

**Meeting:** Cabinet **Date:** 25<sup>th</sup> 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?** 25<sup>th</sup> April 2024 and 1<sup>st</sup> April 2025

**Cabinet Member Contact Details:** Councillor Adam Billings, Cabinet Member for Pride In Place and Parking

**Director Contact Details:** Alan Denby, Director of Pride In Place alan.denby@torbay.gov.uk

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## 1. Purpose of Report

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- 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

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- 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

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- 3.1 That the Cabinet approves the adoption and implementation with immediate effect of the recommendations as set out in Appendix 1 of the Governance and Commissioning Review of SWISCo (Section 7, 1-12.)
- 3.2 That the Cabinet approves the extension of the commissioning of SWISCo, as a wholly owned company of the Council to carry out the works specified in SWISCo Commissioning Agreements for a further 5 year period between 1<sup>st</sup> April 2025 and 31<sup>st</sup> March 2030.
- 3.3 To delegate authority to the Cabinet Member for Pride in Place and Parking, the section 151 officer and the Director of Pride in Place to approve any revisions to the Councils commissioning agreement with SWISCo to the 31<sup>st</sup> March 2030.

### 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

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- 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

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- 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.

## 3. Recommendations from Overview and Scrutiny 10 April 2024

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- 3.1 That the Cabinet be recommended to approve the recommendations set out in the submitted report on the Governance and Commissioning Review of Local Authority Company – SWISCo subject to the following:

- 3.1.1 that the Business Plan be included as part of the SWISCo Annual Report to Overview and Scrutiny;
  - 3.1.2 to include as part of the Value for Money document, climate change and biodiversity to help demonstrate the ways we consider Value for Money for SWISCo; and
  - 3.1.3 to ensure that the risk element and typos referred to are picked up in the final report to Cabinet.
- 3.2 In response to these recommendations Section 7, recommendation 7 of the Governance and Commission Review of Local Authority company document has been updated to reflect the inclusion of business risks and a draft Business Plan in the Annual SWISCo Performance report and the inclusion of social and environmental factors in the Value for Money statement.

## 4. Financial Opportunities and Implications

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- 4.1 There are no direct financial requests within this report.
- 4.2 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.
- 4.3 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.

## 5. Legal Implications

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- 5.1 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.
- 5.2 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.

## 6. Engagement and Consultation

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- 6.1 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 (10<sup>th</sup> January 2024).

## 7. Purchasing or Hiring of Goods and/or Services

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- 7.1 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.
- 7.2 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.

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

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- 8.1 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		

## 9. Cumulative Council Impact

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

## 10. Cumulative Community Impacts

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