Grant Thornton

Woking Borough Council

Report in the public interest on the council's governance arrangements over investment decisions

November 2024

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1. Preface

1.1. Grant Thornton UK LLP (“Grant Thornton”) is the appointed external auditor to Woking Borough Council (the “Council”) for the financial year 2023/24.

1.2. The appointment was made under the Local Audit and Accountability Act 2014 (the Act) and this public interest report is made and published under Section 24 and Schedule 7 of the Act. These provide that a local auditor should consider whether, in the public interest, they should report on any matter relating to the Authority or an entity connected with the Authority that comes to their notice during the audit, so that it may be formally considered by the body concerned or brought to the public’s attention. This report has been prepared in accordance with the Act to bring attention to certain matters relating to Woking Borough Council and for them to be considered by the Council.

1.3. The issues reported concern the governance of the Council’s investment decisions over an extended time frame, going back to 2008, and the financial impact of these decisions on the Council’s financial sustainability.

1.4. We have not undertaken a comprehensive review of evidence or assessment of whether the acts or omissions of any person or body might amount to non-compliance with laws or regulations or whether any possible offences might be made out, or causes of action might accrue. For example, our work excludes analysis of whether the actions of any party might give rise to specific causes of action, such as misfeasance in public office, or criminal offences. No comprehensive review took place of that evidence to assess whether any one or more of a wider range of possible offences might be made out, or causes of action might accrue. Unless expressly stated otherwise in this report, no inference should be drawn from the facts and matters contained in this report as to whether any act or omission might breach any laws or regulation. Accordingly, unless otherwise stated in this report, no assurance or reliance should be placed on the content of this report for the purpose of determining whether any act or omission does or does not comply with any applicable laws or regulations.

1.5. The contents of this report relate only to those matters which came to our attention during the conduct of our normal audit procedures which are designed for the purpose of completing our work under the Act, the National Audit Office Code of Audit Practice, and related guidance.

1.6. This report is addressed to Woking Borough Council. To the fullest extent permitted by law, we do not accept or assume any duty of care or responsibility for any loss occasioned to any third party on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

2. Executive Summary

2.1. The Council has a long and atypical history of borrowing from the Public Works Loan Board Lending Facility (PWLB LF) to fund capital projects, investments and loans to the Council's companies and third parties, for a wide range of purposes, not all associated with the core business of a district council. From 1999 onwards, investments were made mainly in energy generation and energy conservation, through the purchase of existing companies or the establishment of council owned companies. During the 2000s the Council increased its borrowing and expanded its investment activities on the understanding that their loans would be paid back over long periods of time, commonly up to 50 years. An independent review published in May 2023, indicated that cumulative borrowing from the PWLB LF increased significantly from financial year 2017 onwards, from just over £400 million to £1.8 billion by August 2022.

2.2. The Council did not have a Corporate Plan in place until 2022. Prior to this, and in the absence of a Corporate Plan, the Council's overarching aims were to enhance the economic prosperity of the borough by developing Woking town centre while protecting the Green Belt. The Council did not take a strategic approach to borrowing and investments. As a result, investments were made on an ad hoc, opportunistic basis. Between 1999 and 2021 the Council set up twenty-four wholly or partly owned companies for a range of purposes from small scale electricity generation in Milton Keynes to large scale regeneration projects in the borough. Each company had at least one member, one officer and one independent director. The number, scale and complexity of the companies' activities placed significant burdens on the Council's member and officer leadership and management capacity and capability, as well as giving rise to conflicts of interest which were not adequately recognised and managed.

2.3. During the period when the most significant sums were borrowed and investments and loans made, from 2012 to 2021, the senior officer team was unchanged. The former Chief Executive Officer (CEO), Ray Morgan, the former Deputy Chief Executive (DCEO), Douglas Spinks and the former Monitoring Officer (MO), Peter Bryant, were all employed by the Council for thirty years or more. The former s151 Officer and Director of Finance, from 2014 onwards, Leigh Clarke, was employed by the Council for eighteen years. None had any significant experience outside the Council. Although other Strategic Directors were part of the Corporate Management Group (CMG) during this period, the majority of the stakeholders we interviewed expressed the view that Ray Morgan, former CEO, Douglas Spinks, former Deputy CEO and Peter Bryant former Monitoring Officer were a close-knit group who were not exposed to challenge and new ideas. Because they focused on borrowing and investment and relied upon this as a major source of income, they did not seek to modernise and transform the Council's operations and services in the way which was common practice across most councils during this period.

2.4. The Council's approach to borrowing and investment was led by the former CEO, supported and facilitated by the former DCEO, former MO and former s151 Officer, with strong support from successive administrations at the time. Stakeholders have reported that although many key investment decisions were agreed by Full Council, some were agreed by the Executive.

2.5. The Council's investment activities were more significant than those undertaken by large city councils, and there was a notable discrepancy between the Council's small size and its capacity to manage these activities adequately.

2.6. The Council did not develop the governance and management systems necessary to support such a complex portfolio of borrowing, investments and loans. As a result, the Council's approach to governance was wholly inadequate. Decisions were made based on incomplete information. Risk management, programme management and record keeping were inadequate. There was a lack of commercial knowledge and specialist legal knowledge within the Council. Accounting practice and systems were poor and significant mistakes were made which led to the lack of an accurate picture of the Council's true financial position. The Council should have had regard to Part 1 of the Local Government Act 2003 in relation to Return on Investment (RoI), as well as Best Value [1] and Value for Money (VfM).

2.7. There is evidence of a lack of curiosity on the part of some members and a tendency to believe what they were being told by the Leaders and statutory officers at the time when the level of debt was demonstrably so high it should have been a cause for concern. Some members and former members interviewed reported that they

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[1] Local authorities must achieve best value (s3(3) Local Government Act 1999)) through making arrangements to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

assumed that if the PWLB LF was willing to lend to the Council, that the Council had provided sufficient evidence to the PWLB LF for them to judge that the Council's borrowing was affordable. However, it is made clear on the PWLB LF pages of the Debt Management Office (DMO) website that "decisions over which capital projects to pursue and whether to borrow for these investments are the responsibility of the elected Council of each local authority, who are accountable to their electorates. Local authorities are free to borrow so long as the finance director is satisfied that they are acting in line with statute and can afford to repay the loan. The PWLB LF is a non-discretionary lender: it does not ask the purpose of a loan, as this would duplicate the decision-making structures of the individual local authorities." It is clear that the PWLB LF relied solely on the Council's assurances and confirmation from the former s151 Officer that the loans were affordable, so members should not have been reassured by the PWLB LF's agreement to lend the Council such significant sums of money. The responsibility for ensuring that borrowing was affordable ultimately lay with the members of the Council.

2.8. Progress on the construction of assets through Council-owned companies was severely affected by the Council's loss of income during the COVID-19 pandemic at the end of 2019/20. Subsequent financial pressures, including increasing energy costs, inflation and interest rate rises on short term lending, exposed the weaknesses of the Council's financial position. The exceptionally high level of borrowing and the vulnerable nature of some of the investments to periods of economic stress, for example, energy generation, retail premises, restaurants, office space and regeneration, became evident in periods of economic downturn.

2.9. Large sums which the Council made to the companies were advanced in the knowledge that they would be used to enable the companies to pay the Council the interest they owed on their existing loans, to maintain day-to-day operations. In some instances, these were revolving loans, and their application resulted in increased borrowing by the Council. These were essentially revenue payments, yet it is clear from statutory guidance, including The Chartered Institute of Public Finance and Accountancy (CIPFA's) Prudential Code for capital finance in local authorities, that over the medium term debt will only be used for a capital purpose. Although interest costs may be capitalised during the construction phase of projects, loans were made to companies which were not engaged in construction.

2.10. A review by CIPFA, commissioned by the Council in 2023, identified that soft loans were not treated appropriately in the Council's accounts.

2.11. Crucial, planned internal audits of the Council's major investments were deferred for two years after 2018/19 and the external auditors at the time did not complete audits of the Council's financial statements or undertake any VfM audit work after 2018/19. As a result, members lacked the independent insights and overview usually provided by internal and external audit.

2.12. The capital assets which the Council built or invested in, and the recoverable value of the loans advanced to the companies are now worth significantly less than the Council borrowed. The Council did not comply with its duty to make Minimum Revenue Provision (MRP) at a prudent level in line with the statutory guidance. As a result, it failed to set aside appropriate sums to cover the cost of repaying debt. This also meant that members did not have a true picture of the Council's finances. The Council is now one of the most indebted councils in England and faced a General Fund deficit of £1.2bn in 2023/24 at the time the S114 Notice was issued, against an estimated annual net income from local taxation (and other un-ringfenced grant) of about £20m. With significantly reduced returns on investment, the Council faces significant difficulties in servicing related (PWLB LF) debt and as a result requires financial flexibilities from central government.

2.13. The Council's governance arrangements relating to investment decisions have not secured value for money through economy, efficiency, and effectiveness in the use of resources.

3. Methodology and acknowledgement

3.1. This public interest report is based on an extensive documentation review, including reports to members, minutes of meetings and reviews by external bodies, over 50 recorded interviews with current and previous officers and members of the Council and other stakeholders, and consultation on the draft of the report.

3.2. This public interest report sets out our opinion and assessment of relevant matters based on our review and analysis of the underlying facts.

3.3. Where this report refers to statutory officers, it is a reference to individuals set out in paragraph 2.3 above, that is the CEO (Head of Paid Service), the s151 officer and the Monitoring Officer. Where this report refers to "senior officers" it is a reference to the statutory officers plus the Deputy Chief Executive Officer mentioned in paragraph 2.3 above. Appendix 1 sets out in the timeline the dates those officers were in post and Appendix 4 sets out the powers and duties of statutory officers.

3.4. We would like to thank all those that participated in our work. We would like to acknowledge the contribution of Council's current officers, who ensured we were provided with the support and information to complete our work.

3.5. We also acknowledge that the passage of time has rendered this review more difficult, because of the work needed to ensure accuracy of findings, the availability of suitable records was a significant challenge, and increased the importance of reaching individuals no longer in roles at the Council, and the issues around relying on stakeholders' recollections of events which took place up to twenty years ago.

3.6. Whilst the Council may not engage in similarly sized, novel and complex transactions again, there is public interest in the issues reported upon here, to ensure public scrutiny of the key decisions on borrowing and investment, and lessons to be learned for the Council and the local government sector.

4. External Audit's role

4.1. Grant Thornton UK LLP ("Grant Thornton"), in its role as the appointed external auditor to the Council for the financial year 2023/24, is issuing this public interest report under section 24 and Schedule 7 of the Local Audit and Accountability Act 2014 under which an auditor is required to consider whether matters that have come to its attention should be reported in order to bring them to the public's attention. Paragraph 71 of Auditor Guidance Note 07 issued by the National Audit Office (NAO) sets out considerations when auditors are contemplating issuing a public interest report:

- the significance of the matter or weakness in arrangements which has come to their attention or which they have identified during the audit;
- whether the body itself recognises the need to address a concern and is taking appropriate action in a timely way;
- what information is already in the public domain and whether there is merit in bringing the matter to the attention of the public in the interests of openness, transparency and accountability or to facilitate dissemination of learning to other public bodies;
- which form of reporting is likely to be most effective in helping the audited body to understand the significance of the matter and the need to take action; and
- whether previous reporting has been acted upon and, if not, whether more prominent reporting – such as issuing a statutory recommendation or a report in the public interest – is now necessary.

4.2. In considering the NAO guidance above, we believe that a public interest report is the appropriate response due to:

- The scale of significant weaknesses in arrangements relating to investment decisions and the magnitude of their impact on the financial sustainability of the Council.
- The importance of placing of our findings in the public domain. Whilst some information is now in the public domain, other aspects of our findings are not, and consolidating these in this public interest report sets out the significance of the governance failings.
- The lessons that need to be learned by the Council, and the benefit from disseminating this learning to the wider sector and other stakeholders. This public interest report comes at a time when there is a spotlight on the effective and appropriate governance arrangements in local government and councils' financial sustainability. In issuing this public interest report, we seek to enhance the understanding of the challenges when a council is considering significant investment decisions, should such circumstances present themselves. We also believe there are lessons for other organisations, including sector bodies, external auditors and for the government.

5. Background and context

Woking as a place

5.1. The Council is one of 11 borough and district councils in the county of Surrey. It is a modern and diverse town, comprising of 6,357 hectares, 60% of the borough is designated green belt land and large areas of the borough's open space are protected.

5.2. Approximately 100,000 people live in the borough and the council provides services to around 43,000 homes. Woking, West Byfleet and Knaphill are the borough's main urban and economic centres followed by Brookwood, Byfleet, Goldsworth Park, Horsell, Kingfield, Old Woking, Sheerwater, St Johns and Westfield, which have their own identities and local interests.

5.3. Woking is the third most densely populated borough in Surrey. Compared to the rest of Surrey, Woking has a young population, with the second highest proportion of under 16s and the second lowest number of over 65s in the county. However, in common with the rest of the country, the borough has an ageing population, with the over 65s expected to increase by 3,900 (more than 20%) in the next 10 years.

5.4. The Borough benefits from excellent transport links and proximity to London, making Woking an important regional hub with significant potential for growth. Woking has a large economic workforce with 85% of the working-age population economically active, the second highest proportion in Surrey and well above both regional and national averages. However, there are some significant pockets of deprivation, including the Sheerwater Estate, which is one of the poorest wards in Surrey.

5.5. The Council was formed in 1974 and currently has 30 elected members. The Council had been led by the Conservative group for 14 years until May 2022 when the Liberal Democrats formed a new administration following the local elections. The current political breakdown, reflecting the May 2024 election, is 24 Liberal Democrats, 5 Independents and others, and 1 Labour.

The context to our work

5.6. From May 2022, the Department for Levelling Up, Housing and Communities (DLUHC)[2] (now the Ministry for Housing, Communities and Local Government (MHCLG)) engaged with the Council about its extremely high level of borrowing and debt. They commissioned an External Assurance Review in January 2023.The review team were asked to provide an external assessment of the Council's governance arrangements, financial situation and commercial investments as well as their capacity and capability to manage these complex financial arrangements in the immediate and longer term. Following that Review, the then Minister for Local Government announced the Government's intervention in the Council in May 2023.

5.7. The Secretary of State for Levelling Up Housing and Communities issued statutory directions (the Directions) to the Council under Section 15 (5) and (6) of the Local Government Act 1999 to comply with the requirements of Part I of the Local Government Act 1999. In particular:

- To deliver financial sustainability by closing any short, or long-term budget gaps and reducing the Council's high level of external borrowing.
- To ensure compliance with all relevant rules and guidelines relating to the financial and debt management of the Council.
- To rebuild the commercial decision-making, regeneration, property management, procurement and management of commercial projects functions of the Council. This would be done to address the serious failings in these areas over recent years and ensure conformity with the Best Value duty[3], thereby delivering improvements in outcomes for the people of Woking and the public purse.

[2] The name of the department changed to the Ministry for Housing, Local Government and Communities (MHLGC) in July 2024 and we refer to the department by that name in this report.

[3] Local authorities must achieve best value (s3(3) Local Government Act 1999)) through making arrangements to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

- To agree as necessary any changes needed to the Council's operating model and redesign of council services to achieve value for money and financial sustainability.

5.8. Commissioners were appointed by MHCLG as part of the Government intervention. The MHCLG Directions enable the Commissioners to exercise the functions specified. Under these arrangements, most of the decisions continue to be made by the Council but with oversight of the Commissioners. The Commissioners are responsible for upholding proper standards and due process and recommending actions to the Council. The Directions will remain in force until 25 May 2028 unless the Secretary of State considers it appropriate to amend or revoke them at an earlier date.

5.9. On 7 June 2023, the Council's then interim Section 151 Officer laid a Section 114 Notice following statutory consultation with the Council's Head of Paid Service (CEO) and the Council's Monitoring Officer, and a briefing of the Council's Executive. The Council's s114 notice issued in June 2023 forecast a negative General Fund balance of £1.2bn by 31 March 2024. The Section 114 Notice summarised the Council's current financial position, which concerned decisions and actions taken over a long period of time relating to the Council's investment activity. This had resulted in unaffordable borrowing, inadequate steps to repay that borrowing, and high values of irrecoverable loans.

5.10. The Council faces a financial situation of an extremely serious nature with an unprecedented financial shortfall. At the time the Section 114 Notice was issued in June 2023 a forecast negative value of the General was estimated to be £1.2 billion, which cannot be funded from resources available to the Council. This deficit has been driven largely by the revaluation of some of the assets against which money was borrowed by the Council and the miscalculation of the Council's necessary Minimum Revenue Provision (MRP). The number and value of unsecured or under secured loans to third parties and purchases of land and other property without independent valuations have also contributed to the Council's extraordinary level of debt.

5.11. The issuing of the Section 114 Notice has led to stringent financial controls being introduced to limit Council spending, and an update to the Council's Medium-Term Financial Plan. In February 2024, the former Minister for Local Government wrote to the Council, to confirm the Council's request for Exceptional Financial Support. This included in principle capitalisation support, totalling £235.1m for 2023/24 and £95.6m for 2024/25 and the Government's agreement with the assumptions that the Council had made in determining its Minimum Revenue Provision (MRP) in 2023/24 and 2024/25.[4]

The scope of our work

5.12. The Council briefed us promptly, on the Council's governance arrangements relating to the Council's investment decisions. We confirmed our audit approach with the Council on 5 July 2023, which included the following key lines of enquiry:

- Establishing a clear timeline of the key decisions relating to the Council's Investment Strategy, including decisions on the financing of the Strategy, and responsibilities for the decisions and actions taken.
- The Council's governance arrangements and processes in place for making effective decisions in relation to the Investment Strategy, and the effectiveness of the scrutiny of these decisions, including the appropriate assessment and management of risk and the regard given at the time these decisions were made to the regulatory regime in place at the time.
- The Council's approach to the implementation of the Investment Strategy, including business cases developed and approved, and investment structures adopted, including via council-controlled companies.
- The Council's financial planning assumptions and decisions made in relation to the Investment Strategy, including debt repayment assumptions including the appropriateness of decision making in relation to Council's MRP policy.
- The Council's governance arrangements in place for the monitoring and reporting of the implementation of the Investment Strategy and associated finances.

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[4] Capital finance: guidance on minimum revenue provision: https://www.gov.uk/government/publications/capital-finance-guidance-on-minimum-revenue-provision-third-edition/capital-finance-guidance-on-minimum-revenue-provision-5th-edition

5.13. Government statutory guidance in relation to the Local Government Act 2003 defines local authority investments as those relating to all financial assets and non-financial assets held by a local authority that primarily or partially generate a profit, including property investment portfolios and loans made by a local authority to a wholly owned company, joint venture or third party. It does not relate to pension funds or trust fund investments which are subject to separate regulatory regimes. For each financial year, a local authority should prepare at least one Investment Strategy which should fulfil the disclosure and reporting requirements set out in the statutory guidance.

5.14. The Investment Strategy should include the policy for undertaking investments, including loans, the criteria for undertaking investments, how investments will contribute to towards the service delivery objectives and/or place-making role of that local authority, the approach for assessing investment risks, the steps that will be taken so that Uelected members and statutory officers involved in investment decisions have appropriate capacity, skills and information to enable them to make informed decisions, and the corporate governance arrangements in place to ensure accountability, responsibility and authority for decision making on investment activities.

6. Key findings

6.1. Our findings are grouped within seven key themes:

- the leadership of the investment strategy
- the lack of a strategic approach to investment
- the lack of the necessary capacity and experience to manage investments
- the lack of effective governance over companies, including management of conflicts of interest
- the failure to address MRP risks
- the failure of internal safeguards against poor governance and financial mismanagement
- the failure of external safeguards.

Introduction to key findings

6.2. The history of the Council's investments started in the late 1990s with a focus on electricity generation and energy conservation. A timeline of key events is set out in Appendix 1.

6.3. From the late 1990s onwards, the Council began to set up companies and buy existing companies, some of which were trading companies and others focused on regeneration, including joint ventures. The diagram setting out the Council's wholly and partly owned companies and their relationship to each other is included in Appendix 2.

6.4. During the 2000s, the Council continued to borrow, invest and make loans on the understanding that their loans from the PWLB LF would be paid back over long periods, of up to 50 years. During this time several other asset purchases were made, and some investments and loans agreed with third parties. Details of the loans are set out in Appendix 3.

6.5. The Council took the strategic decision to focus development on Woking town centre and avoid development in the Green Belt following public consultation in October 2012.

6.6. We have established that the accumulation of investment assets over this period was initially motivated by the concept of 'placemaking', when local authorities take a pro-active role in stimulating economic growth and prosperity in the local community through targeted investment and leveraging partnerships. Purposes of this nature continued to be the primary drivers of some of the Council's borrowing and investment activity. However, we have concluded that over time and increasingly between 2012 and 2022, there were some instances where the Council borrowed to lend to third parties, for purposes which were not related to the Council's functions and responsibilities, or placemaking role, for example a private school, partly to generate income.

6.7. There was no overarching Investment Strategy clearly setting out the Council's long-term objectives and criteria for investment, although some individual projects can be linked to high level corporate priorities set out in the Council's one page document, 'Towards Tomorrow Today', published in 2016, and the Local Plan. There was no formal Corporate Plan. The Council's investments were made on a piecemeal and opportunistic basis, for example, through the £3m Opportunities Fund, delegated to the former CEO, Ray Morgan with decisions being made, for the most part, by him, in consultation with other senior officers, with the broad support of the administration at the time. Some investment decisions were made by the Executive (see paragraph 2.4). Some of the decisions which went to full Council, had cross-party support from Liberal Democrats, but some opposition from Labour and Independents.

6.8. At the time of our work, the Council had 24 companies, most of which were wholly owned by the Council. However, the Victoria Square development was overseen by Victoria Square Woking Limited (VSWL), a joint venture with Moyallen Ltd, in which the Council has a holding of 48%. In April 2024, the Council bought Moyallen's shares in VSWL and the Council is now sole owner of the company. A list of companies, setting out their relationship to each other and to the Council, is set out in Appendix 2.

6.9. 98% of the Council's investments and loans to companies and other organisations were funded by the Council's borrowing from the PWLB LF. For example, the Council initially anticipated a borrowing requirement in the region of £450m in 2016 in the business case to invest in the Victoria Square development. Higher than anticipated inflation and other factors such as changes to the specification of cladding materials following the Grenfell Tower

fire and the impact of Brexit on building material imported from Europe, resulted in borrowing requirements increasing to over £700m by 2022. The assets against which that money was borrowed are now worth approximately £205m.

6.10. The funds borrowed from the PWLB LF were lent to the Council's companies and used to cover the cost of other capital purchases and smaller investments made by the Council. The loans to companies were, in some cases, provided in the form of a revolving loan facility that offered flexible financing. Some of the smaller investments were approved with minimal engagement with members via the delegated authority of £3m per annum, previously granted by members to the former CEO.

6.11. Borrowing and investment activity gradually increased until 2016, when the level of borrowing and investment began to rise sharply and continued to do so over subsequent years, until 2022. This was largely due to the need to fund the build phase of the regeneration scheme for the Sheerwater Estate, delivered through the Thameswey Group and the Victoria Square development, through VSWL. The level of borrowing after 2016 was significantly outside the norm for a council of this size when considering district councils nationally. No limits were placed by central government on the amount which the Council could borrow.

6.12. The business models of the Council's companies, and progress on the construction of assets through the companies, were severely affected by the COVID-19 pandemic from 2019/20 and subsequent economic pressures, including interest rate rises and inflation, which amplified the financial impact of potential weaknesses in the original business cases relating to companies wholly or partially owned by the Council. This in turn crystallised the inherent financial risk that the Council had exposed itself to through the exceptionally high level of borrowing incurred, particularly after 2016, and the vulnerable nature of some of the investments to periods of economic stress, for example, energy generation, retail premises, restaurants, office space and regeneration (see paragraph 2.8).

6.13. The capital assets which the Council built or invested in, and the recoverable value of the loans advanced to the companies are now worth significantly less than the Council borrowed. As a result, a significant impairment cost will be charged to the Council's General Fund by the end of 2023/24. In addition, the Council did not take a prudent approach to setting aside an annual MRP charge to revenue to cover the cost of repaying their debt (see further below).

6.14. CIPFA have determined that the required level of MRP has been materially misstated as it was not 'prudent' under the previous Government MRP guidance in place from 2008 and since government MRP guidelines were further revised in 2018 (applicable from 1st April 2019), resulting in a further significant charge to the General Fund in 2023/24 via an adjustment, with a significantly higher annual charge required in future years.

6.15. The Council is now the most indebted council in England and faces a General Fund deficit of £1.2bn in 2023/24, against an estimated annual net income from local taxation and other un-ringfenced grant of c.£20m. The Council was under the duty, set out in the Local Government Act 1999, 'to secure continuous improvement in the way its functions are exercised, having regard to economy, efficiency and effectiveness' including delivering a balanced budget and securing value for money in its spending decisions. In our view, as a result of its approach to borrowing and investments including acquisition of property, the Council was likely to have been in breach of its Best Value duty.

Leadership of investment decisions

6.16. Both documentary evidence and the information provided by stakeholders make it clear that the former CEO, Ray Morgan, was the principal architect of the Council's investment decisions. He was employed by the Council for over thirty years from 1989 until 2021. He acted as the s151 Officer from April 1989 until November 2007, as Director of Financial Services from April 1989 until May 2000 and as Strategic Director until 2006, when he was appointed as CEO. After his appointment as CEO, he proposed that he continue in the s151 Officer role as well as that of CEO. Although this is not unlawful, it is considered contrary to good corporate governance because of the consequent lack of objective judgements on financial decisions. That decision was reversed after it was called in by the Overview and Scrutiny Committee in 2006 and Steve Bonsor was then appointed as the s151 Officer in December 2007. When he left this role in April 2014, Leigh Clarke, who had been with the Council since 2005, was promoted to that role and remained in post until March 2023.

6.17. During the period from the late 1990s to 2021, when most of the investments and loans were made, the senior officer leadership of the Council remained unchanged. Peter Bryant, the former Monitoring Officer joined the Council in 1988 and fulfilled several roles, before becoming Monitoring Officer in 2008. When he retired in 2021 as Director of Legal and Democratic Services, he had worked for the Council for over 30 years. Douglas Spinks joined the Council in 1984 and was Deputy CEO from May 2006 until he retired in March 2021. As result, the senior officer leadership of the Council was undertaken by a close-knit group of officers who had worked together for many years and who had limited professional experience outside the Council. Several stakeholders expressed the view that there was a consequent lack of challenge to the way the Council operated, an absence of diverse perspectives and lack of interest in good practice elsewhere.

6.18. The stakeholders who were involved in the Council during the years in which the former CEO, Ray Morgan, was in post provided a consistent narrative that he was the driving force behind the investment decisions and significantly influenced the members' approach to risk. His drive, vision and commitment to Woking, and to the Council, were regularly commented on in a positive light. The majority of stakeholders also reported that other senior officers were supportive and compliant and, in some cases, on the evidence of our interviews, remain committed advocates of the former CEO's approach. There was a lack of challenge from the former Monitoring Officer and former s151 Officer, whose statutory powers and duties, between them, required them to protect the interests of the Council and ensure that decisions were prudent and lawful. The senior officers shared the firm belief that the risks attached to investing funded by borrowing from the PWLB LF, were within acceptable boundaries. This belief lies at the heart of failure of the Council's investment decisions and the problems arising from this approach were compounded by the lack of an effective investment strategy, risk management policy and corporate risk register.

6.19. Two former Conservative Leaders, John Kingsbury and David Bittleston, were very closely aligned with the former CEO's approach to investments, largely with broad support from the Liberal Democrats, for example, the Victoria Square development. Not all Liberal Democrats supported the Sheerwater development, because of the scale or the risks involved. The Liberal Democrats did not support some land purchases, for example, Brookwood Lye. In 2019 they also requested that no further purchases of land should be made without at least two valuations.

6.20. We received consistent evidence from both current and previous members and officers, that the former CEO did not welcome challenge of his decisions by other stakeholders and that dissenting officers and members were either persuaded to go along with his decisions or were marginalised. This behaviour was not just tolerated but sometimes actively enabled by a weak governance environment. This environment developed because both the other former statutory officers and the political leaders of the Council in place when the key decisions were made, were highly supportive of the former CEO and did not question his behaviour in any meaningful way, at times working with him to actively mitigate and manage dissenting voices. This united front from the Council's core leadership group worked to undermine the effectiveness of the standard management controls and member oversight processes that would normally be expected to prevent a single individual from being able to drive through the high-risk investment strategy that ultimately led to the Council's current financial situation.

6.21. The Council's approach to strategic planning and risk management was consistently weak, over a period of many years. In 2016, an outline plan 'Towards Tomorrow Today', was produced but it contained only very high-level priorities with no details of the associated risks, necessary funding, key deliverables or intended outcomes. There was no Corporate Plan in place until a Corporate Plan was produced in 2021, by the then new CEO, Julie Fisher, following the recommendation of Local Government Association (LGA) Corporate Peer Review held in 2019. A more comprehensive corporate strategy, Woking for All was completed in March 2022.

6.22. The links between some investments, the Local Plan and the local Conservative manifesto commitments were tenuous, although members and officers were motivated by a shared commitment to improving the economic and social well-being of the Borough and to protecting the Green Belt, based on public consultation undertaken by the Council in 2012.

Lack of strategic approach to investments

Borrowing to invest

6.23. Central government introduced the Prudential Framework in 2004 which, alongside devolved financial responsibility to local authorities, placed the statutory requirement for borrowing to be within locally set affordable

limits, and in determining this, local authorities need to have regard to statutory guidance (the Prudential Code[5]). Under the Prudential Framework, councils are responsible for setting their own capital strategies, including determining affordable limits for borrowing in accordance with their statutory duties and having regard to the Prudential Code.

6.24. There is strong evidence of exceptionalism in the Council's approach to borrowing and investments, because the level of borrowing was so disproportionate to the Council's income and there is no evidence of any effort being made to benchmark their level of borrowing against local government norms for a district council. There were no limits imposed on the Council's levels of borrowing from the PWLB LF. The extent of the cumulative exposure to risk because of the Council's borrowing was not understood by statutory officers or made clear to members.

6.25. Decisions on investments, the establishment of council owned companies, loans to those companies and to third parties were made incrementally and opportunistically over a period of 25 years. There was no overarching investment strategy to provide a clear strategic focus and to set boundaries. This left the direction of the investment portfolio open to a piecemeal and opportunist approach based to a significant extent on the personal judgement of the former CEO and the other senior officers. Although major investments, such as Victoria Square and the Sheerwater development were agreed by Full Council, most of the decisions on other investments were made by the former CEO and Executive. The Council did not pay due attention to RoI, Best Value or VfM. Their approach prioritised acting quickly to take investment opportunities with potential financial, economic or social benefit as they arose. This meant that there was very little priority given to making sure that VfM was safeguarded in the use of public money. There is evidence of only the limited involvement of external advisors to inform decisions. Although the Council did seek external advice on some investments, this was done on a project by project, piecemeal basis, so no external advisor was asked to advise the Council on the wisdom of its overall approach to borrowing and lending . In most cases we looked at, the Council did not commission external financial appraisals to test the viability of schemes. The risks of financing and the development risks relating to the investments were not clearly highlighted to members or assessed. The impact of the level of borrowing and development and financial risk sitting solely with Council were not adequately considered.

6.26. The Council was subject to the requirements of EU State Aid law (now replaced by the Subsidy Control Act 2022), directly for most of the period and latterly as a matter of statutory requirements relating to obligations during the EU exit period. Any lending to undertakings engaged in market activity, on other than strictly commercial terms, created a potential for unlawful state aid, although whether there was unlawful state aid would depend on a variety of issues, including whether the criteria relating to EU State Aid law were met, such as the potential to distort competition, and whether there were any potential exemptions. Although commercial rates of interest may have been charged by the Council, other aspects of the loans, including the advancing of further sums to finance the payment of interest, and the extent of the required security, were probably not on a market basis. The Council did not give sufficient consideration to whether they were contravening the state aid rules then in place.

6.27. The Council-owned companies included two energy generation companies, one of which operated in Milton Keynes, a supplier of solar panels, a housing management company, a development company, a maintenance company and a guest house for homeless people from within and outside the Borough. The amounts borrowed to fund the twenty-four wholly or partly Council-owned companies and other ventures, gradually increased the Council's net exposure to risk over time.

6.28. It is not possible, because of poor recordkeeping and the complexity of the Council's relationships with its companies, for us to state exactly how much money was lent to the companies and what proportion of those loans were used for capital projects and what proportion was used by the companies to support revenue expenditure, to pay the Council the interest they owed on their existing loans, and maintain day-to-day operations. It appears that about 25% of the money loaned to the companies was used as revenue. Although the Council did not expect some of the companies to make a profit in the short term because of the time taken to complete major developments and initial development costs, many of the companies were set up as trading companies and were therefore expected to make a profit in the medium term. Most of the companies failed to make a profit so the Council was using borrowed money to prop-up unprofitable companies. The PWLB LF, between 2016 and 2020, required councils to provide assurance that they were borrowing within their individual borrowing limits and acting prudently. The Council was obliged to have regard to the Prudential Code 2017 (the Code), further to regulation

[5] The Prudential Code for Capital Finance in Local Authorities (CIPFA, 2017 and updated in 2021). Councils are required by regulation to have regard to the Prudential Code when carrying out their duties in England and Wales under Part 1 of the Local Government Act 2003.

2 of the Local Authorities (Capital Finance and Accounting) Regulations (England) 2003) which in a passage similar to that which appeared in the previous edition of the Code, specifies that: “in order to ensure that over the medium-term debt will only be for a capital purpose, the local authority should ensure that debt does not, except in the short term, exceed the total of capital financing requirement in the preceding year plus the estimates of any additional capital financing requirement for the current and next two financial years.”

6.29. The Code clearly recognises that borrowing should not be used for revenue purposes except in the relatively short term. Although the Code has the status of statutory guidance to which authorities must, by law, have regard, rather than a set of rigid rules[6], this means that an authority must follow the guidance unless there is a good reason not to. It is generally regarded as a core principle of the Code that borrowing should be for capital and not for revenue purposes except in the short term. The loans to the companies were seemingly all designed to operate in the medium to long-term, so they were not short-term measures.

6.30. Regulation 25(1)(b) of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 provides that loans, grants and financial assistance by an authority to another person are to be treated as capital expenditure if the assistance is “towards expenditure which would, if incurred by the authority, be capital expenditure.” It follows that if the Council was borrowing over the longer-term to lend to companies, that would only be consistent with the Code if the lending to those companies was towards expenditure of a capital nature. Expenditure on buildings or other capital works would fall into that category, as would the repayment of the principal of sums borrowed, but the payment of interest on borrowing or general running costs would not. Therefore, it is clear that the Council did not follow the Code when lending to its companies for revenue purposes for the medium to long term. This was a departure from the Code.

6.31. The Council stated that they complied with the Prudential Code but they did not in fact do so. The justification given by former statutory officers in post when these decisions were made and former Leaders for departing from the Code was that the companies would be able to pay back their loans and that those loans did not therefore have to be accounted for as part of the Council’s MRP provision. Although the debt portfolios of the companies were reviewed annually, there was seemingly no understanding of risks arising from the companies defaulting on repaying the loans. The Council made mistakes in its calculation of MRP when it assumed that the companies would always be able to repay their loans. In these circumstances, given the lack of an adequate reason to depart from it, the Council cannot be said to have fully considered that it had complied with the Code.

6.32. The plans that were presented to members showed that the loans would be paid off over a 50-year period, but, in fact, a significant balance will still be outstanding at end of 50 years on some of these loans and that should have been apparent when the loans and investments were made.

Borrowing to lend to third parties

6.33. Although the principal purpose of borrowing from the PWLB LF had initially been to finance major infrastructure and regeneration projects, via lending to the Council’s companies, consistent evidence from both officer and member stakeholders indicates that there was a strong message, over a period of many years, from the former CEO, Ray Morgan, that if debt could be serviced it was possible to borrow as much as the Council wished, for whatever purposes it chose. The former CEO told members that the Council was earning 3% by lending money it had borrowed from PWLB LF but only 1% on housing projects. Taking advantage of the opportunity to borrow from the PWLB LF at rates intended for capital projects and then lending to companies and third parties was against prudent practice and created risks as losses and impairments became a charge on the Council’s revenue account.

6.34. Although the former statutory officers argued that the main purposes of the many loans were to further the Council’s local placemaking agenda, some of the loans which the Council made to third parties were for purposes which are outside the usual role of a small district council. They were not part of a coherent strategy, there were no outcomes measures, and they appear to have been made for the purpose, at least in part, of generating income (see Appendix 3). Although Section 1 of the Local Government Act 2003 does empower councils to borrow for any purpose relevant to their functions or for the purposes of the prudent management of their financial affairs, there is no clear power under the 2003 Act to borrow for the primary purpose of making a profit. Section 4 of the Localism Act 2011 requires councils to undertake commercial activities through a company, but the

[6] Part 1 of the Local Government Act 2003 and Regulations 2 and 4 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 No 3146 as amended, from which this requirement is drawn.

Council entered into loan agreements with third parties directly, rather than through one of its companies. Even if a statutory power to borrow for such purposes existed, the statutory guidance at the relevant time was clear that authorities should not borrow in advance or in excess of need in order to invest for profit7. We are not aware of any evidence of the Council taking independent legal advice regarding its powers in this specific regard.

6.35. There were three loans to Greenfield School, a private school, for a total of £13.5m, £6m of which was secured by a charge on the school's property. The purpose of the loan was to enable the school to relocate. Councillor Azad, who became Leader in 2020, reported that she was told by the former CEO, that it was necessary to agree to additional, unsecured loans to the school amounting to £7.5m, otherwise the school could not complete its relocation and therefore would not be able to take in additional pupils and generate the income required to repay the loan from the Council.

6.36. The opportunistic approach to investment was further enabled by the delegation of an "opportunities fund" of £3m per annum to the CEO. This fund was used to make ad hoc purchases of houses, commercial buildings and parcels of land with possible development opportunities but without planning permission. Most of these acquisitions were made by the former CEO, without any business cases or independent valuations on a 'willing buyer, willing seller' basis. In addition to the statutory Best Value duty, the council as a body corporate is also under a duty to administer the funds of taxpayers in a businesslike manner with reasonable care, skill and caution. This is a duty that has been described in case law as akin to a fiduciary duty. We would therefore expect that, unless there were exceptional circumstances which justified a different course, any delegation of authority to the CEO to purchase land on behalf of the Council would, in the normal course of affairs, include a requirement to obtain independent valuations. Whilst the absence of independent valuations may, in some circumstances, be capable of being lawful, it is unlikely to provide assurance as to Best Value. Some acquisitions were based on independent valuations, but the former CEO frequently paid more than the market price if he wished to acquire a particular asset. As a result, the Council now owns several properties which are not able to be developed and are not worth what was paid for them. In 2019, the Liberal Democrats proposed that all purchases should be made on the basis of at least two valuations.

6.37. The dual roles of the former CEO, where he also held a directorship in the companies, undermined the separation of the Council and its companies in the negotiations for the purchase of land, for example, parcels of land at Brookwood Lye, bought between 2015 and 2019, on behalf of the Thameswey Group of companies. These negotiations were conducted without valuations or the prior knowledge of the Chief Financial Officer (CFO) of the Group. Because he was acting on behalf of a company, it might have been argued that the former CEO was not subject to the same duty to achieve the best price or obtain independent valuations as would have been the case if he was buying the land in his capacity as CEO of the Council and on behalf of the Council. However, the Articles of Association of the Thameswey Group set out an obligation on the part of the companies' directors to act in the best interests of the Council. The former Monitoring Officer signed the contract for the purchase of this land as both the Monitoring Officer of the Council and a director of the Thameswey Group. Both officers were obliged to protect the best interests of the Council, as well as the company. In our view, they should have ensured, both in their roles as directors of the company and statutory officers of the Council, in the normal course of events, that independent valuations were obtained. The cost of the purchase of the land at Brookwood Lye and other costs relating to planning issues, amounted to £18.25m. The current valuation of the land is £4.25m, resulting in a re-evaluation loss to the Council of approximately £14m.

6.38. This approach to acquisition of assets, without appropriate governance arrangements or member oversight, meant the Council were failing in their statutory duty to ensure Best Value. For example, the Council bought Kingsfield Community Sports Centre Ltd, which leased the stadium to Woking Football Club, for £2m, which included repayments of two loans previously made to the company by directors, of £1.4m and £100k. The company had had a significant negative cash flow for the previous three years, so the Council acquired a liability, not an asset. A wholly inadequate due diligence exercise was prepared which did not include most of the necessary information for the Council to make such a large investment with confidence.

6.39. The Housing Revenue Account (HRA) is an account separate from the Council's General Fund, which is ring-fenced, by law, to be limited to expenditure purely on housing. As part of the Council's 2024/25 budget setting process the Council reviewed the recharges to the HRA. The retrospective review identified incorrect recharges of £1.759m from the General Fund to the HRA during the period 2019/20 to 2023/24. This has been addressed

[7] Paragraph 46 of the Statutory Guidance on Local Government Investments (3rd edition), issued under Section 15(1)(a) of the Local Government Act 2003 and effective for financial years commencing on or after 1 April 2018

in budget setting. The recharges included costs associated with a fuel cell at a leisure facility that did not serve HRA properties. A wider review, in respect of the Sheerwater development, and the historic impact on HRA, is ongoing.

6.40. As a result of these decisions, the Council entered the COVID-19 pandemic in a highly vulnerable financial position.

Lack of appropriate capacity and experience

6.41. There was a notable discrepancy between the extent and complexity of the Council's borrowing and investment activities and the Council's capacity to manage and support these activities adequately, which was in line with its size, as a small district council. The number of companies and the range of their activities absorbed a significant amount of senior management capacity and as a result, it was difficult for them to focus on council management and service issues.

6.42. The former CEO took a leading role in managing the borrowing and investments and a detailed interest in the management of the companies. His failure to delegate led to the development of a paternalistic culture which disempowered other managers and led to decisions being referred upwards inappropriately.

6.43. The Council's financial services team (Financial Services) was too small for the level of complex responsibilities and resources it had to manage. Its operating practice was out of date, because of a failure to modernise and develop the service over many years. There is also evidence of a lack of skills and knowledge of accounting guidance and statutory accounting requirements. Financial Services had limited capacity to deliver financial information and there was a lack of management accounting experience in the Council. The Council did not equip itself with suitably experienced managers or with the appropriate commercial skills required to manage the investments or maintain a strong treasury management function.

6.44. One example of the way in which the Council's lack of commercial and contracting expertise led to increased costs was the proposed purchase of a large industrial site. In 2020, the Council entered negotiations with the owners of the site to purchase land near Woking for £100m. The negotiations took place between June and September that year. The plan was for the vendor company to lease the site back from the Council. There is no evidence of there being any strategic purpose for this arrangement. The purchase and leaseback arrangements did not happen. The former CEO told members, at a Council meeting on 30th July 2020, that the vendor company would pay the costs incurred by the Council, including for legal and other advice. No written commitment had been sought from the company that they would cover those costs. As a result, the Council was liable for costs of £446k, including £19k for legal fees.

6.45. Overall, the Council's then central finance, commercial, property and legal services were under-resourced given the scale of the Council's investment activities and insufficiently knowledgeable and experienced for the increasing complexity of the Council's investment activity. There was a lack of the proper documentation and record keeping necessary to support such a large and diverse set of companies and so many varied types of transaction, including transactions which could impact on the HRA and legal ring-fencing requirements. The impact of the Council's central support services being under-resourced was poor record keeping, weak project, programme and risk management and inadequate contract management arrangements.

6.46. Some stakeholders reported that the problems with managing so many projects and complex relationships with Council owned companies, for example, the lack of effective risk management and performance management systems, were raised with statutory officers by several officers and opposition members over a period of twenty years, but they did not respond effectively to mitigate the issues.

6.47. Many key decisions were made without specialist, independent advice, or internal expertise. For example, concerns were raised that the decision to demolish over 400 houses on the Sheerwater Estate would have had an immediate negative impact on the Council's Housing Revenue Account but no specialist advice on how to mitigate that negative impact was sought. When external advice was sought it was usually on an ad hoc, piecemeal basis, rather than in a systematic way. Some stakeholders expressed the view that the Council sought advice in this ad hoc way to gain endorsement for its plans, rather than to ensure those plans were adequately tested and part of a coherent whole.

6.48. In our opinion the Council placed too much reliance on its ability to achieve its goals and to generate income through its companies, borrowing and loans and insufficient efforts were made over the last twenty years to achieve necessary savings through service redesign and transformation. In our opinion, insufficient attention was paid to the impact of investment decisions on the delivery of the Council's statutory responsibilities, including to maintain the Council's housing stock. There was no evidence of an embedded Best Value culture in the Council.

6.49. The LGA Corporate Peer Reviews of 2015 and 2019 were generally positive about the Council's approach to investment. Moreover, the 2019 Review praised the Council, and particularly the s151 Officer's approach to managing commercial risks. It did though highlight the risks and recommended the need to strengthen organisational capacity, but there is little evidence that these recommendations were acted upon. The 2015 Review recommended that the Council develop a five-year strategy but, as has already been noted, 'Towards Tomorrow Today' which was produced in response to that recommendation, was not a complete or robust strategy. The 2019 Review recommended that the Council communicate their rationale for their investment strategy, align the value of borrowing to the value of assets, enable members to better understand the Council's financial position and improve citizen engagement but limited action was taken by the Council to implement the recommendations. However, the former CEO did not present these recommendations to the Council until 2020, when the Council considered the recommendations around aligning assets lives but continued to assume that it was not necessary as the Victoria Square and Sheerwater projects were both developed assets with long lives. Both the 2015 and 2019 Reviews highlighted the need to develop and support the Overview and Scrutiny Committee to enable it to be more effective. Although resourcing of the Overview and Scrutiny function was increased in 2019, no effective strategic action was taken by the former statutory officers. In 2021, the then CEO and the leadership team implemented the 2019 Peer Review recommendations.

Lack of effective governance over companies

6.50. The Council wholly or partly owned twenty-four companies, which were incorporated between 1998 and 2016, including thirteen companies which were part of the Thameswey Group. When most of the wholly owned companies were set up, each company had one senior officer and one member on its board. This placed a significant burden on members and officers, particularly because Woking is a small district council. Some officers were directors of fifteen companies.

6.51. The Council did not establish a shareholder function to manage its relationships with the companies until 2022. There was an over-reliance on the Council's members and officers to protect the Council's interests as board members of the companies. Their fundamental role as directors was to act in the interests of the companies (although see paragraph 6.36 above). However, the former senior officer team and the former executive members failed to appreciate the risks that arose from conflicts of interests between their Council and director roles. They also failed to appreciate the extent to which conflicts of interest impede effective governance and decision making, particularly if the interests of the companies and the Council diverged. Stakeholders provided a consistent narrative that senior officers considered that the declaration of conflicts of interest was sufficient to mitigate the risks arising from them. By declaring conflicts of interest and then not acting on those declarations by removing themselves from decision-making processes (or otherwise resolving the conflicts in advance of the decision), officers were providing false assurance that they had understood and mitigated the risks arising from those conflicts of interest, when they had not meaningfully done so. Several stakeholders interviewed reported that during key meetings it was not clear what role officers who were also directors of the companies were playing. This is supported by board meeting minutes. The former Monitoring Officer maintains that there was no conflict of interest arising between his role as Monitoring Officer and that of a director of the company, Kingston Community Sports Centre Limited (KCSC), which would have benefited from the decision of the Council to offer a £250m revolving loan to a developer to build houses on land owned by KCSC. The developer's company had only £100 of capital which, in and of itself, called into question the degree of due diligence undertaken. The developer was proposing to redevelop the football stadium, owned by KCSC and build up to 1,100 new homes. The responsibility of the Monitoring Officer to safeguard the interests of the Council were therefore in conflict with his role as a director of a company which would benefit directly from a loan agreement between the Council and the developer.

6.52. In our view, the Council failed to consider the potential for conflicts of interest arising from the appointment of Council's senior officers, including statutory officers, as directors of council-controlled companies. There is no evidence that they considered which formal mechanisms, consistent with the Companies Acts and best practice, for example, the creation of a shareholder board or committee, could have been adopted to mitigate such

conflicts. The former Monitoring Officer has suggested that the "Teckal" principle in public procurement law necessitated the approach which was taken. We do not agree. Even if the companies needed to be and were Teckal companies, which is not clear in all cases, there was no need for senior or statutory officers to be appointed to board positions, or for them to be appointed without appropriate mechanisms to manage conflicts of interest.

6.53. The former CEO was a director of fourteen of the Council companies, although not all at the same time. In 2012, he resigned from the boards of Thameswey Energy, Thameswey Milton Keynes, Thameswey Sustainable Communities, Thameswey Housing, Thameswey Developments and Thameswey Solar. When he retired in March 2021, he resigned from Thameswey Ltd, Thameswey Maintenance, Export House, VSWL, Woking Shopping Ltd, Rutland (Woking) Ltd, Rutland (Woking) (Carthousee Lane) Ltd and Rutland Residential Ltd.

6.54. John Kingsbury, the former leader of the Council, was appointed as the independent chair of the board of VSWL in 2018, when he stepped down as a member, although he had prior relationships with both the company and the Council and could not therefore be independent.

6.55. The VSWL Board Minutes 2020 to 2021 show that the former CEO played a leading role as a director of the company, giving rise to numerous instances of conflict of interest between the interests of the Council and company. VSWL relied on a revolving loan from the Council which had increased to over £700m by 2022. The company was drawing down the loan on short terms to avoid paying a higher interest rate, so it was always vulnerable to interest rate rises. Before the former CEO retired on 31st March 2021, he was hired as a consultant by the company at £750 per day on 18th March. Stakeholders reported their understanding of the reason for this appointment was because of the extent of the former CEO's operational involvement in VSWL and the failure to ensure succession planning and an orderly handover of responsibilities on his retirement. The arrangement was terminated after 9 months following the appointment of a project manager for VSWL.

6.56. Members did receive the companies' business plans and annual reports but there were significant weaknesses in the information about the companies presented to members. Members described either not getting the information they needed or being overwhelmed with information, often at the last minute, which was not properly presented or explained, and which did not enable them to ask questions of the Executive or officers. On some occasions, information was provided to members in meetings in the form of large spreadsheets, which they then had to try and read and digest before they were taken away again at the end of the meeting, Presentations about investments were not included in the published meeting papers. There was no effective performance reporting system and a lack of information for members on the financial standing of the companies. Members' Oversight Groups were set for each major project but the oversight groups did not communicate with other members, resulting in a silo-based approach to the oversight of major projects.

6.57. Several stakeholders, including former and current members and officers, commented that business cases prepared by companies wholly or partially owned by the Council were often skewed towards obtaining support for their favoured option rather than presenting a balanced set of options. Loans were made to the companies on 50 year terms without, in many cases, any independent valuation of their assets. This exposed the Council to significant risk of the value of the assets falling due to circumstances that could not be adequately foreseen over such a long period of time. The Council invested significant amounts of money in shopping centres even though there had been a significant decline in the value of similar properties in recent years. Stakeholders report that senior officers and members assumed that the value of residential property would always go up. However, because the former CEO purchased land and properties without independent valuations, that confidence was misplaced.

6.58. Company business cases were vulnerable to market volatility in the medium and long term. The Council's reliance on investment returns to support the Council's finances created exceptional risk. Stakeholders described a culture of 'borrowing, investing, and purchasing', without sufficient attention to RoI. However, the Council did earn some income from its lending activities because it was borrowing from the PWLB LF at one rate of interest and lending to the companies and third parties at a higher rate.

6.59. Exposure to financial risk increased after 2016 due to much higher levels of borrowing, with the Sheerwater regeneration project and the Victoria Square development being delivered in parallel. The Council did not equip itself with experienced treasury managers, appropriate governance arrangements and experienced programme managers to manage the scale of the borrowing and investment portfolio, including the companies, that they had accrued and the complexity of their two largest and most costly projects, Sheerwater and Victoria Square.

6.60. The Council's approach to risk assessment and management was not robust, objective, or consistent. Reports to members indicated that risks relating to investments had been mitigated, without any supporting analysis or evidence.

Failure to address minimum revenue provision risks

6.61. 98% of the Council's borrowing was in the form of loans from the PWLB LF, a significant proportion of which was used to fund Council lending to its companies, particularly the Thameswey Group and VSWL. Standard accounting practice in local government requires that a prudent and proportional annual cost for the repayment of debt is charged every year to the General Fund . This annual charge serves as a proxy for actual loan repayment cashflows that may not be required to be repaid until the end of the loan term. The total annual value of these charges is known as the Minimum Revenue Provision (MRP). The annual MRP charge is calculated based on detailed guidance issued by the UK government and is intended to ensure that the annual charge fairly reflects a proportion of the total borrowing by the Council. In the Council's case, the extremely high levels of borrowing would be expected to result in an extremely high annual MRP charge that under normal circumstances would not be affordable from annual revenues. This should have acted as a barrier to further borrowing. However, due to the Council's failure to apply a prudent MRP policy, this safeguard was not applied.

6.62. If the Council had applied the pre-2019 MRP guidance prudently, it would have been apparent that their borrowing levels were unaffordable, particularly after 2016 when borrowing increased significantly to fund the Victoria Square and Sheerwater developments. The previous MRP guidance did leave scope for interpretation on the issue of MRP, including allowing for judgements, for example, around extended asset lives that the Council adopted, which had the effect of reducing the annual MRP charge. Of particular importance, was the Council's interpretation that MRP need not be charged on loans to companies, where loan repayments from the company to the Council were judged to be used to repay the debt.

6.63. On both counts, an independent review of the Council's MRP policy has concluded that the policy followed could not be judged as prudent by normal sector standards under the pre-2019 guidance and did not correctly apply the more stringent MRP guidance in place after April 2019. In particular, the policy of not charging MRP on loans to companies was predicated on those companies being closely monitored to make sure they were sufficiently profitable over the long term to cover the cost of repayment. In the event, subsequent analysis shows that neither the companies in the Thamewey Group or VSWL were profitable beyond the initial start-up phase and were in fact substantially reliant on Council loans to continue trading. In addition, there is limited evidence that actual loan repayments from the companies, which were obtained, were sufficient to offset the MRP provision that would otherwise accrue.

6.64. The impact of the changes to MRP guidance, effective from April 2019 were identified and discussed within the Council. It should have been apparent to the former s151 Officer that the MRP charge that would be required after the implementation of 2019 MRP guidance was not affordable for the Council. However, we note that the former s151 Officer continued to provide assurance to members that the Council had sufficient resources to cover MRP charges long after it should have been clear that this was not the case.

6.65. External advice was taken by the Council on its MRP policy including from treasury management advisors Link in 2021. Advice received supported aspects of the Council's approach to calculating MRP but the Link report highlighted major risks. The Link report identified the vulnerability of the Council's existing MRP policy, should companies not be able to generate sufficient surpluses to meet the financing costs due to the Council. These warnings about risks were not acted upon by the Council.

6.66. As a result, of this failure to heed the warnings of external professional advisers, a crucial opportunity to begin urgent remedial action to address the affordability of borrowing and the performance of companies was missed in 2019/20 and we note that these accounts have not yet been audited. In our view, no reasonable council could have failed to consider the risks that the companies could not repay the loans from the Council, or considered that its approach was prudent, when calculating its MRP to exclude those debts. Its approach was, on this basis, potentially unlawful. The Council also failed to comply with its duty under Section 21(1) of the Local Government Act 2003, to have regard to the statutory guidance on the calculation of its MRP.

Failure of internal safeguards

Senior management team

6.67. The senior management team of the Council was made up of the former Chief Executive, the former Deputy Chief Executive, the former Monitoring Officer and the former s151 Officer. The complementary knowledge, experience, powers and duties of each of the former senior officers should, between them, have been sufficient to have in place arrangements to safeguard the interests of the Council and ensure that its finances were managed prudently, and that all its actions were lawful. Each member of this team should have been able to challenge the others if actions were proposed which would contravene the laws and regulations under which each operates or damage the interests of the Council.

The Chief Executive

6.68. The CEO should set the tone for the Council by providing visible, accessible and supportive leadership and ensuring effective governance. It was the responsibility of the former CEO to bring together all the expertise of the statutory officers to create a 'golden triangle' of competence, sound judgement and professionalism to support good decision making. He also had a responsibility to support and enable other professionally and technically qualified officers to contribute to the effective management of the Council and delivery of services. The consistent narrative of the majority of both member and officer stakeholders is that the former CEO exercised an inappropriate degree of influence over the other members of the senior management team and that challenge was not encouraged. Rather, member and officer stakeholders described how the approach of the former s151 Officer and the former Monitoring Officer was to seek to enable the former CEO's plans and ambitions, without the necessary and appropriate degree of independent thinking and professional challenge.

The Finance Director (s151 Officer)

6.69. CIPFA sets out the duties of Finance Directors, to be professionally qualified and suitably experienced, to be an active member of the leadership team, influencing major decisions and ensuring they are risk assessed and aligned with the Council's strategies. They also need to ensure good financial management to safeguard public money and provide an effective finance function to support the Council as whole. There is evidence of significant failures in the Council's financial services team which were not addressed or corrected by the former s.151 Officer. For example, an independent review of the Council's treasury management function reported that the Capital Finance Requirement (CFR) was incorrectly calculated since 2010/11 and incorrectly disclosed in the accounts and treasury management information published over this time. As a result, the prudential indicators that would otherwise have alerted the Council to risks earlier, were misrepresented. This had the effect of obscuring the fact that the Council's total borrowing was very close to the Capital Finance Limit (CFL) and potentially in breach of Government borrowing rules around the total quantum of debt in proportion to the Council's size, as defined by the Code. We note that the Treasury Management Strategy and the calculation of prudential indicators within it contained significant misstatements and errors. The former s151 Officer appears not to have sought external advice to ensure values were robust and accurate.

6.70. Mistakes in the calculation of the Council's MRP and the lack of adequate treasury management, disregard of prudential indicators and the failure to understand and act on the risk to the Council caused by the way in which MRP was calculated, are significant failures on behalf of the former s151 Officer. She failed to act on information about the Council's unsustainable financial position in 2020/21, when the seriousness of the position should have been obvious. As a result of these failings, the former s151 Officer did not ensure the effective financial management of the Council.

The Monitoring Officer

6.71. The powers and duties of the Monitoring Officer are set out in s5 of the Local Government and Housing Act 1989. The Monitoring Officer has three statutory roles, to report on matters they believe are, or are likely to be, illegal or amount to maladministration, to be responsible for matters relating to the conduct of councillors and officers and to be responsible for the operation of the council's constitution.

6.72. The former Monitoring Officer in this role and corporately, as Head of Legal Services should have been a vital member of the senior leadership team, providing legal advice to the former CEO and former s151 Officer and contributing to the collective ethical and prudent leadership of the Council. Under the Council's Constitution, there

is a requirement for the Monitoring Officer role to be discharged 'with a positive determination and in a manner that enhances the overall reputation of the Council'.

6.73. There is consistent evidence from member and officer stakeholders and from the former Monitoring Officer himself that he did not, in either his Monitoring Officer or Head of Legal Services roles, challenge the wisdom of the decisions of the former CEO and former s151 Officer to borrow such large sums of money with no credible plan for repayment. The scale and basis of the Council's lending to its companies and third parties was clearly imprudent, perhaps so imprudent as to be unlawful, making this a matter of law, and not just financial prudence. The former Monitoring Officer also confirmed that he knew that the former CEO was using the Council's money to purchase land, without independent valuations, which may, in certain cases (see paragraph 6.36) have been in breach of his fiduciary duty to the Council, but there is no evidence that he raised any concerns or issued any warnings to the former CEO, former s151 Officer or members. The former Monitoring Officer, in his role as Head of Legal Services, should have ensured that adequate legal advice was provided or obtained at all key stages of these events, covering issues such as compliance with the Prudential Framework and compliance with the State Aid rules, then in force, and the risks arising from conflicts of interest.

6.74. The former Monitoring Officer should have commissioned or undertaken due diligence before the Council offered a revolving loan of £250m to a developer whose company had capital of only £100, to redevelop the stadium at Woking Football Club and build up to 1,100 homes. As it was proposed that the Council would act as lender for the proposed development, the former Monitoring Officer should have been able to assure the Council that the developer fulfilled all the necessary criteria that would be applied by any bank before making such a loan. Those criteria include that the development company was capable of delivering the development, that the company had the necessary capital to fund the early stages of the work, that the developer was of good character, that the purpose of the loan and the amount to be loaned was clearly specified, that the terms of the loan, including the repayment period and interest charged were appropriate and that the loan was adequately secured. The Council already owned the land to be developed, following its purchase of Kingsfield Community Sports Centre (KCSC), and other land on which the housing was planned, and the revolving loan was therefore to be secured only via a debenture on a company with negligible assets.

Internal Audit

6.75. Internal audit is an independent, objective assurance and consulting activity, designed to add value and improve the Council's operations. It should help the Council to accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance protocols.. However, Internal Audit does not provide absolute assurance to the Council that its risk management and control arrangements and governance protocols are adequate. The Council always has to take responsibility, through its Audit Committee [8], for ensuring its arrangements are as robust as they can be.

6.76. The Council's Internal Audit Service had been outsourced to Mazars since January 2014. The scope of Internal Audit's work was agreed with the Council. As a result, the focus of much of Internal Audit's work was relatively narrow. We considered the Annual Internal Audit plans and annual reports since 2015/16 and identified several reviews that had been carried out in areas related to investments, asset management, treasury management and Council companies. We note that up until 2020/21 all relevant reports had been rated 'Green' with only minor deficiencies noted. We note that within these reports findings were being raised in relevant areas, but these had not been flagged as being urgent or of the highest level of importance. These included the need to improve the approval process for business plans, signing loan agreements and the reporting of treasury management information. Regarding Council investments and companies, we note that reviews were undertaken on the Sheerwater Regeneration (2019), Thameswey Group (2019) and Brookwood (2020). The review of the Thameswey Group was limited to accounts payable, accounts recoverable and the general ledger. In all cases, the reports were again rated 'Green' with only minor deficiencies noted. However, deficiencies were identified regarding service and programme risk management and the lack of a clear project plan. There were some instances where audits had been deferred at the request of the Council, for example Victoria Square. We note that after 2020/21, when issues with the Council's financial governance were starting to emerge, several 'Amber' rated reports were issued which flagged more significant issues relating to risk management, investment performance and corporate debt management. The gradual escalation of concerns was also reflected in the

[8] Audit Committee is used in this report. This committee is currently known as the Audit and Governance Committee, and was formerly known as the Standards and Audit Committee.

Head of Internal Audit opinions on controls moved from 'adequate and effective' assurance in 2020/21 to 'moderate' assurance in 2021/22 to 'unsatisfactory' assurance in 2022/23. We note that the Internal Auditor had raised the issue of significant delays to agreeing report findings with the Audit Committee in that audit year.

6.77. As an outsourced service, with no Internal Audit nominated council representative on the client side to act as liaison, Internal Audit were reliant on the information provided by the Council to assess risks and agree appropriate levels of coverage within the audit plan, and the scope of work in each case. The key liaison between the Council and Internal audit was the former s151 officer, and concerns about the investment portfolio, borrowing or the performance of companies had not been raised by her with Internal Audit. The Internal Audit Plan drew on the Corporate Risk Register which did not include significant risks relating to borrowing and investments, particularly lending to the Council's companies and was therefore an incomplete and unreliable guide to the risks faced by the Council. Although the Corporate Risk Register was not Internal Audit's only starting point when identifying areas of risk, weaknesses and gaps in the Corporate Risk Register did have a negative impact on Internal Audit's ability to plan their work effectively. We note that Internal Audit had flagged the lack of service level risk registers to the Council as an issue and that the Audit Committee did not substantially challenge the proposed coverage of investment related areas of the Internal Audit plan between 2019 and 2022.

6.78. The evidence indicates that Internal Audit was either deliberately or inadvertently kept at arm's length by the Council and not kept fully informed on key decisions or potential risks. Internal Audit's ability to access relevant information and have a clear view of the Council's key risks may have been impaired by the way in which the Council limited the scope of Internal Audit's reviews and delayed planned audits which would have identified significant risks to the Council arising from its approach to borrowing and lending.

Members

6.79. There is evidence of a failure of members, some of whom are now former members, to provide the safeguards inherent in their roles in the Council between 1999 and 2021. The level of borrowing was discussed by members, and some did raise concerns. Members and former members consistently reported that they relied on professional advice from their statutory officers and such external advice as was sought by them. Although members of the administration did tend to accept the assurances of statutory officers, members of the opposition report that they did continue to question those assurances. Current and former members also recall the extent to which councils were being encouraged by central government, post 2012, to seek alternative sources of income to replace income lost as a result in cuts in central government funding for councils and this had the effect of reassuring members that the Council's approach to borrowing and lending was appropriate.

6.80. In 2016, following the LGA Corporate Peer Review in 2015, which had recommended strengthening training for members, it was proposed that training covering licensing, planning and the Council's Code of Conduct, but not finance, should be mandatory, but this was resisted. Finance training was offered to all members but only taken up by members of the Finance Committee because it was not mandatory.

6.81. Although members were given the 'Green Book', which was a monthly report setting out the Council's key financial and performance information, it was not in a comprehensible format and was not always accurate. For example, the income from investment properties was included but not the costs. It contained more detail than was necessary for members but lacked the detailed analysis of the implications of financial decisions which would have enabled members to gain a real understanding of the financial jeopardy the Council was in. Financial information was also provided in decision papers presented to the Executive and Full Council, however, members' ability to challenge decisions was limited by the lack of context or comparison to provide a benchmark. There is also evidence of a lack of consideration of alternative, accurately costed options. Papers were often presented late, giving members insufficient time to discuss the decisions they were being asked to make. They were told that risks relating to borrowing and investment decisions had been mitigated but this was often not the case. The current and former members we interviewed reported that when members did probe or challenge proposals, they were usually reassured by officer advice or outvoted by other members.

6.82. There is some evidence of a lack of curiosity on the part of some members, and a tendency to believe what they were being told by the Leaders at the time and senior officers when the level of debt was demonstrably high and should have been a cause for grave concern. There is evidence that some members mistakenly relied on the PWLB LF to provide the necessary scrutiny of such large loans. It is likely that the lack of appreciation of risk by the former statutory officers undermined the value of their assurances to members. Only limited attempts to

obtain independent, external advice and assurance were made before making significant borrowing and investment decisions.

6.83. The ability of members to hold officers to account for the performance of the companies was hampered by barriers to accessing company information due to confidentiality. Initially, members had to sign a Non-Disclosure Agreement (NDA) before they were given access to information about the Council's companies. This then created difficulties, as the Members' Code of Conduct, introduced in 2012 and amended in 2013 and 2016, specified, as is normal for local authorities, a duty of confidentiality, apart from disclosures in certain limited circumstances and following consultation with the Monitoring Officer. The NDAs thereby gave rise to a further potential conflict of interest because a member who had concerns about the performance of any of the companies, or any other related issues, would have been inhibited in raising those concerns openly.

6.84. There is limited evidence of the effective use of scrutiny powers. There were exceptions, for example the call in, in 2006 of the proposal that the former CEO would act as both s151 Officer and CEO, which led to the proposal being rejected. In 2015, the Independent Sheerwater Scrutiny Panel review of the regeneration project for the Sheerwater Estate highlighted significant failings on the part of the Council in the way they engaged with both members and residents. The Overview and Scrutiny Committee Task Group Review of the proposed development of Westfield and Woking Football Club was a rare example of a thorough and searching review which asked the relevant questions and undertook a detailed analysis of the evidence to find the answers. Although both the LGA Corporate Peer Reviews undertaken in 2015 and 2019 recommended strengthening the Council's Scrutiny function, no significant effort was made to do so. This undermined the ability of members to hold the Executive and senior officers to account.

6.85. The complacency of some members, and failures of the former Monitoring Officer and former s151 Officer to fulfil their roles, enabled the former CEO to push through poor investment decisions largely unchallenged.

External safeguards

External Audit

6.86. BDO were appointed the Council's external auditors from 2018/19 replacing KPMG. The Council received unqualified audit opinions, including for Value for Money, up to the 2018/19 opinion in November 2020 from both KPMG and BDO. No external audit was concluded after 2018/19. BDO have advised that the factors that contributed to delays in their audit work include the Covid-19 pandemic, delays to their appointment as the Council's external auditors, delays to the Council preparing group financial statements (including the delay in the preparation and audit of Thameswey Group's financial statements for the year ended December 2019 following a change to the company's auditors), and an increase in regulatory expectations on local audit work.

LGA Corporate Peer Reviews

6.87. The LGA Corporate Peer Reviews undertaken in 2015 and 2019 were both largely supportive of the Council's approach to borrowing and investment. The 2015 report notes "This brave entrepreneurial approach has given it a reputation as willing to do deals led by the Chief Executive who is energized by risk and the management of it". However, the report did raise issues about the affordability and sustainability of the Council's investment approach, and organisational capacity to deliver. The 2019 LGA Corporate Peer Review commented on the Council being an outlier for borrowing and recommended it should improve organisational understanding of the overall financial position and consider changing its approach to borrowing but there is no evidence that the Council implemented that change or the report's other recommendations for improvement.

6.88. The tone of the 2019 report was, like that in 2015, supportive of the Council's approach to borrowing and investing, for example "the CFO has an innovative approach to financial management and demonstrates a good understanding of risk". The 2019 report identified the need for a corporate strategy and more effective citizen engagement and drew attention to the borrowing levels and the need to make it easier for elected members and officers to understand the Council's overall financial position. There is no evidence of any serious efforts to improve citizen engagement or the comprehensibility of financial information for members. A corporate strategy was not produced until March 2022, after the appointment of the then new CEO.

The Public Works Loan Board Lending Facility

6.89. The PWLB LF lent money to councils for capital projects. 98% of the Council's borrowing was from PWLB LF. The PWLB LF relied on the certification by the former s151 Officer that the Council was acting within its legal powers, borrowing limit, and acting properly and prudently. They continued to lend to Woking even after the Council had accumulated high levels of debt. Some loans to the Council have been used to lend on to third parties for medium to long-term revenue purposes, which is contrary to the Prudential Code.

7. The speed of response and remediation

7.1. The Council failed to heed several strong warning signs about both failures of governance and its increasingly weak financial situation. For example, the Independent Sheerwater Scrutiny Panel report in 2015. The LGA Corporate Review Reports in 2015 and 2019, whilst making some positive comments, both found that the Council had weaknesses in governance. The LGA 2019 peer review highlighted the extent to which the Council was an outlier as a district council, in terms of its levels of borrowing. It also noted the need to improve organisational understanding of the overall financial position and consider changing the approach to borrowing. In 2018/19 and 2020/21, the Council did engage with their then external auditors, BDO, and specialist advisers Link, about the way in which they had been calculating MRP. Although they did not directly criticise the Council's approach, both highlighted the risks to the Council. The former s151 Officer was aware of those warnings but continued to advise the Council that the way in which they were treating loans to companies when they calculated their MRP was correct.

7.2. In 2021, the newly elected Conservative Leader, Ayesha Azad, applied to the MHCLG for Exceptional Funding Support because of increasing concerns about the Council's financial position post Covid-19. The funding application only referred to Covid-19 related funding shortfalls, not the Council's overall level of indebtedness. On the basis of the incomplete information that the Council presented, MHCLG did not agree to provide Exceptional Financial Support at that time.

7.3. When the new Liberal Democrat administration was elected in May 2022, their ability, and that of the new officer leadership team to understand the scale of the Council's financial difficulties was hampered by poor record keeping by the previous senior officer team, the absence of complete minutes of decisions and the complexity of arrangements for land purchases and swaps, acquisitions and development ventures which were contingent on planning permission and the number of secured and unsecured loans made to the Council's companies and to third parties.

7.4. Julie Fisher, who was appointed Chief Executive in April 2021, had some prior involvement with the Council. She had been a director of VSWL in 2016, on behalf of Surrey County Council, which was then planning to invest in the company, in her capacity as Deputy Chief Executive of the County Council. She had also been involved in previous years as a consultant, covering the former CEO's extended sick leave, for 6 months, and as the interim Director of Community Services. Julie Fisher continued in the role of Chief Executive from April 2021 until she left the Council in March 2024.

7.5. During 2021, Julie Fisher and her new management team, including Kevin Foster the Director of Corporate Resources who was responsible for managing the former s151 officer, began to grasp the extent of the risk arising from the accumulated level of debt. However, at that stage, the new CEO was reliant on information provided by the former s151 officer.

7.6. The realisation that the financial risks had crystallised emerged gradually over the next year, particularly the understanding of the loans to companies, the commercial difficulties of the companies and MRP. Progress is now being made in gaining a full understanding of the value the Council's assets and liabilities.

7.7. EY were commissioned in the autumn of 2021 to review the extent of the Council's borrowing and investments and reported to the Council in January 2022. The CEO and her team also reviewed company governance and removed members from director roles during 2022 and established a Shareholder Advisory Group, although some officers have remained as directors, for the time being.

7.8. In 2022, the Council introduced a transformation programme, 'Fit for the Future', to begin to address many of the underlying problems with the Council's management and performance. This has since been superseded by a more comprehensive 'Improvement and Recovery Plan' which was approved by the Council in August 2023. This plan will be delivered over three to five years, and this timescale recognises that the Council is on a difficult journey and still faces significant problems that cannot be resolved in one or two years. The current focus is on the next year and the Plan will be further developed and refined as it progresses.

7.9. The then Chief Executive became fully aware of the seriousness of the situation in 2022, and actions taken resulted in the former s151 Officer resigning and leaving the Council at the end of March 2023. An Interim s151 Officer, who had been appointed earlier in March 2023, took over responsibility for managing the Council's finances. It was already apparent to the then CEO and the Director of Corporate Resources, at that time, that the Council could not balance its books and it would be necessary to issue a s114 notice. The External Assurance

Review undertaken by MHCLG and a financial review undertaken by CIPFA which reported in May 2023, helped the Council to have a more complete understanding of the extent of the challenges it faces. The Interim s151 Officer issued a S114 Notice in June 2023.

Impact of company director roles on response and remediation

7.10. In 2020, the newly elected Leader, Ayesha Azad also began to develop concerns, particularly around the proposed football stadium development and the findings of the Overview and Scrutiny Task Group Review. She commissioned a report, via the LGA, undertaken by Dr Gifty Edila, into the planned development of Woking Football Club and adjacent land. That report was highly critical of the actions taken by the former statutory officers, which had been endorsed by the Executive. The key concerns highlighted included the significant conflict of interests, particularly of the former Monitoring Officer and former s151 Officer, who were also directors of the KCSC, which owned the site, inadequacies in risk management and the lack of evidence of due diligence undertaken before a revolving loan of £250m was offered to the development company. The report also noted poor record keeping by the Council's Legal Services department, which also undermined good governance.

Consequences and the current position

7.11. The S114 Notice, which was issued on 7 June 2023, introduced stringent financial controls to limit Council spending. It summarised the Council's financial position as follows:

- The Council had been setting aside insufficient monies for the repayment of debt. The Council's debt portfolio was £1.8bn as at 31 March 2023, and the MRP appears to have been under-calculated since 2007/08. This will result in additional charges to the Revenue Account, which will be approximately £95m in 2023/24, and an average of approximately £75m in each year that follows. Given that the original MRP charge to the Revenue Account in 2023/24 had been calculated incorrectly and was lacking a prudent basis, it is clear that the Council has not complied with the relevant statutory duties, including its duty to have regard to the statutory guidance.
- The current estimated negative General Fund balance prior to submission of any request for support from MHCLG is approximately £350m as at 31 March 2023. The additional in-year deficit for 2023/24 is estimated by the Council to be in excess of £800m, resulting in an overall deficit of almost £1.2bn being forecast at the time the s114 notice was issued in June 2023.
- The financial deficit identified by the Council has the highest ratio compared to the resource base of any major council in recent years. The expected deficit of approximately £1.2bn as June 2023 is estimated by the Council to be 107 times greater than the amount raised in Council Tax in each financial year, which totals £11m. This raises an important point: that the resource base in the Council is insufficient to accommodate meeting the overall deficit even if capitalised over a very long period of time.

7.12. An Improvement and Recovery Plan has been developed, and was approved by full Council on 22 August 2023, but it is too early to assess its full impact. Its key areas of focus are financial recovery, addressing commercial challenges, governance and assurance, organisational development and service redesign. Statutory 'risk of redundancy' notices were issued to staff in September 2023.

7.13. The External Assurance Review undertaken on behalf of MHCLG reported in May 2023, sets out the way in which the Council can balance its budget in 2023/24 and 2024/25 by using reserves, but only if it can deliver £11m in savings over the next three years. The Council has developed a revised Medium-Term Financial Strategy which was approved by Full Council on 28 September 2023.

7.14. The Council applied to the PWLB LF in October 2023 for additional funding, £57m to complete the most critical phases of the Sheerwater Regeneration Project and further funds to enable the outstanding work on the Victoria Square development to be completed.

7.15. The Council continues to face significant challenges in delivering such an ambitious programme of change including significant savings with the necessary speed and effectiveness, alongside delivering business as usual services to residents.

8. Conclusion and recommendations

Conclusions

8.1. It is clear from the evidence gathered and analysed to inform this public interest report that many of the key safeguards, designed to protect councils from governance and financial failure, did not operate. As a result, the Council now has levels of debt which are wholly disproportionate to its income and assets which are worth less than was paid for them or invested in them. The Council now faces very significant organisational and financial problems which now require clear and consistent leadership and additional capacity and capability to resolve.

8.2. Although the Council's overarching aims, since 2012, were to enhance the economic prosperity of the Borough by developing Woking town centre while protecting the Green Belt, the Council did not develop a coherent, long term, strategic approach to achieving these aims. It did not have an investment strategy. The political and managerial leadership of the Council failed to ensure that borrowing and investments were proportionate to the Council's size, levels of income and management capacity.

8.3. The Council's governance arrangements and decision-making processes in relation to borrowing and investment decisions were wholly inadequate. Decisions were made without members being fully informed about the risks. Although it is clear that some members and officers expressed concerns about the level of borrowing and the Council's approach to investment, there is some evidence of a lack of curiosity on the part of some members and a tendency to believe what they were being told by the Leaders at the time and by senior officers.

8.4. The Council borrowed from the PWLB LF over a period of 30 years. These funds were used to support the commercial activity of 24 companies which were either wholly owned by the Council or joint ventures with other companies. The Council owned companies were not profitable, and they used additional loans from the Council to pay the interest to the Council on the previous loans. It should have been apparent to members from 2016 onwards that the Council's companies were not profitable and that further loans were being made to them to enable them to pay interest on earlier loans.

8.5. During the 2000s the Council continued to borrow, invest and make loans on the understanding that their loans from the PWLB LF would be paid back over long periods, of up to 50 years. During this time several other land and asset purchases were made, and some investments and loans agreed with third parties. The Council delegated an inappropriate level of control over investment to the former CEO, without any requirement of independent valuations. As a result, members of the administration at the time did not have a complete understanding of the purpose and value of asset purchase. As a small district council, it should have been evident to members of the administrations at the time that the Council did not have the necessary capacity or expertise to manage a complex portfolio of commercial companies and investment activities.

8.6. The Council's governance arrangements relating to investment decisions have not secured value for money through economy, efficiency, and effectiveness in the use of resources.

8.7. Members of the administration at the time were, on many occasions, not given the necessary information or accurate advice; some members of administrations at the time were not sufficiently curious despite warning signs. The level of indebtedness of the Council indicates that the former CEO, Monitoring Officer and s151 Officer failed to ensure that, at the relevant time, the Council's finance and business was managed prudently and lawfully.

8.8. In the absence of internal and external assurance opportunities were missed to recognise the scale of the Council's financial problems and to take more timely remedial action.

8.9. The External Assurance Review, undertaken on behalf of MHCLG reported in May 2023, provided the Council with comprehensive recommendations, including changes to be implemented in the short-term, medium term and long-term, to resolve the Council's most urgent problems and put the Council on a stronger organisational and financial footing for the future. We note that these recommendations have informed the Council's Improvement and Recovery plan.

Recommendations

8.10. The Council should continue to work with Commissioners to deliver the Improvement and Recovery plan, taking the necessary actions to ensure the Council's long-term financial sustainability, and lead the organisation, and the communities that it serves, through a very significant period of uncertainty.

8.11. The Council should carefully consider this public interest report to ensure all members understand the events and conditions that led to the issues set out in this public interest report. Consideration should be given to what happened, the organisational culture and governance arrangements that allowed it to happen and the key elements of the Council's current arrangements that can reassure members of the Council's ability to appropriately manage future investment decisions, and that members appropriately discharge their scrutiny and governance responsibilities.

8.12. The Council should identify the training and development needs of both members and officers to ensure that all have the necessary knowledge, skills and competence to ensure the effective delivery of the Council's Improvement and Recovery Plan. The Council should pay particular attention to the officer support and development needs of members of the Audit Committee and the Overview and Scrutiny Committee, to ensure their effectiveness in providing essential safeguards in relation to the management of risk and good governance.

8.13. The Council should consider the effectiveness of its internal audit arrangements and how they are directed towards areas of risk and that the Audit and Standards Committee assures itself that the appropriate risks are being covered in the annual audit plan, with a sufficient level of resource to deliver these audits.

8.14. The Council should continue to understand potential irregularities as they are identified and their relevance to the future financial position of the Council, seeking legal advice where appropriate.

8.15. We note that the requirements for the Council to consider our recommendations in this report do not apply to the Government. However, the Government should consider whether the findings in this report indicate the need for any change in relevant government policy and the approach to oversight of local government, the safeguards in place in relation to borrowing, and whether additional training requirements are needed, for example for those holding Section 151 responsibilities in the sector.

8.16. The Council's responsibilities under the Local Audit and Accountability Act 2014 are to, as soon as is practicable after receiving this public interest report:

- publish the report and a notice that identifies the subject matter of the report and states that any member of the public may inspect the report and make a copy of it or any part of it between the times and at the place or places specified in the notice;
- supply a copy of the report to each of its elected members;
- supply a copy of the report to its Audit Committee;
- ensure that any member of the public may inspect the report at all reasonable times without payment from the moment it receives the report; and
- publish a notice on its website with details of the meeting where the report will be considered, before the beginning of the period of 8 days ending with the day of the meeting.

8.17. The Full Council must consider the report at a meeting held before the end of the period of one month beginning with the day on which this public interest report was sent to the Council. At that meeting the Council must decide what, if any, action to take in response to the report.

8.18. As soon as is practicable after making decisions the Council must notify their external auditor of those decisions and publish a notice containing a summary of those decisions which has been approved by the auditor.

APPENDIX 1: Timeline of Key Events

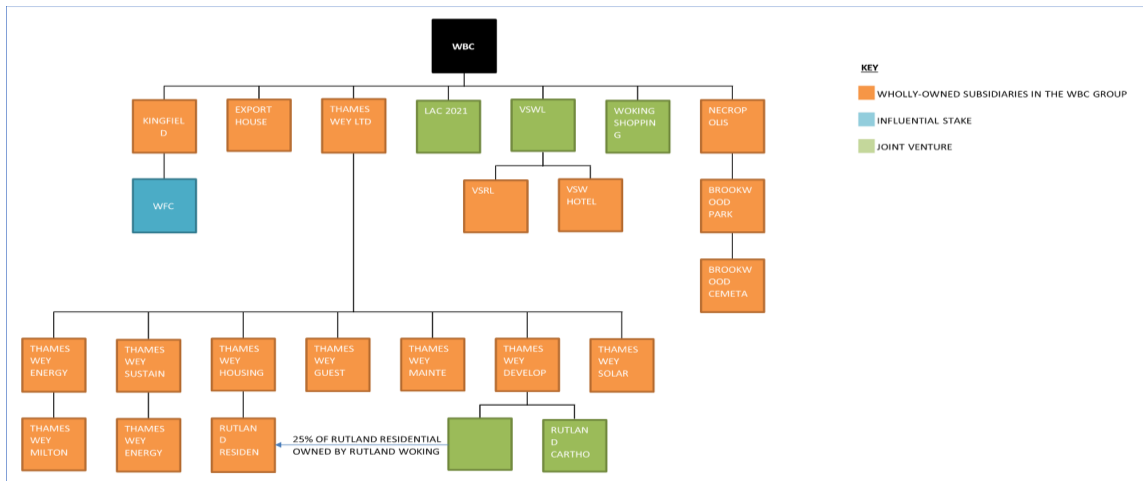
Date	Event
1984	Douglas Spinks employed by Council
1988	Peter Bryant employed by Council
1989	Ray Morgan appointed Director of Financial Services and s151 Officer
1995	Rutland (Woking) Ltd set up by Council
1998	Conservative minority administration - No overall control
1999	Thameswey Ltd set up by Council
	Thameswey Energy Ltd set up by Council
	Thameswey Sustainable Communities Ltd set up by Council
	The Council changed from Committee to Cabinet governance model
	Ray Morgan becomes Strategic Director and continues as s151 Officer (since 1989)
2001	The Council is debt free
	Brookwood Park Ltd set up by Council
2003	Conservatives form minority administration
2004	Thameswey Central Milton Keynes Ltd set up by the Council
2005	Leigh Clarke employed by the Council
	Thameswey Housing Ltd set up by the Council
	Thameswey Maintenance Services Ltd set up by the Council
2006	Liberal Democrats form minority administration
	Douglas Spinks appointed Deputy CEO
	Ray Morgan appointed CEO and remains s151 Officer until the decision was called in by the Overview and Scrutiny Committee and then reversed
2007	Steve Bonsor appointed s 151 Officer
	Conservatives form majority administration – Leader Anne Murray
2008	Thameswey Developments Ltd set up by the Council
	Conservatives continue as majority administration - Leader John Kingsbury
	Peter Bryant appointed as Monitoring Officer
	Thameswey Solar Ltd set up by Council
2010	Wolsey Place shopping centre acquired by Council
	Woking Shopping Ltd 50%/50% joint venture with Peacocks set up
2011	Conservative minority administration formed - Leader John Kingsbury
	Export House Ltd set up by the Council
	Rutland Woking (Carthouse Lane) Ltd set up by the Council

Date	Event
2012	Council decides to focus development on Woking town centre and protect Green Belt
	Energy Centre for Sustainable Communities (ECSC) Ltd bought by Council
	Conservative majority administration formed - Leader John Kingsbury
	Victoria Square Woking Ltd (VSWL) set up - 48%/52% joint venture with Moyallen Ltd.
	VSW Hotel Ltd set up by the Council
2013	KPMG signed off accounts for 2012/13
	Thameswey Guest Houses Ltd set up by the Council
	Rutland Woking (Residential) Ltd set up by the Council
2014	Woking Necropolis and Mausoleum Ltd set up by the Council
	KPMG signed off accounts for 2013/14
	Brookwood Cemetery Ltd bought by the Council
	Steve Bonsor s151 Officer left the Council
	Leigh Clarke appointed s151 Officer
2015	Regeneration of Sheerwater Estate proposed
	KMPG sign off accounts for 2014/15
	LGA Corporate Governance Review report recommends development of corporate strategy, better financial information for members and strengthening Overview and Scrutiny
	Independent Scrutiny Report into the Sheerwater Estate regeneration project recommended improved citizen engagement
2016	VS Residential Ltd set up by the Council
	Council publishes ‘Towards Tomorrow Today’ an outline corporate strategy with no specified resources or outcomes
	Land at Brookwood Lye purchased by former Council CEO, Ray Morgan KPMG sign off accounts for 2015/16 (30 Sept 2016)
2017	KPMG sign off accounts for 2016/17 (28 Sept 2017)
	John Kingsbury (Conservative) steps down as Leader
	David Bittleston (Conservative) becomes Leader
	Moore Stephens appointed as External Auditor (December 2017) for five years from 2018/19 audit year
2018	John Kingsbury becomes Independent chair of board of VSWL, immediately following retirement as a member
	Overview and Scrutiny Report into development of Westfield and Woking Football Club highlights major flaws in plans, conflicts of interest, weak risk management and lack of due diligence in relation to the development company KPMG signs off accounts for 2017/18 (30 July 2018)
2019	Moore Stephens merged with BDO (Feb 2019) and BDO appointed as External Auditors for five years from the 2018/19 audit year.

Date	Event
	Conservatives form minority administration - Leader David Bittleston
	Kingsfield Community Sports Centre (KCSC) Ltd bought by the Council
	Sheerwater Estate regeneration project begins
	LGA Corporate Peer Review Report recommends development of corporate strategy, improved financial information for members and improved citizen engagement
2020	David Bittleston steps down as Leader
	Ayesha Azad becomes Leader
	BDO signs off accounts for 2018/19 (26 Nov 2020)
2021	LGA Report into Woking Football Club and Development (Dr Gifty Edila) highlights conflicts of interests on the part of statutory officers and failures in risk management and due diligence
	Link report on Minimum Revenue Provision (MRP) calculations warned Council of risks of their MRP policy
	Council publishes draft accounts for 2019/20 but audit not completed by BDO
	LAC 2021 Ltd set up 50% WBC, 25% Surrey Heath BC and 25% BC Elmbridge for disposal of non-hazardous waste
	Ray Morgan (CEO), Douglas Spinks (Deputy CEO) and Peter Bryant (Monitoring Officer) retire
	Joanne McIntosh appointed Monitoring Officer
	Julie Fisher appointed CEO
2022	Ayesha Azad asks MHCLG for Exceptional Financial Support because of Covid costs and loss of income not levels of borrowing – request denied
	EY review of WBC's assets, borrowing and contractual obligations highlights high levels of borrowing and loans to companies and 3rd parties
	The Council publishes first full corporate plan – 'Woking for All Strategy 2022 – 27'
	DLUHC engage with the Council because of concerns about levels of debt
	'Woking for All Strategy' refreshed and new version notes debt of £1.8bn rising to £2.4bn over next 5 years
	Company governance arrangements for Council owned companies and joint ventures changed to remove councillors as directors of companies and set up Shareholder Advisory Group
2023	January: DLUHC commissions External Assurance Review of the Council
	March: Joanne McIntosh resigns as Monitoring Officer
	March: Gareth John is appointed Monitoring Officer
	April: Grant Thornton appointed as External Auditors
	April: Leigh Clarke (s151 Officer) leaves the Council. Brendan Arnold, Interim s151 Officer appointed
	May: DLUHC publish report of External Assurance Review highlighting the Council's precarious financial position and need for use of reserves and significant savings to balance books
	May: Statutory intervention announced and three Commissioners appointed

Date	Event
	June: Interim s151 Officer issues s114 notice. The Council forecasts a General Fund deficit of £1.2bn by 31 March 2024. .2bn
	June: The Council seeks Exceptional Financial Support from the Government
	July: Grant Thornton commences audit of governance arrangements relating to the Council's investment decisions.
	November: Julie Fisher announces she is planning to leave the Council.
	December: Changes to the Commissioner team announced with the appointment of Richard Carr as managing Director Commissioner to replace Julie Fisher
2024	February :Government wrote to the Council to confirm their request for Exceptional Financial Support
	March: Julie Fisher leaves the Council.
	March: The Council buys Moyallen's shares in VSWL.

APPENDIX 2: The Council's wholly and partly owned companies (from a report to the Shareholder Advisory Group)



APPENDIX 3: Loans to companies and third parties up to 2021 agreed but not necessarily drawn down by the Council's companies and 3rd parties (collated by CIPFA in 2023)

Note: This analysis was produced by CIPFA as part of their Review of Companies Stage 1 Report, published in May 2023. It provides an initial analysis of loan commitments from the Council to the companies, taken from loan facility agreements that were available for review at that time (it does not provide a complete analysis of borrowing drawn down by the companies or of the corresponding PWLB borrowing by the Council). This information is provided here to illustrate of the scale of loan commitments the Council had entered into, and reflects the provisional position as it was understood by CIPFA early in 2023. It does not provide a definitive analysis of the current position on loans to companies and third parties.

Year	Borrower	Amount
2005	THAMESWEY HOUSING LIMITED	£3,440,000
2006	THAMESWEY CENTRAL MILTON KEYNES LIMITED	£2,500,000
2009	THAMESWEY DEVELOPMENTS LIMITED	£6,000,000
2010	THAMESWEY DEVELOPMENTS LIMITED	£20,000,000
2012	THAMESWEY ENERGY LMITED	£5,500,000
2012	THAMESWEY SOLAR LIMITED	£2,196,000
2012	RUTLAND (WOKING) LIMITED	£8,000,000
2012	THAMESWEY CENTRAL MILTON KEYNES LIMITED	£27,850,000
2012	THAMESWEY HOUSING LIMITED	£64,300,000
2017	VICTORIA SQUARE WOKING LIMITED	£460,000,000
2017	THAMESWEY DEVELOPMENTS LIMITED	£2,500,000
2018	RUTLAND (WOKING) LIMITED	£2,000,000
2018	THIRD PARTY A	£1,855,000
2019	THIRD PARTY B	£6,000,000
2021	THIRD PARY C	£1,850,000
2021	THAMESWEY DEVELOPMENTS LIMITED	£115,000,000
2021	THAMESWEY ENERGY LMITED	£5,250,000
2021	THAMESWEY HOUSING LIMITED	£290,000,000
2021	THAMESWEY HOUSING LIMITED	£116,000,000
2021	THIRD PARTY B	£5,000,000
2021	THIRD PARY B	£2,500,000

APPENDIX 4: Statutory Officer Roles

Local authorities have a duty to appoint a number of senior officers to statutory roles. The Head of Paid Service, Section 151 Officer and Monitoring Officer roles feature in this public interest report and further details on these is set out below.

Local authorities have other statutory officer roles, including Director of Children's Services (DCS) and a Director of Adult Social Services (DASS) which are not the focus of this public interest report.

Section 151 Officer

Section 151 (s151) of the 1972 Local Government Act requires every local authority to make arrangements for the proper administration of their financial affairs and requires one officer to be nominated to take responsibility for the administration of those affairs.

The S151 Officer must be a CCAB qualified accountant. Their main statutory roles are:

- Ensuring the council sets a balanced budget each year. Legislation describes when a budget is considered not to balance:
  - Where increased uncertainty leads to budget overspends of a level which reduces reserves to unacceptably low levels
  - Where an authority demonstrates the characteristics of an insolvent organisation, such as an inability to pay creditors
  - S151s must interpret this based on the circumstance of their own organisation and should continually monitor income and expenditure in-year.
- Report any unlawful financial activity involving the authority (past, present or proposed)

The S151 Officer also has a number of statutory powers in order to allow this role to be carried out, including issuing a S114 Notice (see further detail below).

Section 114 Notice

Section 114(3) of the Local Government Finance Act 1988 requires the S151 Officer, in consultation with the council's Monitoring Officer, to report to all the authority's members if they believe the council is unable to set or maintain a balanced budget. It is often described as a local authority declaring itself bankrupt. Such a notice is only given in the gravest of circumstances.

It is most likely to be required in a situation in which reserves have become depleted and it is forecast that the council will not have the resources to meet its expenditure in a particular financial year.

A full council meeting must then take place within 21 days to consider the notice.

A S114 Notice results in significant spending restrictions, including that no new agreements involving spending can be entered into.

Head of Paid Service

Section 4 of the Local Government & Housing Act 1989 provides that it is the duty of every local authority to designate one of their officers as its Head of Paid Service. It is the duty of the Head of Paid Service where he or she considers it appropriate to do so, to prepare a report to the authority setting out their proposals as to:

- the manner in which the discharge by the authority of their different functions is co-ordinated;
- the number and grades of staff required by the authority for the discharge of their functions;
- the organisation of the authority's staff; and
- the appointment and proper management of the authority's staff.

Regulations made under the Local Government Act 2000 reinforce these duties by making the appointment of staff below chief officer level the exclusive function of the Head of Paid Service or someone nominated by him or her.

The Head of Paid Service is normally the Chief Executive Officer.

Monitoring Officer

The legal basis for the post relates to Section 5 of the Local Government & Housing Act 1989, as amended by schedule 5, paragraph 24 of the Local Government Act 2000. The monitoring officer has three main roles:

- to report on matters he or she believes are, or are likely to be, illegal or amount to maladministration;
- to be responsible for matters relating to the conduct of councillors and officers; and
- to be responsible for the operation of the council's constitution.

The role can be held by the Head of Legal Services but Monitoring Officers do not have to be qualified lawyers.

Section 5 Report

It is the role of the Monitoring Officer to report on matters they believe to be illegal or amount to maladministration, to be responsible for matters relating to the conduct of councillors and officers and, to be responsible for the operation of the council's constitution.

A Section 5 Report is the means by which a Monitoring Officer reports such concerns, under their responsibilities as set out in the Local Government and Housing Act 1989.

Before issuing a Section 5 Report the Monitoring Officer should consult with the s151 Officer and Head of Paid Service.

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