

# Shareholder Board Annual Report

Financial year 2015/16

June 2016



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# INTRODUCTION

The council has created trading companies and made investments to enhance the financial resilience of the council.



*Our Corporate Strategy, Confident in Surrey's future*



Listen



Responsibility



Trust



Respect

The council's strategic framework for innovation and investment is supporting the development of new ideas and approaches to enhance the financial resilience of the council. This increased emphasis on commercial activity has led to the creation of the Shareholder Board to monitor the council's trading activity and ensure satisfactory performance and effective risk management. The financial returns delivered from innovation and investment will help to ensure that we continue to deliver quality services at the right cost for our residents.

The Shareholder Board is an example of best practice governance. It provides effective oversight and alignment with the strategic objectives and values of the council. The Board safeguards the council's interests and takes decisions in matters that require the approval of the council as owner or as a shareholder of a company.

The Annual Report of the Shareholder Board provides an overview of the progress we have made in developing new models of delivery and enhancing the financial resilience of the council.



David Hodge  
Leader of Surrey County Council

# THE SHAREHOLDER BOARD

## Governance

- The Shareholder Board was created in September 2013 following the report to Cabinet setting out the council's strategic approach to innovation and new models of delivery.
- The Board and its role is noted in the constitution of the council.
- The Board works in accordance with its Terms of Reference (see Annex B) which are reviewed on an annual basis.
- Meetings take place at least quarterly.

The Shareholder Board is comprised of 3 members of the council's Cabinet and the Chief Executive. The board is supported by officers of the council, including the Section 151 Officer (Director of Finance) and the Monitoring Officer (Director of Legal & Democratic Services).

### Members

- Leader
- Deputy Leader
- Cabinet Member for Business Services & Residents Experience
- Chief Executive

### Advisors

- Deputy Chief Executive
- Director of Finance (Section 151 Officer)
- Director of Legal & Democratic Services (Monitoring Officer)
- Strategic Finance Manager (Board Secretary)

# THE SHAREHOLDER BOARD

## Purpose

The primary and most common purpose behind the creation of a Local Authority Trading Company (LATC) is to enable a council to participate in commercial trading activities. Many local authorities have created an LATC for this purpose, with the most common reason given being in order to grow income to protect services. Surrey County Council's first trading company, Babcock 4S Ltd, the Joint Venture with Babcock to provide school improvement services was created in 2003

The decision to create a company or invest in shares is taken by Cabinet upon the basis of a business case. Like many other councils, SCC has created companies in order to trade and grow income; with profits generated for the council available to support the delivery of the council's Medium Term Financial Plan and enhance financial resilience. This is however not the only reason for the creation of a company or investment in shares.

Cabinet approved the creation of a Property Company in order to strengthen the council's ability to invest in a diversified and balanced portfolio of assets in pursuit of the Investment Strategy. The council's investment in FutureGov Ltd enhances this portfolio of assets and supports a company that has a track record of delivering innovative products and solutions in children's services and adult social care.

The council's participation in the Joint Venture Company, Bandstand Square Developments Ltd, delivers the council's strategy of enhancing economic prosperity in the county. This company, a special purpose vehicle, was established in order to deliver the economic regeneration of Woking Town Centre in partnership with Woking Borough Council and a private developer, Moyallen Ltd.

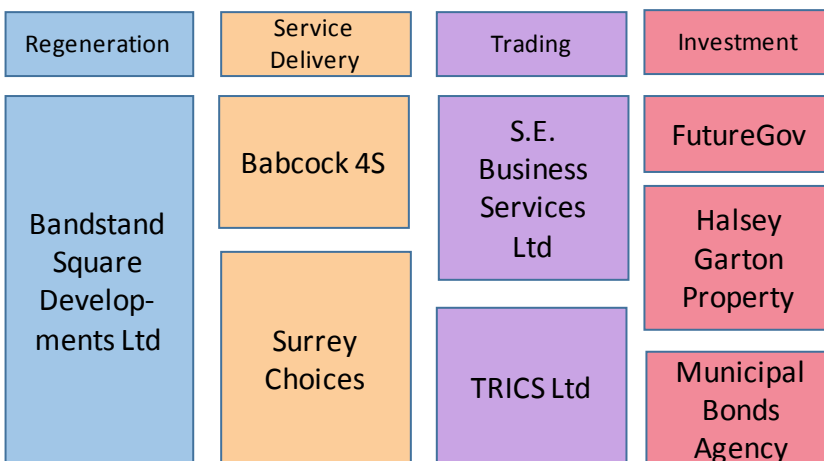
# THE SHAREHOLDER BOARD

## The Council's Shareholdings

The council has created companies and purchased shares in order to;

- Deliver services, benefiting from efficiencies driven by operating in a commercial environment,
- Trade & generate income
- Invest in assets to deliver an income and enhanced asset value in the longer term.
- Deliver regeneration

**Cabinet Decision**  
To create a company or invest in shares



The decision to create a company or to invest in shares is taken by Cabinet or in accordance with delegated decision-making, upon the basis of a business case which articulates the financial implications and associated risks for the council.

These proposals are made with realistic and prudent expectations regarding the investment required and the length of time it will take to establish a successful company.

The council therefore recognises that returns will not necessarily be received in the short-term but will contribute to financial resilience in the longer term.

# THE SHAREHOLDER BOARD

## The Council's Shareholdings

Company	Ownership
Surrey Choices Ltd	100%
S.E.Business Services Ltd	100%
Halsey Garton Property Ltd	100%
Bandstand Square Developments Limited	24%
Babcock 4S Limited	19.99%
TRICS Consortium Limited	16.67%
FutureGov. Ltd	13.1%
Municipal Bonds Agency	Minority*

*\*Will depend on total equity raised*

### Shareholder Board & Decision-Making

The day-to-day operation of each company is the responsibility of the Directors (of each company) with the Shareholder Board being responsible for taking decisions on behalf of the council where these are of a more strategic nature. The extent of this decision-making will depend upon the council's shareholding and upon terms included in a company's Articles of Association (matters reserved for the Shareholder) and / or a Shareholders Agreement in relation to Joint Venture companies.

The Articles of Association for the companies wholly owned by the council stipulate that the shareholder, that is the Shareholder Board on behalf of the council, are required to approve or make decisions in relation to the following, for example,

<u>Decision</u>	<u>Rationale</u>
Changes to the Articles	Removes all controls
Appoint and remove Directors	To ensure that the company is appropriately managed and that there is satisfactory governance
Material change in the nature or scope of the business	To ensure companies only undertake activities for which approval has been given and to protect the council's reputation /continued

# THE SHAREHOLDER BOARD

## Reserved Matters (continued)

<u>Decision</u>	<u>Rationale</u>
Purchase of shares or interest in another company. Acquisitions of any business or any shares.	Significant business decision which may involve further financial risk
Borrowing or the raising of finance (except from SCC). The creation of any security interest (except SCC)	To avoid taking on debt that undermines security for SCC debt (excluding de-minimis bank overdrafts) and to avoid incurring further financial risk
Issuing, withdrawal or buy back of shares	To maintain SCC ownership as originally intended
Enter any Joint Venture, consortium or partnership	To ensure companies only undertake activities for which approval has been given by Cabinet or the Shareholder Board, to protect SCC reputation. To ensure that it is the council that takes decisions that may involve substantial financial risk (rather than the Directors alone).
Selling, transferring, leasing, assigning property or assets (excluding de-minimis and replacement of operational equipment)	To avoid dilution of assets or security in relation to SCC debt
Disposal of any business or any shares	To maintain SCC ownership as originally intended
Entering into an administration order or steps to voluntarily wind up the company	To protect SCC's reputation

The decisions set aside for Shareholder approval listed above are an extract of the type of matters contained in the Articles of Association of each of the council's LATCs. The Shareholder Board reviews these articles on a periodic basis to ensure that they remain appropriate.



# THE SHAREHOLDER BOARD

## Company Details

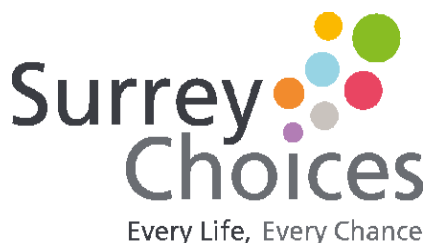
The following pages contain information about each company, including a description of activities and purpose, Cabinet approval & date of incorporation and progress made to date. Information of a financial and commercially sensitive nature has been excluded.

## Directors

Each company must have at least one person named as a Director – the council itself cannot act in this capacity. The Shareholder Board is responsible for appointing (and removing) Directors to act on behalf of the council. Directors have specific responsibilities in Company Law and therefore the Shareholder Board will need to ensure that persons with the appropriate skills are selected. The name of the person(s) appointed to each company is noted in the next section of the report. In the case of Joint Ventures the person appointed by the council to act in respect of its shareholding is noted. Directors appointed by the council receive no additional remuneration and undertake this role as part of their duties as an officer or member.

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# SURREY CHOICES LTD



Cabinet Approval	December 2013
Ownership	100%
Date of Incorporation	March 2014
	Commenced Trade in August 2014
Council Investment	£100 Share Capital
Directors	Simon Laker (Managing Director) & Kevin Kilburn

## Company Profile

Surrey Choices Ltd commenced trade in August 2014, following Cabinet approval of the business case in December 2013. The company provides people with learning and physical disabilities with a range of services in a variety of settings. The service offer includes day services and support for people who wish to seek employment or become engaged in work, volunteering or training opportunities. The Shared Lives service matches carers who provide support in a family home environment to people with disabilities. The company has recently developed a respite service creating additional capacity in the Surrey based market. The commissioning contract to supply services to the council triggered the transfer of employees from the council to the company under TUPE regulations in August 2014.

## Business Case

The council created the company in order to ensure the sustainability of the services provided and to create a commercial environment in which to deliver efficiencies and continued innovation. Benefits to the council are to be derived by two means;

- Income generated from trading activity by supplying services to those people with personal budgets and those that privately purchase, and,
- A reduction in the cost of services, that were previously delivered in-house from economies of scale delivered as a result of trading activity and from reducing fixed costs.

The business case demonstrated that the company would make a modest profit within the first five years of operation.

# SURREY CHOICES LTD

## **Council Investment**

The council provided share capital of £100 and loans to enable the company to purchase operational assets from the council and to provide for working capital requirements– all lending has been provided on an “arms-length” basis at market rates of interest.

## **Progress Report**

The Company has secured approval from the Care Quality Commission for the regulated services provided and for the newly developed respite provision. Changes have been made to the management team who have undertaken a thorough review of responsibilities, standards and policies, with these being re-shaped from the customer perspective. Management layers have been reduced such that there are now three tiers of management across the business and use of agency staff has reduced with increases to the permanent staffing.

The company are putting in place changes to improve the internal controls and governance environment following growing concerns expressed by both Internal Audit and the Shareholder Board and the report of the external auditors, Grant Thornton, which identified a number of weaknesses. The Directors have made changes to the overarching governance within the company, taking on board advice from the auditors to improve the visibility and collective responsibility for the company’s financial performance. Improvements include regular meetings with the auditor to track progress with the plans being monitored by the Shareholder Board on a regular basis.

The company delivers services to the council under a commissioning contract; this is currently a block arrangement meaning that the risk of any volume increase rests with the company rather than with the council. Over the last year the number of new referrals from the council has significantly increased and this has contributed to a deteriorating financial situation, such that a loss is expected for this first full year of trading. The Shareholder Board is satisfied that these cases would have created a volume pressure within the council under previous arrangements and that the company is providing the additional services at a lower cost compared to the previous in-house provision. Discussions have concluded between the company and the Adults commissioning team to agree appropriate adjustments to the block contract.

The Shareholder Board are sufficiently encouraged by the progress made by the Directors to believe that a credible recovery plan is achievable to return to profitability. The company has further developed their financial plans for the forthcoming year which will continue to be reviewed by the Shareholder Board.

# S.E.BUSINESS SERVICES LTD



Cabinet Approval	March 2013
Ownership	100%
Date of Incorporation	June 2013. Commenced Trade in December 2013
Council Investment	£100 Share Capital
Directors	Liz Mills, Laura Langstaff & Steve Ruddy

## Company Profile

S.E.Business Services commenced trade in December 2013 following Cabinet approval as part of the New Models of Delivery strategy in March 2013. The company provides business to business professional, technical, training and contingency services, enabling the council to trade in those functions in which it has particular expertise and capacity.

## Business Case

Originally developed in order to enable the council to trade and to provide IT services, including data hosting, helpdesk and application support to a private sector organisation, the company has further developed and expanded to provide further IT contracts and services. Shareholder Board approval followed by Cabinet approval in March 2014, has enabled the company to enter the aviation fire contingency market created as a result of regulatory and licensing changes for UK airports. The company was selected to provide these services under contract in April 2014.

# S.E.BUSINESS SERVICES LTD

## Council Investment

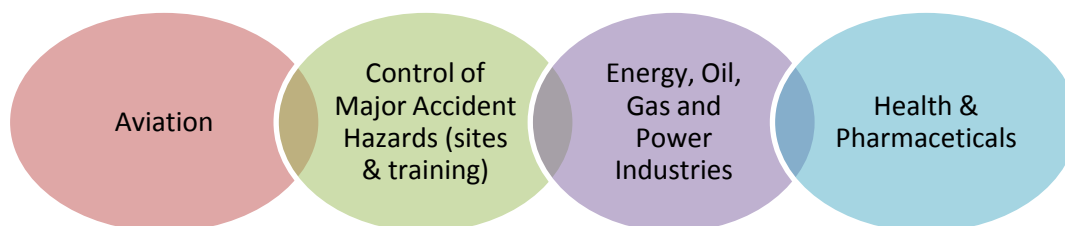
The council provided share capital of £100 and an initial working capital loan to enable the company to commence trade– all lending has been provided on an “arms-length” basis and has been fully repaid.

## Progress Report

The company has delivered profits in excess of those expected in the Business Case and compared to its approved Annual Business Plan. These profits have been delivered as a result of entering the fire aviation contingency market and by securing a strategic contract with Heathrow Airport. This enabled the company to declare a dividend in relation to the first full year of trading to 31<sup>st</sup> March 2015 (incorporating retained earnings from the prior year) and a further dividend for the year ending 31<sup>st</sup> March 2016.

The company employs staff as required to deliver confirmed contracts, and engages appropriate contractors, advisors and service providers to undertake the activities of the company. The Company receives services from the council, including contract delivery and operational services, commercial bid management support together with professional legal and finance services and accountancy support services. The council makes an appropriate charge to the company for any services provided, ensuring that the full cost of the activity is recovered.

The company will continue to develop its client base and reputation in the market in order to secure further contracts in target markets from the provision of business continuity services, training and development, technical services and subject matter consultancy and advice.



# HALSEY GARTON PROPERTY LTD

Cabinet Approval	May 2014
Ownership	100%
Date of Incorporation	June 2014
Council Investment	£2,544,000 Share Capital (as at 31.03.2016)
Directors	John Stebbings & Susan Smyth

## Company Profile & Business Case

Halsey Garton Property Ltd was incorporated in June 2014 in order to fully implement the recommendations of the Investment Strategy approved by Cabinet in July 2013. The company will enable the council to invest in a diversified and balanced portfolio of assets delivering income, asset growth and enhancing the council's financial resilience over the longer term.

## Council Investment

The council provided initial share capital of £1,000 and provides further equity and debt financing to enable the company to progress agreed investments. This is provided on an arm's length basis following the approval of the business case by Cabinet. The council provided a further £2.5m of equity funds in enable the company to purchase its first investment asset in November 2015, with the balance provided as debt financing.

## Progress Report

Cabinet approved the company's purchase of premises at Hampton Park West, Wiltshire in November 2015. This asset is occupied by Avon Rubber PLC as their global headquarters and UK manufacturing and distribution facility and hence provides an Industrial sector asset to complement and provide balance to the council's own portfolio. An investment approved by Cabinet in March 2015 was withdrawn from sale by the vendors during the due-diligence process and therefore did not proceed. Further investments have been made by the company in the first quarter of hte financial year.

The first dividend is expected to be received after the first full year of trading, in 2016/17.

# BANDSTAND SQUARE DEVELOPMENTS LTD

Cabinet Approval	September 2012
Ownership	24%
Date of Purchase of Shares	February 2013
Council Investment	£7,200 Share Capital
Surrey County Council Directors	Denise Le Gal & Trevor Pugh

## Company Profile

Bandstand Square Developments Ltd (BSDL) is a company created for the purpose of delivering a regeneration of Woking town centre and is owned in partnership with Woking Borough Council (WBC) and a private developer, Moyallen Ltd. The company will be wound up upon completion of the development and is therefore in nature, a Special Purpose Vehicle (SPV).

## Business Case

The council's participation in the regeneration project aligns with the strategic priorities of the council to support economic growth and will ensure the long-term viability of the retail offer in the town. The development, known as Victoria Square, will provide further retail premises, a hotel and residential accommodation. The development will create additional employment in both the development phase and the longer term and will require the relocation of the existing fire station and changes to the highway. BSDL are responsible for securing the planning permission, funding and delivering the replacement Fire Station to the council's specification.

# BANDSTAND SQUARE DEVELOPMENTS LTD

## Council Investment

The council has provided share capital of £7,100. Development loans for the first phase of the project are being provided to the Joint Venture by both SCC and WBC, on equal terms, and at a margin above the cost of equivalent borrowing. WBC will repay all loan funding upon completion of the development when it takes ownership of the freehold from the company.

## Progress Report

Phase 1 of the project is focussed upon putting together the redevelopment site, securing planning consent and developing the new Fire Station. Specifically;

Activity	Status
Site Acquisition Secure planning consent for the relocation of the Fire Station	Completed Planning consent secured and a construction contract awarded. Construction is in progress with the new Fire Station expected to be delivered in the summer of 2016.
Secure planning consent for the main scheme and agree terms with a residential development partner, a hotel operator and a large retailer for the main components of the scheme.	Planning consent for the Victoria Square scheme was approved in November 2014. Negotiations with various parties continue with the company seeking tenders for the main construction contract and a hotel operator.

The new Fire Station will provide additional garaging for specialist vehicles and provides enhanced training facilities including a smoke house and an area for Road Traffic Accident training. Construction is expected to be completed in the summer of 2016.



# BABCOCK 4S LIMITED

Cabinet Approval	July 2003
Ownership	19.99%
Date of Incorporation	September 2003
Council Investment	£199.99
Surrey County Council Director	Jason Russell

## Company Profile

The Company provides specific and statutory educational support services under a Service Delivery Agreement (SDA) with the council and has developed to provide a range of services to schools. Their services include those related to education, including curriculum advice, governor support and more generic services such as personnel services, technology support and facilities management. The company also provides services to other local authorities.

## Business Case

The Joint Venture company was formed in 2004 when the council selected a commercial partner to deliver its school support and improvement services. Originally named VT Four S Limited, the company was renamed as Babcock 4S Limited when Babcock Internal PLC acquired VT Education and Skills Limited in 2010.

The Joint Venture was proposed in a time of uncertainty regarding the role of Local Education Authorities. The Government had announced its intentions for the greater independence of schools and predicted that the market for education services would be provided by a small number of larger providers. The council formed the Joint Venture in response to these proposed changes, selecting a partner to enable the services to be traded, utilising the partner's commercial skills to enter the market and providing greater sustainability if the levels of service purchased by the council were to decline.

# BABCOCK 4S LIMITED

## **Council Investment**

The council received a substantial consideration from VT Education and Skills upon commencement of the Joint Venture and award of the contract to supply services. Investment required to establish the company in the market was provided by VT Education and Skills, as at the time Local Authorities were operating under a different capital finance regime which restricted borrowing and investment.

## **Progress Report**

The Joint Venture has proved to be successful, delivering a financial return to the council as a shareholder, significant dividends and improving school performance as part of its SDA with the council. However it is expected that the company will be significantly impacted by changes in the schools market in the future. The change to academy status means that a proportion of funding is transferred from the local authority to individual schools and the academy is then responsible for commissioning its own support services. Some academies have chosen to continue to purchase their support services from B4S but others have not. The company has lost a number of significant local authority contracts since 2012 or seen the contract value of those remaining significantly reduce.

The changes in the market will therefore impact upon the nature and viability of the business in the future. The Shareholder Board recognise that the increasing emergence of free-schools and multi-academy trusts will impact on whether a single provider for schools improvement is the best long-term approach and that the company will need to manage these risks and any associated costs, such as redundancy, accordingly.

# TRICS CONSORTIUM LTD



Cabinet Approval	July 2014
Ownership	16.67%
Date of Incorporation	October 2014
	Commenced Trade in January 2015
Council Investment	£37,500 Share Capital
Surrey County Council Director	Mike Green

## Company Profile

TRICS Consortium Ltd commenced trade in January 2015, following Cabinet approval in July 2014. The Company provides a service to the transport planning and property development customer community by providing access to a comprehensive database of travel patterns known as trip rates. Trip rate data is used by planning consultants in support of planning applications in order to demonstrate the impact of major developments on local traffic. The database is recognised in national planning policy and is widely used by the planning profession and its use has been given due weight by Inspectors at Planning Inquiries.

The company is a joint venture with five other local authorities, Dorset County Council, East Sussex County Council, Hampshire County Council, Kent County Council, and West Sussex County Council. These councils held the rights to the database under a long-standing partnership arrangement and therefore became the shareholders of the company. The company now owns all Intellectual Property Rights in relation to the database and the brand.

## Business Case

The creation of the company ensures that the commercial activities of the consortium councils is being undertaken in an appropriate manner and will enable the growth potential of the database into other territories to be fully exploited.

# TRICS CONSORTIUM LTD

## **Council Investment**

The council, together with the other five local authority shareholders, invested equity funds to provide for working capital and set-up expenses. The funds provided were from balances held by the consortium, created from surpluses from previous activity.

## **Progress Report**

The Company commenced trading on 1<sup>st</sup> January 2015 when it took over the operation of the database from the incumbent supplier. The company comprises of the Managing Director, recruited to deliver the day-to-day operation of the company and three employees that TUPE transferred from the previous supplier. The company achieved its highest ever number of members (customers) in December 2015 and is benefiting from the more optimistic financial climate which has a large influence on activity within the industry. The company is developing plans to expand its reach into international markets, particularly in New Zealand and Australia.

The company delivered a profit in excess of expectations for the first full year of trading due to tight control of set-up costs and the improving economic environment. The company has distributed a dividend to its shareholders thereby delivering a return on investment within a short timeframe.

## **FUTUREGOV**

Cabinet Approval	December 2013
Ownership	13.1%
Date of Purchase of Shares	January 2014
Council Investment	£125,000
Surrey County Council Director	Julie Fisher until 1 <sup>st</sup> March 2016. From April the board meetings of the company will be attended by an observer.

### **Company Profile**

FutureGov Ltd provides innovative digital solutions to Local Authorities and specialises in the children's services and adult social care market. Their products and consultancy services have been purchased by a number of authorities including those in Australia.

### **Business Case & Council Investment**

The investment in FutureGov strengthens a partnership that has already delivered innovative products within social care. The council's investment of equity and debt finance in 2014 was made alongside investment from Nesta, a charity whose investment function has a track record in identifying commercial opportunities that deliver social value. The debt financing provided by both parties is at market applicable interest rates, with the interest receivable offsetting the funding costs incurred on the initial equity investment. The business case expected that the investment would generate a modest net return to the council over a five year period.

### **Progress Report**

The company has delivered a significant growth in sales revenue since the date of investment however continues to fall short of delivering fully against its ambitious business plan and profits targets. The products have sold well in Australia but have had limited success within the UK market. As a result of this, the company are further refining their business strategy which is expected to include a refocusing towards consultancy services.

# MUNICIPAL BONDS AGENCY

Cabinet Approval	Decision taken under delegated approval September 2015.
Ownership	Minority – will depend upon the total equity raised.
Date of Incorporation	September 2014
Council Investment	£450,000 share capital

## Company Profile

The Municipal Bond Agency's objective is to provide an alternative to the Public Works Loans Board (PWLB) as a cheaper source of borrowing for local authorities from the issuing of bonds. The agency, developed by the Local Government Association, has raised equity funds from 56 councils to provide for operating costs and sufficient capital against risks.

## Business Case & Council Investment

The council's equity investment will be long-term in nature as the agency is not expected to break-even until at least 2018. The agency will provide access to all local authorities to raise external borrowing provided that they meet the criteria set, however preferential terms will be provided to those councils that are also shareholders in the company. This means that, for example, on a loan of £10m the council will save £15,000 per annum compared to PWLB, and if it were not a shareholder the saving would be about £5,000.

## Progress Report

The Municipal Bond Agency has distributed a framework agreement which set out the terms upon which local authorities will be able to borrow from them. Authorities will be expected to pass the agency's own credit checks and agree to a joint and several guarantee that would operate if a local authority defaulted on its borrowing. Once sufficient numbers approve the framework, the agency will develop plans for the first bond issue.

# GLOSSARY (and associated principles)

## **Articles of Association**

A company's Articles of Association set the rules (the constitution) for the company. The Articles are filed as part of the incorporation process and are publically available documents. The objects of the company describe what the company will do. The objects of a company are now deemed to be unlimited, unless the Articles limit them.

The Articles may restrict the decision-making powers of the Directors – these are described as Reserved Matters. The Articles may be changed at any time by a special resolution of the members (the shareholders) of the company.

Companies created by the council follow the model articles with the exception of the introduction of reserve powers in matters of strategic importance and one or two other minor exceptions.

## **Assets**

A council owned company may purchase assets from the council. In disposing of assets, the council must ensure that it receives appropriate market value and the company in turn will be required to purchase at market value in order to ensure that there is no financial subsidy or advantage that may be deemed as state aid.

The council will retain property assets unless there is a financial advantage to transfer (for example, where the purpose of the trading company relates to property activities). Market rents will be charged for occupancy of property assets – rents are a pre-tax expense making this arrangement tax efficient and this also ensures that the council's balance sheet remains strong and is not diluted.

Surrey Choices Ltd purchased operational assets, such as vehicles and musical equipment, at appropriate market values from the council and this formed part of the initial set-up costs for the company.

## **Debt Financing**

Debt financing provides the funds required to run a business. With limited or inadequate funds at a Company's disposal, the company may borrow the money required to grow and develop the business.

Interest on debt is a business expense, and therefore deducted before tax.

Companies created by the council, such as S.E.Business Services and Surrey Choices have been set-up with limited equity funds. Funding for growth and working capital requirements has been provided by the council under an agreed loan facility.

# GLOSSARY (and associated principles)

## **Directors Duties**

The Shareholder Board are responsible for appointing (and removing) Directors to act on its behalf in relation to companies in which the council holds shares. Directors duties are described in the Companies Act 2006 and include a responsibility to promote the success of the company, exercise independent judgement and exercise reasonable care, skill and diligence.

Directors appointed by the Shareholder Board do not receive additional remuneration for their role and are covered by indemnities provided by the council in respect of financial loss (an extension of the indemnities provided by the council to staff and members as agreed by Cabinet in March 2013). This does not and cannot extend to negligence, default, breach of duty or breach of trust.

The council's legal team brief Directors so that they understand their duties.

## **Group Companies**

Companies form a Group if one is a subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person.

Companies within a Group can take advantage of Group Tax relief. In tax legislation, the council is a body corporate that can perform the link between LATCs and therefore the losses of one company can be offset against profits of another.

This group status in tax law also provides the council with the ability to be exempt from stamp duty which would ordinarily apply to property transactions (including the entering into lease arrangements between group companies).

The council is required to produce Group Accounting statements which mean that the financial results of its LATC's will be included together with the financial results of the council. The council will continue to also produce detailed Annual Statements of Accounts on a single entity basis as now.

## **Joint Venture**

A Joint Venture company is one that is owned by more than one shareholder, where the shareholders concerned are corporate bodies in their own right. The term Joint Venture is not one that is legally defined and is often used in respect of other arrangements that do not necessarily involve a limited company.

## **LATC (Local Authority Trading Company)**

The terminology "LATC" is often used to describe a company that is owned by a Local Authority (i.e. Local Authority Trading Company). It is not a legally recognised different form of company however most companies described as LATC's are companies limited by shares, with the shares and therefore the company being wholly owned by the local authority.



# GLOSSARY (and associated principles)

Companies created by SCC are most likely to be limited by shares, as this structure ensures that profits can be returned to the shareholder (the council) in the form of dividend payments, and provides the possibility for future sale. It is the most suitable structure for trading activity and enables the Council to create a tax group.

It is possible that other company structures may be applicable in certain circumstances; however these structures tend to involve the removal of council control or would mean an inability to return profits.

## **Reserved Matters**

Reserved matters are important decisions for which the Directors are required to seek and gain Shareholder Approval. These decisions are written in the Company's articles of association which set the constitution or the rules for the running of the company.

The Shareholder Board has delegated authority to perform these functions on behalf of the council. The reserved matters of SCC's companies have been written to ensure that the Shareholder Board is responsible for consideration of issues of strategic importance, take decisions that may involve changes to financial risks or may have an impact on the council's reputation.

## **Share Capital (Equity)**

Equity or shares in a company represent the ownership interests. The Equity invested is the amount of funds contributed by the owners to the financial requirements of the company. In a limited liability company, the owners / shareholders lose no more than the amount invested. Equity invested at start-up is evaluated on the basis of assets owned and/or earnings potential.

Financial returns to the shareholders are made in the form of dividend payments. Dividends are not a business expense and are paid from post-tax profits.

## **Shareholders**

The Shareholders (the owners of a company) and directors have different roles in a company. The Shareholders own the company and the directors manage it.

The Directors must obtain shareholder approval for decisions where the shareholder has restricted the powers of the Directors – these are called reserved matters. The Shareholder Board has delegated authority to perform these functions on behalf of the council.

## **Shareholders Agreement**

These are agreements between shareholders which are private documents. These agreements set out how the shareholders interact with each other and can define what happens in the event of dispute.

# GLOSSARY (and associated principles)

A shareholder agreement is only relevant when there is more than one shareholder and is recommended practice for Joint Ventures.

SCC has entered into shareholder agreements in respect of the Woking Bandstand Development (BSDL), TRICS Consortium Ltd and in relation to the investment in FutureGov Ltd (in this instance called an Investment Agreement).

## **Support Services**

The 2003 Local Government Act provides the ability for the council to enter into agreements for the supply of goods and services, by and to a LATC. The supply of goods, services and financial assistance must be made without subsidy. The legislation guides the council to apply CIPFA definitions of total cost in calculating the cost of supplies made to a Trading company. This provides the ability to recover all costs in the organisation, including a proportion of all central overheads, depreciation, capital costs and pension back-funding. This wide definition allows significant overhead recovery in the provision of services to an LATC. The supply of goods and services calculated on this basis will be compliant with state aid legislation.

The arrangements for LATCs should seek to ensure that the overall cost base of the Group is not unnecessarily duplicated or increased as a result of any new arrangements. Therefore SCC will provide services to an LATC where it is in a position to do so, where these services are fit for purpose for the business and support its strategy and can be supplied at a cost that is competitive. This is particularly important from a Group perspective where costs are relatively fixed, for example in the provision of payroll services where a substantial portion of the cost relates to the system.

## **TUPE**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protects employees when a business changes to a new owner and apply to “relevant transfers” which may occur in many situations, including service provision or contract changes. In these situations, the employment transfers, employment terms and conditions transfer and continuity of employment is maintained.

The new employer is therefore required to provide the same terms and conditions to the staff concerned. Alternate provision can be made, e.g. a cash alternative to a lease car, but this alternate provision must be acceptable to the employee.

SCC is required to follow the provisions of the TUPE act. This will apply where a service is being transferred to a trading company, as occurred with the award of the commissioning contract for services to Surrey Choices.

A LATC will additionally be required to follow TUPE provisions when taking over a service contract from another supplier – for example, as in the case for S.E.Business Services in the provision of IT managed services previously supplied to the customer by another provider.

# GLOSSARY (and associated principles)

## **Teckal**

Procurement complications arise where the Local Authority creates a company to supply services that the LA wishes to continue to purchase – be those that were previously in-house or previously provided externally. The Council is not permitted to automatically purchase from a LATC company outside of normal EU procurement rules. The LATC is required to tender alongside other private sector suppliers.

Procurement issues in relation to the purchase of goods and services from a LATC were evaluated in the Teckal case. According to the 1999 Teckal judgement, public procurement rules do not apply to contracts if the control exercised by the contracting authority over the entity awarded the contract is similar to that which it exercises over its own departments and, if at the same time that entity carries out the essential part of its activities with the controlling authority. This judgement has now been codified into a new EU Directive and in UK Law by the Public Contract Regulations 2015.

SCC will need to ensure that arrangements comply when considering transferring activities to a trading company, assuming that the council wishes to continue to purchase the services. The arrangements for Surrey Choices comply with these considerations.

A LATC falling within the Teckal exemptions will itself be required to comply with the EU public procurement rules, and therefore Surrey Choices is subject these procurement regulations.

## **Transfer Pricing / State Aid**

Transfer Pricing refers to the price at which divisions of a company or a group of companies transact with each other – the terminology relates to all aspects of inter-company financial arrangements. These arrangements have potential implications for the tax authorities. The UK has adopted principles of “arms length” in tax laws.

State Aid issues would apply where a LATC is established, or provided with goods and services and financial assistance at a subsidy.

SCC will need to ensure that it steers an appropriate path or middle ground between issues of transfer pricing (in relation to tax) and those in relation to State Aid. The cost of goods and services and financial assistance (e.g. loans) supplied by the Council to an LATC will therefore be tested against the market to ensure that prices / rates can be justified on an arm’s length basis.

## SHAREHOLDER BOARD TERMS OF REFERENCE



### SHAREHOLDER BOARD

### TERMS OF REFERENCE

#### Overview

The Shareholder Board will exercise the Council's role as shareholder in any company, limited by shares wholly or partly owned by the Council for the purposes of service provision and/or trading activities. The Board acts with the delegated authority of Cabinet to ensure the performance of any such company is satisfactory.

Any reference in these terms of reference to "Company" is defined as a company in which the Council holds shares.

The Shareholder Board may also decide, from time to time, whether to accept proposals to submit a bid to provide goods and /or services which, if successful would commit the council to the establishment of a company (which may include a joint venture company). In these instances, the decision of the Shareholder Board would be ratified in accordance with the council's decision-making process.

#### Membership

- |  |               |
|--|---------------|
| • Leader of the Council (Chairman)     | David Hodge   |
| • Deputy Leader of the Council         | Peter Martin  |
| • Cabinet Member for Business Services | Denise Le Gal |
| • Chief Executive                      | David McNulty |

The Director of Finance, Director of Legal & Democratic Services and the Strategic Director for Business Services will be advisors to the Board to provide open and strong technical advice. Susan Smyth, Strategic Finance Manager, will act as secretary to the Board. Additional advisors may be invited to attend the Board as required.

#### Purpose

The Shareholder Board will:

1. Have the power to appoint and remove Company Directors
2. Approve and monitor Company Business Plans
3. Approve the allotment of further shares in a Company (whether to third party shareholders or the Council)
4. Exercise any reserved powers in the Articles of a Company
5. Endorse any amendments to Company Business Plans
6. Periodically evaluate financial performance of a Company
7. Agree significant capital or revenue investments proposed by a Company
8. Determine the distribution of any surplus or the issue of any dividends from a Company
9. Consider any recommendation from Company Directors to cease trading
10. Report to the Council annually on trading activity
11. Review the risks associated with trading activities.

The Shareholder Board will not have operational control over Companies. All decisions regarding the day to day operation of each Company, its business developments and commercial opportunities, staff terms and conditions and the development and implementation of its internal procedures, rest with the Directors of each Company.

### **Relationship to scrutiny**

Select Committees will retain their scrutiny function in relation to the Shareholder Board. The Council Overview Board will be able to call the Shareholder Board to account for progress in relation to any Company for which the Council is a shareholder and any returns it is making.

### **Scope**

#### In respect of Teckal-compliant companies

The Shareholder Board will:

1. Monitor Teckal compliance at least annually.
2. Ensure the Business Plan of a Teckal compliant Company is aligned to the corporate objectives of the Council.

#### In respect of non Teckal-compliant wholly Council-owned companies

The Shareholder Board will also:

1. Seek to achieve appropriate returns on investment from trading activities.
2. Ensure trading activities are conducted in accordance with the values of the Council.

#### In respect of any shareholding and/or joint ventures

The Shareholder Board will:

1. Evaluate the return and benefits of the shareholding against the values of the Council.
2. Where appropriate, exercise influence over the company and /or joint ventures in accordance with the values of the Council.

#### In respect of the submission of a bid which will commit the council to the establishment of a company (or Joint Venture)

The Shareholder Board will:

1. Evaluate the return and benefits of the proposal, including an evaluation of the proposed profit share in a Joint Venture.
2. Seek to achieve appropriate returns on investment from trading activities.
3. Ensure trading activities are conducted in accordance with the values of the Council.

### **Operation of the Shareholder Board**

1. The Cabinet has delegated to the Shareholder Board the authority to take decisions in respect of 100% of the Council's shareholding in any Company.
2. The Shareholder Board will meet quarterly, or as required.
3. The quorum for a meeting of the Shareholder Board is a minimum of 3 members, one of whom must be the Leader or Deputy Leader, who will chair the meeting.

4. The Shareholder Board may take decisions outside of a Company's general meeting as follows;
  - a. At meetings of its members by consensus of those present, unless any member of the Board requires a vote, in which event a majority decision will be taken with each member of the Shareholder Board present having a single vote. The Chairman of the meeting has a casting vote in the event that there is no clear majority; or
  - b. In cases of urgency, by a decision made by the Leader or Deputy Leader in consultation with the Chief Executive.
5. Any decisions made by the Shareholder Board in accordance with 4a or b above, must be notified to the Company's directors as soon as reasonably practicable following such decision being taken.
6. The Shareholder Board may take decisions at a Company's general meeting in accordance with the principles set out in 4a above.
7. The Chairman approves the agenda for each meeting. The agenda and papers for consideration are circulated at least two working days before the meeting. After each meeting, the Chairman approves the meeting notes and actions and signs any resolutions agreed by the Board.
8. The Shareholder Board will review the Terms of Reference annually.

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Last reviewed: 16.07.2015