

# Strategic Investment Board Report

Financial Year 2020/21 & Mid-year 2021/22

## CONTENTS

### Shareholder Board

- Introduction Page 3
- Purpose Page 4
- Governance Page 5
- The Council's shareholdings Page 6
- Strategic Investment Board Decision-making Page 8
- Directors Page 9

### Company Details

- Halsey Garton Property Page 10
- Hendeca Group Page 15
- Surrey Choices Page 17
- South Ridge Development Page 19
- TRICS Consortium Page 21
- Municipal Bonds Agency Page 22

**Glossary** Page 23

## The Council has created trading companies and made investments to enhance the financial resilience of the Council



The Council's strategic framework for innovation and investment has supported the development of initiatives to enhance the financial resilience of the Council. The Strategic Investment Board (SIB) monitors 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 SIB provides effective over-sight ensuring alignment with the strategic objectives and values of the Council. The SIB 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 mid-year report of the SIB provides an overview of the progress we have made in the year to deliver innovation in service delivery and in enhancing the financial resilience of the Council. The report also gives an update on the companies for 2021/22 following the continuation of the Covid-19 pandemic.



Tim Oliver  
Leader of Surrey County Council

## 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 a LATC for this purpose, with the most common reason given being in order to grow income to protect services.

The decision to create a company or invest in shares is now taken by the SIB upon the basis of a business case. Like many other Councils, Surrey County Council (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.

Surrey Choices for example was set up in order to safeguard the provision of services to people with learning and physical disabilities. Cabinet likewise 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 its Investment Strategy. The investment in the UK Municipal Bonds Agency was made to give the Council an alternative source of finance at preferential rates. The establishment of a Recruitment Joint Venture will enable the Council to have flexibility and control of temporary and interim recruitment in a changing market to suit both the needs of the Council and of the workforce.

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

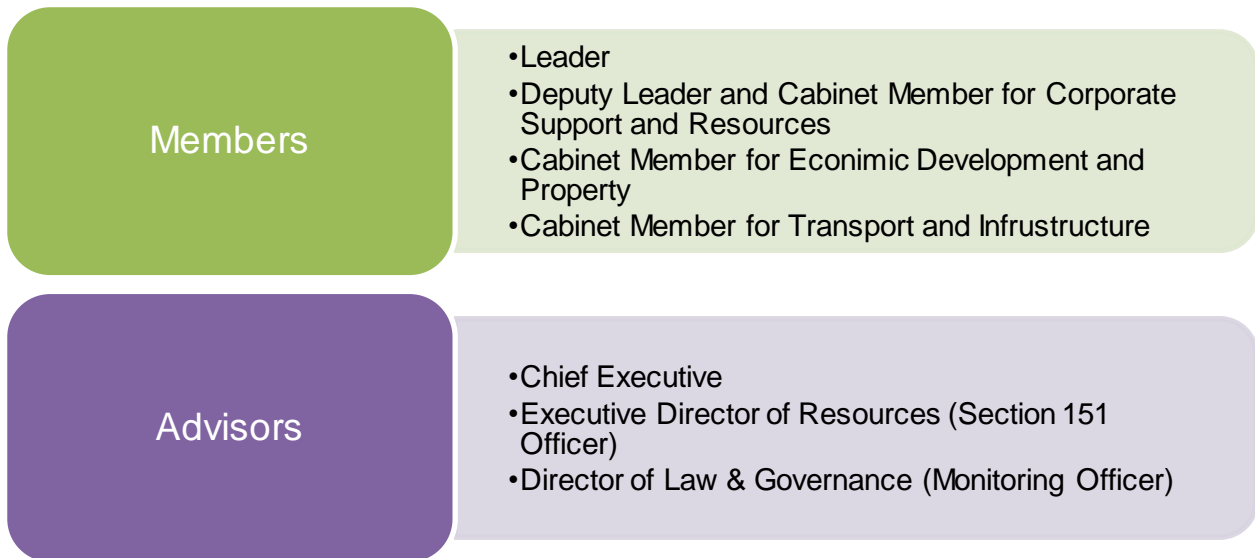
## THE STRATEGIC INVESTMENT BOARD



### Governance

- The SIB was created in June 2019 following the combining of the Shareholder Board and the Investment Board as noted in the 2018/19 report.
- The Board and its role are noted in the constitution of the Council.
- The Board works in accordance with its Terms of Reference which are reviewed on an annual basis.
- Meetings are scheduled to take place monthly.

The Strategic Investment Board is comprised of three members of the Council’s Cabinet and is supported by senior officers of the Council, including the Section 151 Officer (Executive Director of Resources) and the Monitoring Officer (Director of Law & Governance).



The SIB is further supported by the Asset Strategy Board (ASB) and the Shareholder Investment Panel (SHIP). The roles of both the ASB and the SHIP are detailed on Page 7 of the report.

## Strategic Investment Board & Decision-Making Process

19

The day-to-day operation of each company is the responsibility of the Directors (of each company) with the SIB 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 Council's wholly owned companies stipulate that the shareholder, that is the SIB on behalf of the Council, are required to approve or make decisions in relation to the following matters summarised in the table below.

<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
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 in order to protect SCC reputation. To ensure that it is the shareholder that takes decisions that may involve substantial financial risk (rather than the Directors alone)

<u>Decision</u>	<u>Rationale</u>
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

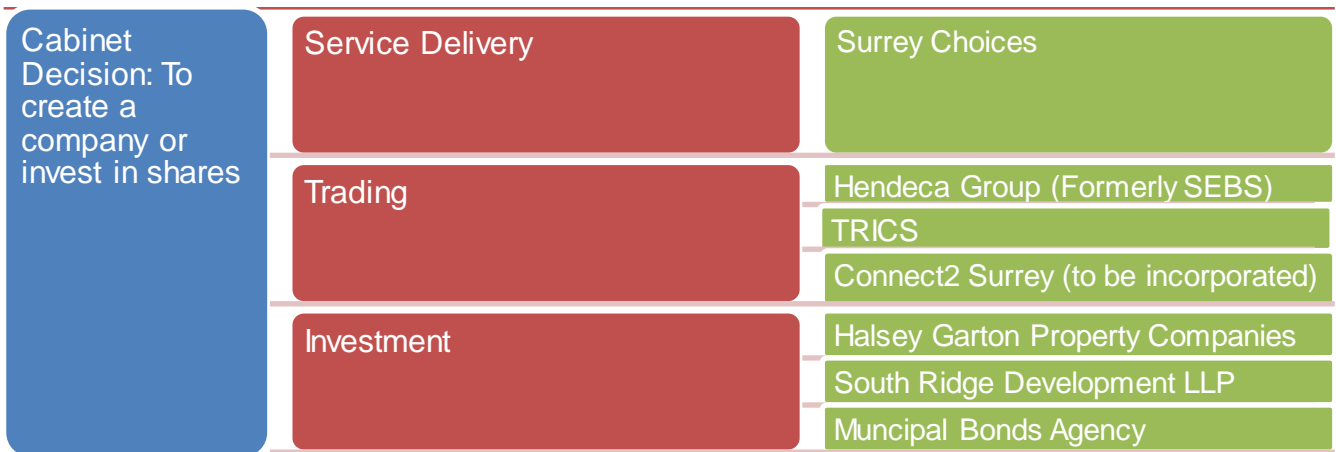
The SHIP, an Officer led panel, chaired by the Director of Finance – Corporate and Commercial (Deputy s151), works within delegated authority limits set by the SIB. The Panel's remit is to review and challenge the subsidiaries performance within year and assist with the approvals and operational workings 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 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.

## THE COUNCIL'S SHAREHOLDINGS

19

The decision to create a company or to invest in shares is taken by Cabinet, or in accordance with delegated decision-making at the SIB. The decision is made 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 recognises that returns will not necessarily be received in the short-term but will contribute to financial resilience in the longer term.



Company	Ownership
Halsey Garton Property Ltd	100%
Hendeca Group Ltd	100%
Surrey Choices Ltd	100%
South Ridge Development LLP	50%
TRICS Consortium Ltd	16.7%
UK Municipal Bonds Agency	3.4%
Connect2Surrey LLP (to be incorporated)	50%

Connect2 Surrey will be a Joint Venture arrangement with Commercial Services Kent Ltd to deliver temporary and interim recruitment to the Council. The Joint Venture is to be arranged as a Limited Liability Partnership (LLP) which is a structure permissible in certain circumstances and is

beneficial for the Council as it is transparent for tax. The SIB provides oversight for LLPs in a similar way to companies limited by shares. Further information about LLPs is included in the glossary section.



## Directors

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. 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.

Since the last report the following Directors have been appointed-

Halsey Garton Property Companies	•Diane Wilding
Hendeca Group	•Lynne Hobbs

These members work alongside the other appointed directors, bringing their valuable experience to the board, and will be responsible for delivering the day-to-day activities of the company in accordance with the strategies and business plans agreed by the SIB.

As Directors, their role is not to provide scrutiny, but to be accountable to the SIB, alongside other directors, for the performance of the company and for their own performance as a Director. The SIB will continue to be the subject for scrutiny rather than individual directors.

Directors appointed by the Council receive no additional remuneration and undertake this role as part of their duties as an officer or member of the Council.

## Company Details

The following pages contain information about each company, including a description of activities and purpose, Cabinet approval and date of incorporation and progress made to date. Financial information has been included where this is generally publicly available (e.g. from the statutory accounts of each company) or not commercially sensitive however information that is commercially sensitive, such as the future business plans, has been excluded.

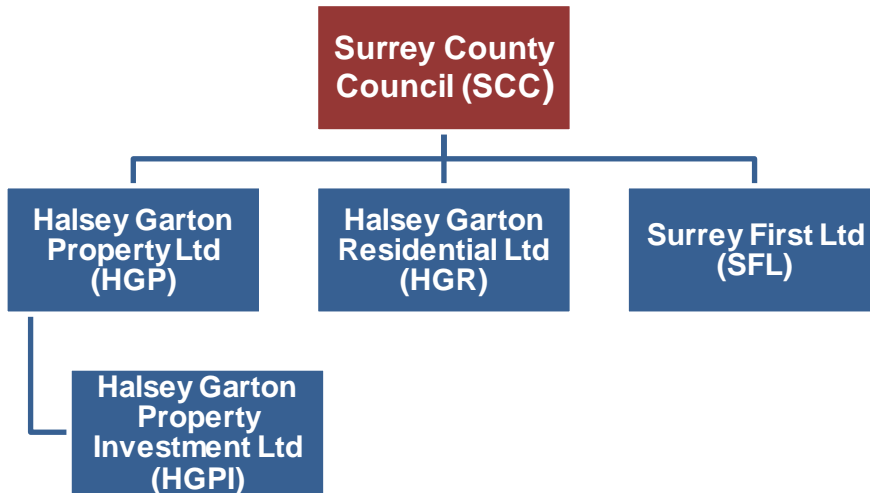


**Company's Profile & Business Case**

The Halsey Garton group of companies were incorporated in June 2014. The initial remit for the companies related to Halsey Garton Property Ltd which was incorporated to fully implement the recommendations of the Investment Strategy approved by Cabinet in July 2013. Halsey Garton Residential Ltd was dormant until August 2020 when it became active following the long lease purchase of 23 properties. Surrey First (formally Halsey Garton Property Developments Ltd) remains dormant.

The Halsey Garton companies are named after people associated with the history of Surrey County Council. Halsey was the first Chairman of the Council (1893) and Garton was the High Sheriff of Surrey in 1913.

**Company Structure**





Cabinet Approval	May 2014
Ownership	100%
Date of Incorporation	June 2014
	Commenced trade in November 2015
Council Investment	Share Capital £93m Loans of £234m (as at 31 <sup>st</sup> March 2021)
Return on Investment	In 2019/20 and 2020/21 the company did not propose a dividend (2018/19 £1.6m) and made interest payments to the Council in 2020/21 of £14.2m (2019/20 £14.2m).  The paid dividend in 2017/18 was £1.6m and in 2016/17 was £750,000.
Directors	Nicola O'Connor, Diane Wilding, (Cllr Edward Hawkins to November 2020)

## 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 or more recently under the delegated authority of the SIB. The Council has provided a further £93m of equity funds and loans of £234m as at 31<sup>st</sup> March 2021 to enable the company to purchase agreed investment assets.

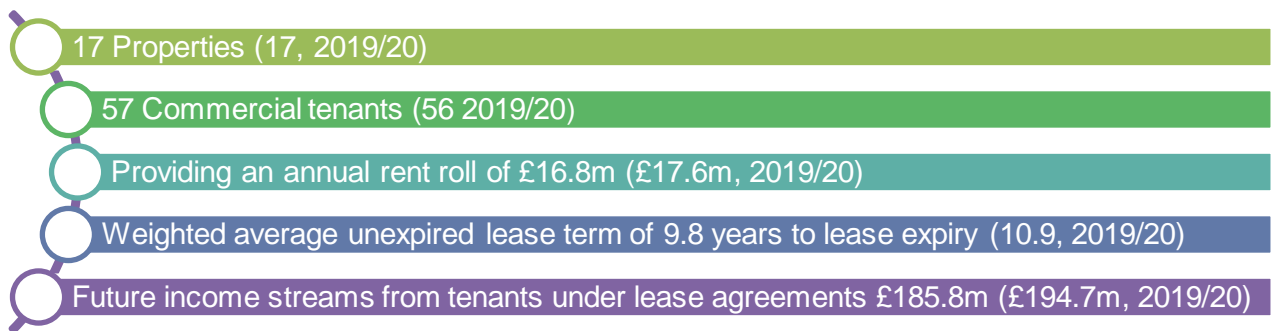
The Council's strategy is to no longer invest outside of County borders. Therefore, the portfolio is currently static with no current plans to purchase or dispose of any of the 17 assets held.

## Changes to funding rules

Changes to the Public Works Loan Board (PWLB) lending rules have stopped Council's taking borrowing to invest purely for commercial gain. Therefore, loans cannot be taken out by the company via the Council, or other third-party sources, for pure commercial investment. This limits the Company to work within the current envelope of investment that it has had to date, or alternatively, make investments where commercial returns are a secondary benefit.

## Progress Report

The company purchased its first asset in November 2015. The company now owns investment assets with a value of £251 (£267m, 2019/20) – with the following key indicators.



Assets held by HGP	Description
Hampton Park West, Melksham	Manufacturing and warehouse facility
Washford Mills, Redditch	Retail warehouse units
Hawkley Drive, Bristol	Manufacturing and warehouse facility
Manton Wood, Worksop	Distribution warehouse
Aztec West, Bristol	Single tenanted office
Wiggs House, Salford	Distribution warehouse
Friar Street, Worcester	Cinema and retail / restaurant units
Travelodge, Stratford	Hotel and retail units
Willowbrook, Loughborough	Retail units (out of town location)
Oakgrove, Milton Keynes	Retail units (out of town location)
Stratham Street, Macclesfield	Retail warehouse unit
High Street, Winchester	High Street department store
Blenheim Park, Nottingham	Distribution warehouse
Malvern Shopping Park, Worcestershire	Retail units (out of town location)
Travelodge, Hatfield	Hotel
Park Spring Road (Symphony), Barnsley	Manufacturing and warehouse facility
Kitemark Court, Milton Keynes	Single tenanted office

The company did not propose a dividend in 2020/21 following the continued impact of the Covid-19 pandemic in the financial year. Bad debt provisions were made in relation to the largest arrears owed by tenants. As a result, the pre-tax profit was below the forecasted level. Collection rates have been strong throughout the Covid-19 period with 93% of all rents collected. The company continues to manage the impact of deferred payment terms from tenants and CVA's (company voluntary arrangements) within the portfolio. The company's property advisers have stated the rent collections are an above average performance when compared to similar portfolios. The company is forecasted to be profitable before taxation for the year 2021/22 however, due to the ongoing impact of the pandemic and with the portfolio holding a 37% weighting in the retail sector, no dividend is anticipated to be paid from the 2021/22 trading year.



Cabinet Approval	May 2014
Ownership	100%
Date of Incorporation	June 2014
	Commenced trade in August 2020
Council Investment	Share Capital £3.7m Loans of £6.6m (as at 31 <sup>st</sup> August 2021)
Return on Investment	£Nil
Directors	Nicola O'Connor, Diane Wilding

### Council Investment

The Council has provided debt and equity funding for the purchase of 72 residential properties totalling £10.3m to date.

### Progress Report

The company held 65 properties on long-term leases at the end of the financial year 2020/21. A small loss of £30k was made during 2020/21, representing 8 months of trading which included start-up costs.

A further 7 properties were purchased by the company on long-term leases in 2021/22.

The forecast for 2021/22 is for the company to make a full year profit in line with the approved business plan. The improvement in the business performance is driven from the movement out of the initial start-up phase, together with properties that were untenanted on transfer becoming let.



Cabinet Approval	March 2013
Ownership	100%
Date of Incorporation	June 2013
	Commenced Trade in December 2013
Council Investment	£100 Share Capital
Return on Investment	The company has provided the following dividends-
	2014/15: £400,000                      2015/16                      £400,000
	2016/17: £440,000                      2017/18                      £400,000
	2018/19: £500,000                      2019/20                      £400,000
	2020/21: £200,000
Directors	Steve Ruddy, Janine Lewis, Lynne Hobbs

## Company Profile

Hendeca commenced trade in December 2013 following Cabinet approval as part of the New Models of Delivery strategy in March 2013. The company was known as S.E.Business Ltd, changing names to Hendeca Group Ltd during the year. The company provides business to business (B2B) 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. 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.

## 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

In 2020/21 the company delivered pre-tax profits of £477k, above those expected in the approved Annual Business Plan. These profits have been delivered in the main because of the contracts in the fire aviation contingency market. The company also delivered IT services to two private sector organisations operating in the health sector which are not due to be renewed. The reduced dividend paid by the company of £200k, reflected the continued investment into the company to assist with seeking new opportunities, and offered some financial protection due to fluctuating market conditions following the continuation of the Covid-19 pandemic.

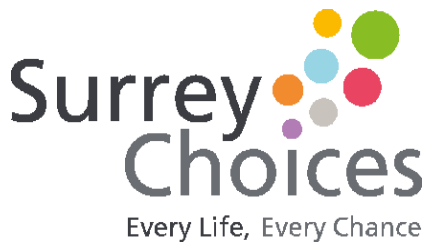
Moving forward into 2021/22, Hendeca have been successful in securing another major contract in the fire aviation contingency market. The award of this contract will provide the company with added financial security over the short to medium-term, allowing continued investment into other identified business opportunities.

The main business opportunity identified currently being targeted is in the B2B training market. This market compliments the skill set held within the company currently and is a service which has been offered previously on a very small scale. The new Hendeca website (<https://www.hendecagroup.com/>) outlines the services to be provided as “Delivering training & support services to reduce risk, ensure business continuity and keep people and property safe.”

Work has been undertaken on key areas of improvement with a complete rebranding, to include clarity that the offerings are made independently from SCC, and creation of the aforementioned website. Adding automated services to the website, creating a range of effective marketing tools, and targeting promotional activity, Hendeca will exploit opportunities as they arise to the benefit of all parties, with minimum risk but maximum speed of response.

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, professional legal and finance 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.





Cabinet Approval	December 2013
Ownership	100%
Date of Incorporation	March 2014
Council Investment	Commenced Trade in August 2014
	£100 Share Capital Loans of £2.8m
Directors	Jane Earl (Chair), Mette Le Jakobsen (Managing Director), Rachel Wigley, Stefan Nahajski (NEDs)

## 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 and autistic people 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, as well as a residential respite care service. In addition, the Shared Lives service matches carers who provide support in a family home environment to people with disabilities. The commissioning contract to supply services to the Council triggered the transfer of 246 employees from the Council to the company under TUPE regulations in August 2014, of whom 81 are still employed as at 31 March 2021. Today the company has a turnover of ca. £14m and employs ca. 320 people.

## 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 from reductions in service delivery costs and income generated from trading activity from the supply of services to people with personal budgets and those that privately purchase. The business case demonstrated that the company would make a modest profit within the first five years of operation.

## Council Investment

The Council provided share capital 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. The loans were extended in 2019/20 and are to be repaid over the next 8 years, with the initial instalment being received by SCC a year earlier than planned in 2020/21

## Progress Report

The company delivers services to the Council under a commissioning contract; this is currently primarily a block arrangement meaning that the risk of any volume increase rests with the company rather than with the Council, however the Short Breaks and Shared Lives services are now paid for on a spot basis. In the first 18 months of operation the Council increased the number of new referrals and this led to deteriorating financial situation for the company and losses for the first two years of operation.

In light of this, the Adults Service (ASC) undertook a review of the contract and made appropriate amendments. This review concluded in October 2016 and recognised the importance of ensuring the continuation of the services provided to the residents of Surrey. A revised business plan, which was approved by the Shareholder Board in December 2016. This was based upon the delivery of significant cost savings and prudent assumptions in terms of non-Council business and signalled the start of the significant turn-around in the success of the company. Pre-tax profits of £397k were delivered in 2017/18, £734k in 2018/19, £658k in 2019/20, and £343k for the year to 31 March 2021 (all figures are quoted prior to the actuarial gain or loss on the defined benefit pension scheme).

The current MD, Mette Le Jakobsen, has now been in post since November 2018 and has made a significant and positive impact, building resilience with a strong senior management team and a strengthened company board which now includes two independent Non-Executive Directors. Over the past two years the company has delivered a number of improvements including profitability, service modernisation, corporate governance, as well as staff, commissioner and other stakeholder relationships and communications.

The forward looking five-year strategic business plan for 2019/20 and beyond, approved by the Shareholder Board in 2019 has been co-designed with the Council's ASC senior team. It continues to focus on delivering transformational shifts in service delivery and was jointly reviewed and re-indorsed in June 2020. Surrey Choices will develop all of its current portfolio of services, with a primary focus on day service modernisation, the expansion and development of employment and vocational opportunities, flexible community-based support, as well as the expansion of the Shared Lives service. The company continues to develop its offer to young people with additional needs.

Due to the challenging efficiency expectations of the Council (£3.5m over the next three years), the profit before tax forecast for 2021/22 is likely to be below that of previous years. The company is currently working closely with the senior ASC team to meet the challenges in the most effective and efficient way to try and minimise any impact to service delivery.

## South Ridge Development LLP



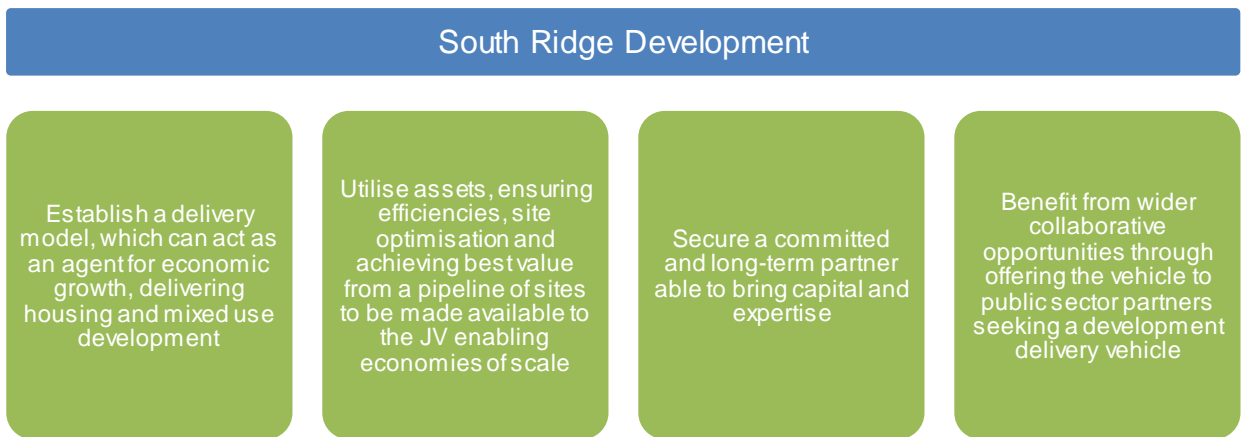
Cabinet Approval	December 2017
Ownership	50%
Date of Incorporation	September 2018
Council Investment	No investment to date
Surrey County Council Directors	Peter Hopkins & Diane Wilding

### Company Profile

South Ridge Development is the Joint Venture (JV) arrangement with Places for People to deliver housing and mixed-use development on some of the Council’s surplus sites. The JV is arranged as a Limited Liability Partnership (LLP) which is a structure permissible in certain circumstances and is beneficial for the Council as it is transparent for tax. The LLP was set up in September 2018 following Cabinet approval in December 2017.

### Business Case

Places for People were selected as the Council’s development partner following an extensive open-market procurement exercise. The JV will provide SCC with an ability to secure the following objectives-



South Ridge Development

## Council Investment

Development costs will be borne by the JV and recouped from the sale of residential units once developed. The JV's cash flow requirements will be provided by an initial working capital loan provided by Places for People. The Council is able to provide development finance to the company and will do so if it is financially beneficial. Any loan provided will be required to be on an "arm's length" basis.

## Progress Report

Following the approval of the Indicative Site Development Plans (ISPDs) for the first four sites (Batch One) in 2019/20, the JV were unable to bring forward viable Site Development Plans (SDPs) for approval despite various attempts and reworking of the plans. Therefore, a decision was made in 2021/22 to terminate the agreement.

The sites earmarked for development via the JV remain the property of SCC and consideration is on going to deliver the appropriate benefits from these sites. The closure of the JV via an independent administrator is expected by the end of 2021, marking the end of the arrangement with Places for People.



Cabinet Approval	July 2014
Ownership	16.67%
Date of Incorporation	October 2014
	Commenced trade in January 2015
Council Investment	£37,500 Share Capital
Return on Investment	The company has provided the following dividends- 2015: £81,347 2016: £83,821 2017: £80,219 2018: £93,040 2019: £90,291 2020: £98,667 2021: Not yet declared
Surrey County Council Director	Mike Green

TRICS

## 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 (JV) with five other local authorities, Dorset 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.

## 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, three employees that TUPE transferred from the previous supplier and two further employees recruited to support its recent growth. The company is benefiting from increased memberships with user activity on the increase particularly from the residential development sector. 2019 saw a further increase in members of 4% on 2018, membership numbers have risen each year since inception.

TRICS has now become a truly international company, with its Australasian Database being released in September 2018. The second phase of this region's database being released in September 2019, with the improved TRICS Surveys being added from this date. It is anticipated that TRICS commissioned surveys can start within the region in 2022.

The company continues to deliver profits in excess of expectations and has distributed a dividend to its shareholders each year since its creation, thereby delivering a significant return on investment within a short timeframe.



## MUNICIPAL BONDS AGENCY

Cabinet Approval	Decision taken under delegated approval in September 2015
Ownership	3.4%
Date of Incorporation	September 2014
Council Investment	£450,000 share capital

Municipal Bonds Agency

### Company Profile

The UK Municipal Bond Agency's (UKMBA) 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 (LGA), raised equity funds from 56 Councils to provide for operating costs and capital against risks.

### Business Case & Council Investment

The agency aims to provide access to all local authorities to raise external borrowing provided that they meet the criteria set, and at the time of SCC's investment, preferential terms were expected to be provided to those Councils that are also shareholders in the company. It is uncertain whether this commitment will stand in the future.

### Progress Report

UKMBA distributed a framework agreement which set out the terms upon which local authorities will be able to borrow from them. Authorities were 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. The requirement to provide the guarantee has since been removed, however the approval of a credit check remains.

UKMBA are still confident of being able to beat the low rates available via PWLB, and there is no guarantee of the PWLB rates remaining at the current levels. The LGA continues to financially support the agency.

To date, only a single bond issue to Lancashire County Council has been made. While interest remains from local authorities which could result in further bond issues, the lack of activity has led to the auditors of UKMBA to state that there is material uncertainty related to going concern. As a result, SCC has reduced the carrying value of the investment from £225k to £0. Should the performance of the company recover the investment value can be reinstated. However, the treatment adopted removes any future risk relating to the company for the Council.

### **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 publicly 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. A 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 Hendeca Group 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. The Council provides loans to enable Halsey Garton Property to buy investment assets.



### **Directors Duties**

The SHIP 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.

### **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. For example a Joint Venture may also be a Limited Liability Partnership or may be used to describe an arrangement between public bodies.

### **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 different form of company and 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.

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-examples are companies that are limited by guarantee.

### **Limited Liability Partnership (LLP)**

A Limited Liability Partnership is an alternative legal structure that is similar to a traditional partnership (e.g. as used by a firm of solicitors) but it limits financial risk whilst still being able to benefit from flexibility of structure, tax, profit distribution and the rights and duties of the partners. A partner of an LLP is called a member and is similar to a degree to a shareholder. A partnership agreement will usually be put in place to set out the rights, responsibilities and liabilities of each member and will specify the way in which the LLP will be managed.

LLPs do not have to pay Corporation Tax – it is “transparent” for tax. This means that each member is taxed in accordance with its own tax status. This is beneficial for the Council as it means that Corporation Tax is not payable on its share of eth profits. A LLP however can only be set-up by a Council in certain circumstances and cannot be established where the purpose of the LLP is purely to trade or deliver an income.

An LLP is permissible for the creation of the “JV” with Places for People since this entity is being established for the purpose of creating a model to deliver benefits to residents from the development of housing and mixed used schemes utilising the Council’s vacant sites. As this is an activity that the Council can undertake in its own right (rather than requiring a company to be set-up) a LLP is an appropriate structure.

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

SCC has entered into a shareholder agreement for TRICS Consortium Ltd and in relation to the investment in FutureGov Ltd (in this instance it is called an Investment Agreement but is essentially the same thing).

### **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 Hendeca Group in the provision of IT managed services previously supplied to the customer by another provider.

### **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 since they can be used by multi-national corporations to move profits to countries with lower taxes. The UK has adopted principles of “arm’s 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.

This page is intentionally left blank