

Governance arrangements: Shareholder Cabinet Committee, Board of Directors, and the establishment of a 'Smart' Client Team

South Somerset District Council will establish a governance framework to demonstrate how it will clearly manage its differing responsibilities. These include being an owner of the company (e.g. Shareholders) and interacting with the company Board of Directors (which may include SSDC officers overseeing and managing the operations of the company); as well as the operational Board of Directors interacting with SSDC services who are suppliers to the company (e.g. internal services such as finance, being recharged to the company).

The governance arrangements will demonstrate that:

- The Council is acting in an open and transparent manner in respect of the Company's business
- Objectives of the Council and the Company are being delivered
- Performance and risks are managed, reported and reviewed
- The extent of delegation to any Company Directors and operational officers is clear
- There is transparency around key Shareholder (Council) decisions
- Clear separation of company owner and supplier functions to the company

To this extent, the Council is currently obtaining expert legal advice from external solicitors, which will set out in more detail the legal implications. This detail will follow in the future suite of governance documents to be created. They will consider how the company governance and management structure will operate to show clear and effective Council management and oversight of the company between Shareholders (which hold strategic and key decision making responsibilities) and Directors (which hold operational business decision making responsibilities to deliver company objectives).

A Shareholder Cabinet Committee

Expert advice proposes that an overarching Shareholder Cabinet Committee made up of 5 members would be formed with strategic key decision making and advisory powers. The Shareholder Cabinet Committee is proposed to be a subcommittee of the Council Cabinet so that it will have delegated power to make decisions in a commercial manner in relation to the Holding Company and the councils other trading companies, partnerships and charities into the future. This is a recommendation, but the Shareholders can choose also to delegate all or certain matters to a different number of representatives or a 'Smart' client representative such as a senior SSDC officer(s) e.g. (Monitoring Officer or S151 Officer).

The Shareholder Cabinet Committee (or other delegated representative) can take responsibility for all decisions on behalf of Shareholders or reserve the right to defer back to full Cabinet (all Shareholders) if they so wish.

Decisions may include:

- a) Establishing the new companies, partnerships or charities
- b) Decommissioning or winding up of existing companies, partnerships or charities
- c) Determining the articles of association
- d) Determining Council share ownership
- e) Determining investments of funds and assets
- f) Determining any loans to the companies
- g) Identifying reserved matters such as to appoint or dismiss directors
- h) Scheme of delegations to Shareholder Cabinet Committee
- i) Approving the Company's performance and financial delivery against the Business Plan
- j) Decisions over Reserved Matters where delegated by Council Cabinet
- k) Reviewing reports of the Company prior to submission to the Audit Committee
- l) Managing interactions between the Council and the Company, including the Council's other organisations such as trading companies, partnerships and charities
- m) Delegation of functions to senior Council officers acting as an in-house 'Smart' client representative reporting to the Shareholders to increase commercial flexibility interacting with the Company Board of Directors

The benefits of adopting the structure and responsibilities set out are:

- Effective protection for the Council against potential poor performance and excessive risk (i.e. timely decision making)
- A split decision making process in order to reflect and manage the Councils differing responsibilities as company Shareholders and as a supplier to the company
- Monitoring and communication between the Company (and other Council trading organisations) and the Council

Whilst there is a risk that under this structure and decision making is limited to members on the Shareholder Cabinet Committee, this can be mitigated by requiring key decisions being agreed as reserved matters to be approved only by the full Council Cabinet. The Councils smart client (e.g. Monitoring Officer and Section 151 Officer) can provide support to Shareholder Cabinet Committee and authority can be delegated to them by Shareholders, if they choose. In addition, the decisions made by the Shareholder Cabinet Committee can be reviewed by the Audit Committee and the Scrutiny Committee to ensure transparency and oversight.

Company Board of Directors (Holding Company and trading companies)

Council appointed Company Directors will be responsible for:

- Acting in the statutory role of a company director with fiduciary duties to the Company, acting in the best interests of the company
- Operational control of the company
- Developing, delivering and approving the company operational business plan to the Shareholder Cabinet Committee or chosen representatives

- Regular reporting on progress of the company and business plan to the Shareholder Cabinet Committee (minimum of twice a year, once to include an Annual General Meeting of Shareholders)

In order to avoid conflict of interests and accusations of predetermination and bias as highlighted from external legal advice, it is recommended that the Board of Directors should not be officers holding direct responsibilities for matters on which the council needs to retain unfettered decision making ability. Any council officer appointed to the Company Board will not be officers who also hold responsibilities for statutory or executive duties within the council.

Establishment of a 'Smart' Client

There is a recommendation for an in-house client manager(s) to act as the interface for the Council to the Company, to represent the best interests of the Council/Shareholders and with the responsibility for the oversight, management and delivery of a defined set of outcomes by the company. As these client officers represent the interests of the Shareholders they will not be the same persons who sit on the Company Board of Directors, who are there to represent the interests of the company.

The client officer(s) may be responsible for:

- Commissioning services and negotiating and agreeing service agreements
- Setting performance levels, service standards and monitoring performance against standards, payments, timelines and performance levels/ indicators
- Managing changes to service delivery, performance and determining forward strategy
- Acting as a first stop forum to consider matters which are outside the Business Plan
- Arranging and obtaining Council approvals through the Council's internal governance process (contract rules)
- Acting in the Councils best interests

The benefit of setting up an in-house smart client are:

- 1) Interface between the Council and the Company Board of Directors
- 2) Clear separation of client (Shareholder) and service supplier functions
- 3) Proper use and resource of client side functions to support the Company.