

DRAFT PROTOCOL FOR THE SCRUTINY OF COUNCIL OWNED COMPANIES

1. Background

The Government Guidance on Alternative Delivery Models outlines five options¹ for delivery of Council services not delivered 'in-house'. Services that are not delivered 'in-house' involve some form of alternative delivery model (ADM):

- Local Authority Trading Company (commonly referred to as a LATC)
- Public Service Mutual (commonly referred to as a PSM or mutual)
- outsourcing (to an existing social enterprise or charity; or to a for-profit provider)
- joint venture (JV - potentially involving ownership and control by a range of stakeholders including (but not limited to) staff, the council, or independent provider(s))

Any full or partly externalised service will fall within one of the delivery model categories listed above. These are not necessarily exclusive - PSMs can be LATCs and JVs under some circumstances.

A further delivery model option exists; the service 'remaining in house with re-engineering'. This option reflects the need for some level of change to take place, without externalising the service. It is therefore a delivery model option in its own right.

As part of its strategy to innovate in developing new models of delivery and to benefit from the freedoms introduced by the Localism Act, Surrey County Council had made investments and created trading companies to deliver income and efficiencies and in doing so has established a Strategic Investment Board, which reports annually to the Council.

2. Surrey County Council Governance

Strategic Investment Board:

The purpose of the Board is to safeguard the Council's interest as shareholder and to take decisions in matters that required the approval of the Council as owner of a company. The Board is a sub-committee of the Cabinet and is responsible for the monitoring of the Council's trading activity and its investments in companies to ensure satisfactory performance and effective risk management. The financial returns delivered by trading and investment helps to ensure that we continue to deliver quality services to our residents.

The Board's responsibilities and powers include:

- approval of annual business plans; and

¹ Guidance 'Alternative delivery models explained,' [Alternative delivery models explained - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604247/Alternative_delivery_models_explained_-_GOV.UK.pdf), 28 March 2017. As accessed 26 January 2022.

- reviewing the financial and overall performance of trading companies; and
- appointing and removing directors.

Specifically, the Board will:

- (a) approve the allotment of further shares in a Company
- (b) periodically evaluate financial performance of a Company
- (c) approve the strategic direction of a Company
- (c) approve the sale of the Council's investment in a company
- (d) agree capital or revenue investments of £1m and above proposed by a Company
- (e) consider any recommendation from Company Directors to cease Trading
- (f) report to the Council annually on trading activity

The **Shareholder Investment Panel (SHIP)**, an Officer led panel, chaired by the Director of Finance – Corporate and Commercial (Deputy s151), works within delegated authority limits set by the SIB. The Panel's remit is to review and challenge the subsidiaries performance within year and assist with the approvals and operational workings of the respective companies. This enables approvals to be made in a timely manner so that operational effectiveness is not impacted by an elongated approval process. The SHIP also provides governance, as the client, for projects delivered by any of the subsidiaries and acts as the Senior Responsible Owner. Items that fall outside of the approval limits afforded to the SHIP will still be discussed and scrutinised by the Panel before coming forward to the **Asset Strategy Board (ASB)**.

The ASB is a Council Member led Board, supported by Officers, which reviews and considers submissions from both SHIP and the Capital Programme Panel (CPP). The CPP's role is to oversee the Council's Capital Programme, considering asset plans, new projects, schemes and overall capital programme delivery. The ASB will monitor the ongoing strategy for subsidiary companies and property which has been approved by the SIB and Cabinet. Furthermore, the ASB will challenge to ensure any submissions moving forward to the SIB for approval are aligned to the strategies. Submissions received by the ASB from the CPP will move forward to Cabinet for approval.

Each company must have at least one person named as a **Director** – the Council itself cannot act in this capacity. The SHIP has delegated authority from the SIB for appointing (and removing) Directors to act on behalf of the Council. Directors have specific responsibilities in Company Law and therefore the board or panel making the selection will need to ensure that persons with the appropriate skills are appointed.

3. Scrutiny

The Council's Select Committees are responsible for scrutiny of the executive decision making and performance, to monitor and review company performance and provide recommendations to the Cabinet. Select Committees may use their power to call in decisions if required.

Article 7 of the Constitution of the Council states that Select Committees have a specific role to, "[scrutinise] the Strategic Investment Board in respect of the performance of the companies for which the Council is the majority shareholder."

In practice this means that the relevant Select Committee may call the Board as a witness in the scrutiny review of any Council company relevant to its remit. For example, Surrey Choices at the Adults and Health Select Committee.

Outside of individual executive decisions the Resources and Performance Select Committee will be responsible for the regular scrutiny of the overall performance of the Council's companies and its investments.

Specific role:

- Select Committees may call Cabinet Members, Strategic Investment Board Officers and relevant Company Representatives, including Directors, as part of the scrutiny of executive decisions.
- Select Committees may conduct scrutiny of financial and service delivery performance of wholly owned and majority owned Council companies relevant to their remits (see table 1) when the proposed scrutiny meets the Council's selection criteria for addition to the Select Committee's forward work programme.
- Select Committees may programme scrutiny of the set-up of any new Council owned company as part of its pre-decision scrutiny work.
- The Select Committee Chair and Vice-Chairs' Group to receive information on the performance of the Council's companies including their finances on a six-monthly basis to inform their decision to programme scrutiny and to fulfil their overview function.
- The Resources and Performance Select Committee will receive the Strategic Investment Board's Annual Report in order to scrutinise performance against the Council's strategic objectives and the performance of investments.

Access to information:

As per the Article 15 of the Council's Constitution², a member of a Select Committee will be entitled to copies of any document which is in the possession or control of the Cabinet, its committees, or individual Cabinet Members and which contains material relating to any business transacted at a public or private meeting of the Cabinet, its committees, or individual Cabinet Members or any decision which has been made by an officer of the authority in accordance with executive arrangements.

A copy of the document must be provided as soon as reasonably practicable and, in any case, no later than 10 clear days after the request has been received. Where it is determined that, a member of a select committee is not entitled to a copy of a document or part of any such document for a reason set out under paragraph (i) a written statement must be provided to the relevant select committee setting out the reasons for the decision.

(i) Limit on rights

A member of a select committee will not be entitled to:

- any document that is in draft form;
- any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision it is reviewing or scrutinising or intends to scrutinise; or
- the advice of a political adviser.

Trading happens quickly and involves commercial confidentiality therefore we must ensure scrutiny is appropriately timed and part of planned work and has due regard to rules on the handling of exempt information. To ensure that Select Committees are able to plan their activity Members must have access to confidential information and guidance from Council officers as to upcoming decisions that may require scrutiny.

Table 1: Breakdown of Council Companies Overview and Scrutiny Reporting, February 2022

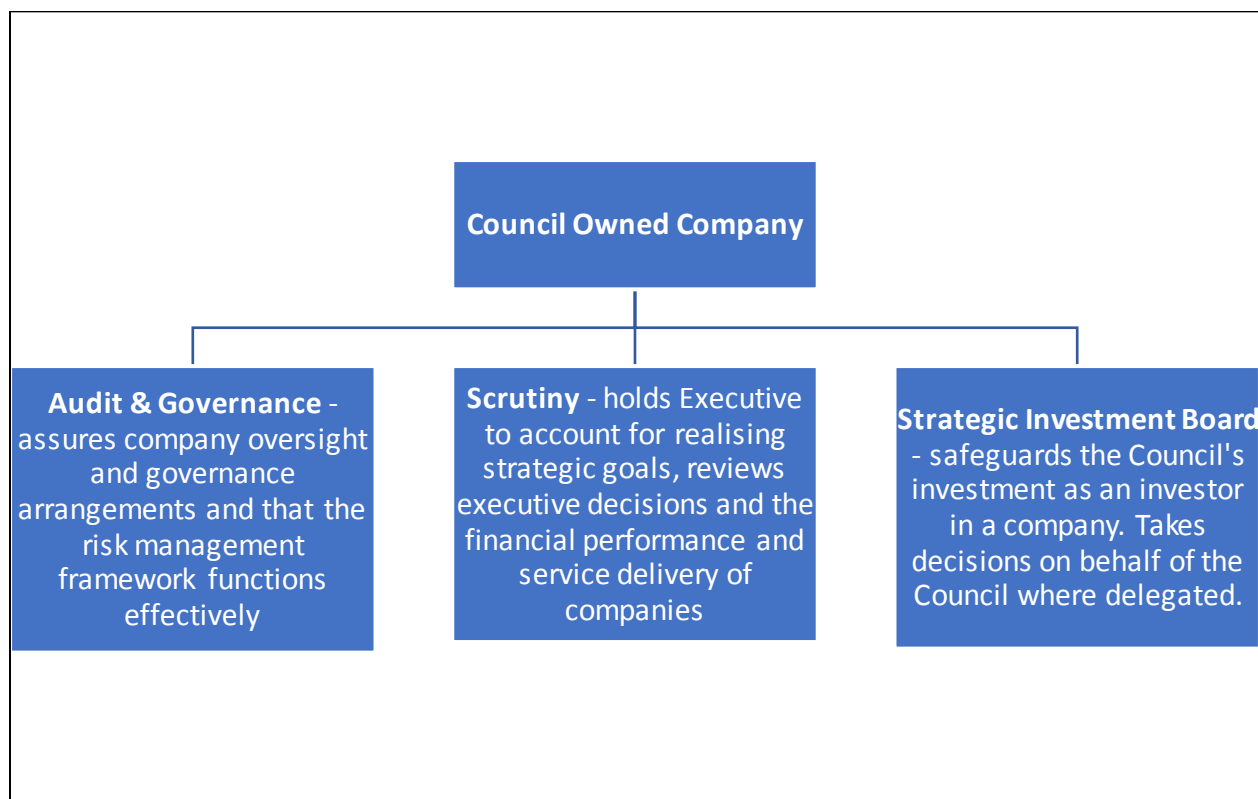
Council Company	Relevant Select Committee
Halsey Garton Property	Resources and Performance
Hendeca Group	Resources and Performance
Surrey Choices	Adults and Health
TRICS Consortium	Communities, Environment & Highways
UK Municipal Bonds Agency	Resources and Performance
Connect2Surrey LLP	Resources and Performance

² Surrey County Council, Article 15.3 SPECIFIC MEMBERS' RIGHTS OF ACCESS TO INFORMATION, Constitution of the Council, October 2021.

4. Audit and Governance

The role of the committee is to give assurance to governance arrangements, to receive and review the Council’s annual accounts, the annual accounts and audit reports of the Council’s wholly owned subsidiaries, the Strategic Investment Board’s Annual Report and to consider council risk.

Diagram 1: High-level Governance Model Summary



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