure that the company is functioning within its Teckal parameters. For a wholly owned company of the Council to be Teckal compliant there are two key tests:

- the control test
- the functional test

The local authority must control all shares in the company and must also exercise effective day-to-day control over its affairs; in other words, the same as the relationship between the council and one of its internal directorates.

The Teckal parameters require the company to deliver at least 80% of its activities (turnover) for its Local Authority owners. Changes to EU procurement regulations meant that 20% of trading can be outside the Teckal contract, this is calculated on a 3 year turnover basis which allows for variations to be smoothed over. There is evidence that this is monitored by the SWISCo Board, Shareholder Panel and the Councils finance representatives and Section 151 officer on an annual basis.

It is recognised that the balance between adopting an approach of treating the company as a department of the organisation, enable sufficient freedoms to the company to achieve its objectives and ensuring robust oversight by the Council to protect its investment can be difficult to achieve.

To achieve this the commissioning agreement and the individual service level agreements relating to each service delivered by the company play a vital role in setting clear definitions of the objectives the Council is seeking the company to achieve, specifications for standards and quality, key performance indicators and monitoring frameworks.

Clear expectations set by the Council and detailed within the agreement will enable the company freedoms and control over how it achieves these through its day-to-day activities, reporting achievements in line with formal monitoring framework, and reporting achievements and risks outside of the agreement by exception.

The Council has adopted a 'intelligent client' approach, designating a senior officer of the Council (known as the Lead Commissioner) the task of ensuring the Council gains desired outcomes from the Company, providing challenge where required, holding it to account using performance data and ensuring there is clarity on a day to day basis of the Councils expectations for delivery and assessment of value for money and quality.

Further to this, as a way of establishing clear processes that supports the company to have sufficient freedoms to achieve its objectives while ensuring the Council maintains sufficient control over its day to day activities a process has been established between the Council's designated Lead Commissioner and SWISCo to agree programmes of works to be carried out in the public realm (Parks and Open Spaces and Highways). Programmes of works are now submitted to the Lead Commissioner and agreed in advance of each quarter. This will ensure the Council has oversight of the works, assess cumulative impacts and ensure co-ordination with the Councils Governance and Communications team to communicate works and engage with the community where appropriate. The new process has been instituted by the commissioner and enables SWISCo officers to have sufficient freedom over the delivery of these works on a reporting by exception or change basis while also ensuring the Council is properly engaged.

It can also be evidenced that the Council demonstrates day to day control of SWISCo activities through the inclusion of the managing director of SWISCo in Council Senior Leadership Team meetings and incorporating reporting against SWISCo operations with the Corporate Performance, Budget and Risk Management processes in line with best practise guidance to 'manage operations of the wholly owned company as a department of the Council'.

The format of the SWISCo Annual Report submitted to the Council by SWISCo is sufficient in term of a description of key achievements, deliverables and outcomes and is presented in a style expected of a trading company. However, the report provided in Autumn 2023 does not contain all suggestions recommended by the best practise guidance to provide the Council with information to inform its decision making and scrutiny of the wholly owned company.

Therefore, the Council will be prescriptive for future editions of the annual report accepting that SWISCo may want to provide a summary document for the public domain.

4.5 Recommendations

The content of future Annual Review Reports provided by SWISCo to the Council should include content in line with best practise guidance:

- A description of the use of its resources
- A value for money statement (including consideration of social and climate change/ environmental factors)
- A description of key achievements, deliverables, and outcomes.
- A list of Key Performance Indicators, targets and performance data
- A summary of key risks
- A forward plan, strategy and investment plan
- A draft business plan

5 Commissioning Agreement and Performance Management

5.1 Tests

- Are the current service contracts fit for purpose and reflective of good practise guidance?
- Are KPIs robust and included in the commissioning agreement or supporting documents?
- Are their effective arrangements in place for monitoring performance?
- Are KPIs clearly linked to the Councils objectives?
- How well are risks managed, are they owned, recorded, reported and mitigated?
- Do Commissioning arrangements provide an adequate framework for performance management and ensuring value for money.
- Do commissioning arrangements provide an adequate framework for monitoring compliance with commissioning agreement expectations?

5.2 Are the current service contracts fit for purpose and reflective of best practise guidance?

The current Commissioning Agreement between the Council and SWISCo took effect from 1 July 2020 and remains effective until 31 March 2025, with an extension to 31 March 2030 by mutual agreement.

Best practise guidance states that the council should have commercial agreements which set out the specification for delivery of activities, any assistance provided to the company and the terms for that assistance.

The Councils Commissioning agreement and suite of accompanying Service Level Agreements sets out the basic requirements of service delivery and support services to be provided to the company, along with arrangements for payment of the commissioning fee for cyclical works and arrangements for commissioning additional works outside of this contract. The agreement also sets out a pathway for dispute resolution stating the Memorandum and Articles of Association of SWISCo prevail over the Commissioning Agreement. The agreement also sets out the variation processes where any significant alteration to Commissioned Services is required.

As mentioned in the previous section the commissioning agreement should set clear definitions of the objectives the Council is seeking the company to achieve, specifications for standards and quality and key performance indicators to effectively assess the achievement of the Councils objectives.

The current commissioning agreement and suite of SLAs were designed to provide the overall scope of the services and activities to be delivered by SWISCo. The Council considers they should be strengthened across all areas including service standards and expectations for service delivery and Key Performance Indicators to ensure these are sufficient to provide the Council with a detailed framework to manage performance. The Commissioning agreement should also outline expected levels and methods of engagement and communication with the community and Members. This work commenced in September 2023 with the expectation of a revised commissioning agreement to be in place by 1st April 2024.

Where a council department commissions SWISCO outside of the annual commissioning fee, these departments are required to monitor performance and delivery of goods or services as agreed with SWISCO on a day-to-day basis. Best practise guidance suggests there should be evidence of a consistent approach across the council in commissioning the company. At the time of the review an exercise is being undertaken to create a standardised form for use across the council by officers commissioning services outside of the scope of the commissioning agreement to ensure the scope of the work is clearly defined, value for money is tested and performance monitoring is defined.

The current commissioning agreement includes four service level agreements Parks and Green Infrastructure; Highways, Fleet and Transport Services; Waste and Recycling Services and Business Commercial and Support Services as outlined in Appendix A.

The Council provides Support Services to SWISCO delivered in accordance with service agreements. SWISCO assesses its Support Service requirements annually. This covers the event that the Council is no longer able to provide the services or is unable to provide a level of services compatible with SWISCO's changing requirements, in which case SWISCO may obtain services from alternative providers with appropriate regard to obtaining best value. With the financial terms between the Parties being adjusted accordingly.

The Commissioning Agreement includes 'Support Service Agreements' as listed below.

- a) Information Communication Technology
- b) Financial Services
- c) Procurement
- d) Payroll, including Pensions
- e) Legal
- f) Internal Audit
- g) HR
- h) Information Compliance
- i) Communications
- j) Health, Safety & Environment (HS&E)
- k) Administrative Support

The costs of these services are calculated by the Head of Finance of the Council and are agreed with SWISCO as part of the annual budget setting process. Where it is assessed by the SWISCO Board and agreed with the Shareholder Panel that the Council is unable to provide a level of services compatible with SWISCO's changing requirements, adjusting the annual commissioning fee to enable SWISCO to purchase these services from an alternative provider or provide these services directly through SWISCO employees this would place a budget pressure on the Council and require a redistribution of the resource currently providing these services to SWISCO. This situation could create a conflict of interest between the Council and SWISCO which has the potential to hinder the ability of SWISCO to achieve its objectives in the most effective and efficient way. The commissioning agreement should be revised to establish a process for SWISCO to submit a business case for any changes to the support services provided by the Council.

The Commissioning Agreement states that both SWISCo and the Council will monitor the Performance of the Commissioned Services provided in accordance with the SWISCo Business Plan, objectives, SMART Action Plans and the Service Performance Agreements and will focus on the:

- a) Overall delivery of Commissioned Services against budget
- b) Delivery of commissioned services
- c) General activities to increase and safeguard employment in Torbay
- d) Increase in turnover and surpluses from commercial activities to support the provision of the Commissioned Services
- e) Delivery against an agreed maintenance programme for the Council's fleet and licenced assets
- f) Effective maintenance of the Council sites/buildings, which SWISCo occupy under a lease
- g) Effective provision of Health & Safety requirements and Risk Management for SWISCo employees and associated assets

There is evidence that the quarterly performance reports submitted by SWISCo to the Board and Shareholder Panel are structured to ensure inclusion of the above performance criteria.

The Councils Lead Commissioner and Managing Director meet regularly to discuss delivery of the strategic outcomes required by the Council. These meetings should be strengthened to include performance monitoring of and compliance with the commissioning agreement and to identify and record early issues with delivery of core requirements and service standards and escalating risks.

There is evidence that the SWISCo Board and Shareholder Panel are sighted on risks and mitigation plans on at least a quarterly basis. As with other departments of the Council SWISCo risks are included in the Councils Strategic and Corporate Risk Framework which ensure they are owned, recorded, mitigated and tracked, with processes in place to escalate and deescalate risks. The Councils Strategic and Corporate Risks are reported to Members through the Councils Governance Framework. The Council's Lead Commissioner for SWISCo services is alerted on a day-to-day basis of any new or escalating risks as they arise for mitigation to be planned on a timely basis.

5.3 Recommendations

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.

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.

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.

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.

6 Finance

6.1 Tests

- Has SWISCo achieved the desired and expected financial objectives over the last 3 years?
- Have financial targets been met for both trading and council service delivery?
- Are budget monitoring processes fit for purpose and effective, are reports received in a timely way?
- Are financial regulations and procedures relevant to SWISCo followed consistently?
- Are procurement regulations and procedures relevant to SWISCo followed consistently?

6.2 Has SWISCo achieved the desired and expected financial objectives over the last 3 years? Have financial targets been met for both trading and council service delivery? Are budget monitoring processes fit for purpose and effective, are reports received in a timely way?

Referring to section The Financial Strategy for SWISCo adopted by the Council (confirmed by the Councils finance team) has been to seek a break-even outturn at the end of each fiscal year. It is also clear from the financial outturn reports of SWISCo (summarised in Appendix B) that the operating profit/loss of the Company has achieved a least a break-even position over the previous two fiscal years and financial targets have been met.

If the Council intends to alter the financial purpose of SWISCo, for example in order to achieve surpluses with dividends to be paid to the shareholders or to be reinvested directly back to improve the efficiency and effectiveness of commissioned services to deliver the Councils Corporate Objectives, these financial objectives should be clarified by the Council and financial targets set to reflect this over the course of the commissioning agreement period.

The SWISCo Board, Shareholder Panel and financial reporting to s151 officer are provided with quarterly performance monitoring and financial data. SWISCo financial performance and outturn projections and future investment requirements are reviewed and incorporated into the Councils Financial Reporting and Monitoring Framework and midterm financial plan.

6.3 Recommendations

See 3.2.1 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.

7 Summary of Recommendations of the Review

This section of the report summarises the recommendations from all sections of the report:

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.
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. 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.
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.
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.
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.
7. The content of future Annual Review Reports provided by SWISCo to the Council should include content in line with best practise guidance:
 - A description of the use of its resources
 - A value for money statement (including consideration of social and climate change/environmental factors)
 - A description of key achievements, deliverables, and outcomes.
 - A list of Key Performance Indicators, targets and performance data
 - A summary of key risks
 - A forward plan, strategy and investment plan

- A draft business plan
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.
 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.
 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.
 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.
 12. Audits should be scheduled annually to give assurance of consistent compliance with financial and procurement regulations across SWISCo services and activities.

8 Recommendation - Extension of the Commissioning Agreement

This section of the report will provide an officer recommendation regarding extending the Commissioning Agreement with SWISCo for a further 5 years.

As a result of this review, it can be concluded that SWISCo continues to deliver against its purpose of delivering improvements and innovative solutions to services that were failing, to build strong working relationships amongst colleagues who share a similar remit, to deliver key services on behalf of the Council and to support the Council in delivering its corporate and community objectives.

It is clear from the annual review reports, feedback from customers, community groups and members, and the significant reduction in recorded complaints against the services) that the company has improved the execution of the commissioned services on behalf of Torbay Council.

With the adoption of the recommendations within this report it is the recommendation that

- **The Commissioning Agreement between the Torbay Council and SWISCo is extended from 1st April 2025 for a further 5 years to 31st March 2030.**

Appendix A

The Agreement details the services to be provided as follows:

- a) Parks & Green Infrastructure Services
 - i) Commissioned Services
 - ii) Parks & Ground Maintenance
 - iii) Environmental Quality
 - iv) Green Infrastructure
 - v) Community Liaison

- b) Highways Fleet & Transport Services
 - i) Commissioned Services
 - ii) Traffic & Development
 - iii) Transport & Fleet
 - iv) Highways Operations
 - v) Highways Assets

- c) Waste & Recycling Services
 - i) Commissioned Services
 - ii) W&R Strategy & Performance
 - iii) W&R Collections
 - iv) Waste Disposal & Recycling Processing

- d) Business Commercial & Support Services
 - i) Commissioned Services
 - ii) Customer Services
 - iii) Projects Innovation & Systems

Appendix B

Note: The Statutory Accounts are distorted by things outside of SWISCO's control, such as pension valuations and accounting for leasing. Therefore, it is pertinent to consider primarily the operating profit/loss line below.

	20/21 (9 month period)	21/22	22/23
Income	(11.76)	(18.58)	(21.37)
Expenditure	11.78	18.08	21.03
Operating Profit/(Loss)	(0.02)	0.50	0.34
Net Profit/(Loss) after ITDA	(0.21)	0.27	0.02
Actuarial (gains)/Losses recognised in pension scheme		(2.5)	0.2
Taxation		0	0
Total (Profit) or loss		(1.8)	0.8
Statutory Assets	6.72	6.75	7.09
Statutory Liabilities	(20.05)	(18.28)	(7.04)
Total Statutory Net Assets/(Liabilities)	(13.33)	(11.53)	0.05

Appendix C

