

Classification: Public

Key Decision: No

Gravesham Borough Council

Report to: Cabinet

Date: 03 January 2023

Reporting officer: Stuart Bobby, Chief Executive and
Michelle Batstone, Corporate Change Manager

Subject: Review of the Governance Framework for Rosherville Limited

Purpose and summary of report:

To provide Members with the findings of a review undertaken into alternative governance frameworks for local authority trading companies.

To present Members with proposals for amendments to the framework for the Rosherville group of companies which will ensure that, moving forward, the company is able to respond to changes within the commercial environment, whilst ensuring that the Shareholder, through the elected Members, has oversight of the operations of the Rosherville group of companies.

Recommendations:

Cabinet recommends to Full Council that:

1. The governance framework surrounding the operating model for Local Authority Trading Companies in Gravesham is updated in line with the recommendations made within this report to better reflect best practice.
2. A request is made to Rosherville Limited to amend its Articles of Association in line with the revised framework set out within this report.
3. Subject to the request coming forward from the company, that delegated authority is given to the Chief Executive, in consultation with the Leader of the Executive, the Monitoring Officer, the Section 151 Officer and the Chair of Rosherville Limited to make all necessary amendments to the company Articles of Association and Shareholder Agreement to reflect the agreed changes.
4. Upon amending the Articles of Association and Shareholder Agreement, officers submit these documents to Cabinet to formally approve the changes in March 2023.
5. The changes outlined in the report formally take effect from 1 April 2023.

| Key Implications: | |
|------------------------------------|--|
| Item | Implications |
| Legal | <p>There are two key pieces of legislation which allow a local authority to trade in the services it provides:</p> <ul style="list-style-type: none"> • The Local Government Act 2003 which allows local authorities to trade in the ordinary day to day functions of the Council. • The Localism Act 2011 which allows local authorities to trade in any area (unless expressly prohibited or limited by statute). <p>All companies <i>should</i> be supported by Articles of Association which Rosherville currently has in place but will need to be updated to reflect any changes ultimately approved by Members.</p> |
| Finance and Value for Money | <p>Amending the governance framework of the Rosherville group of companies has no immediate financial impact on the Council.</p> <p>However, to ensure that the Articles of Association of the company reflect any changes approved by Council, it <u>may</u> be necessary to seek external legal advice. This is estimated to be £3,500 (excluding VAT and disbursements) and will be funded from G020/34101.</p> <p>In addition, should recommendations relating to the recruitment of a specific officer with a commercial focus and independent non-executive Directors be approved in due course, there will be costs associated with these posts which are to be determined.</p> |
| Corporate Plan | <p>#3 – PROGRESS</p> <p>an entrepreneurial authority; commercial in outlook and committed to continuous service improvement, underpinned by a skilled workforce and strong governance environment.</p> <p>Specifically, the following commitment:</p> <p><i>Develop an entrepreneurial culture: deliver on commercial opportunities to generate income and provide a social impact.</i></p> |
| Climate Change | <p>There are no specific climate change implications arising from this report. It is noted however that Rosherville has made a Climate Change commitment which is published on its website and aligns with that of the Shareholder.</p> |

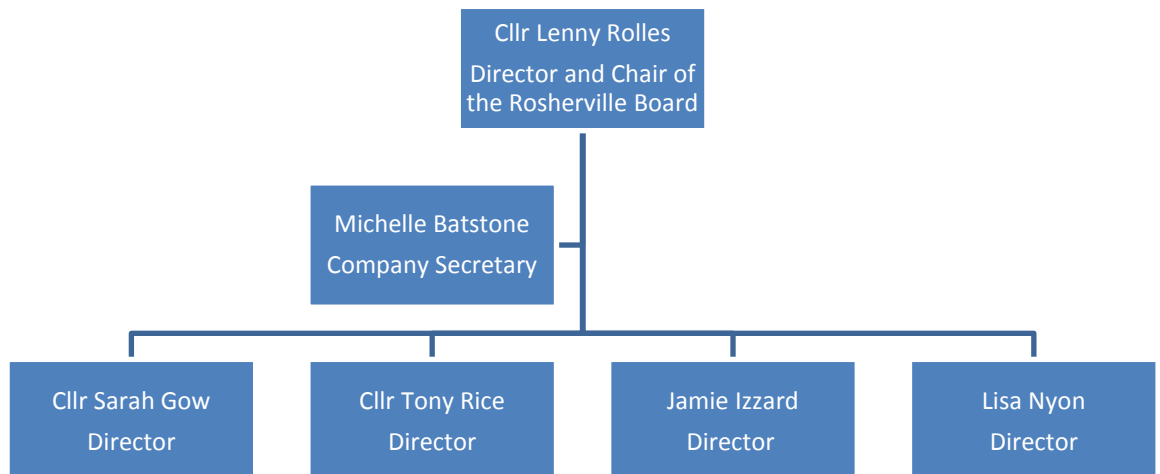
1. Background and Introduction to the Review

- 1.1 At the meeting of Full Council on 17 December, Members approved the formation of a Local Authority Trading Company (LATCo) and Rosherville Limited was duly registered as a trading company of GBC on 07 January 2020.
- 1.2 In line with the recommendations approved by Full Council, the Cabinet maintains overall responsibility for a number of 'Reserved Matters' including (but not limited to) the approval of the Holding Company's business plan, appointment and dismissal of Directors and approval of the Articles of Association and Shareholder Agreements.

- 1.3 In line with this agreed framework, Cabinet approved both the Shareholder Agreement and the Articles of Association for Rosherville Limited at its meeting on 03 February 2020, with a subsequent minor update in February 2021, setting out the governance framework within which the Rosherville group of companies will operate.
- 1.4 The Cabinet also approved the appointment of the Directors to the Rosherville Limited Board which consisted of three Members and two council officers. The Board has played a critical role in the successful implementation of the trading companies to date and has provided invaluable advice and challenge to ensure all Rosherville entities are operating effectively.
- 1.5 As the company has been operational for a number of years, it was felt that it would be beneficial to undertake a review of the governance arrangements in place with a view to ensuring that the company has the best structure in place to ensure it continues to grow the company and its subsidiaries (and any other new subsidiaries that may be commissioned).
- 1.6 In undertaking the review, best practice regarding the structures of LATCos has been considered, along with exploring how other LATCos are structured and public interest and best value reports that have looked specifically at LATCo governance. This includes a review of the Local Partnerships document Local Authority Company Review Guidance which specifically looks at the process for reviewing trading company structures.

2. Current LATCo Governance Arrangements

- 2.1 Currently, the Rosherville Limited Board has five voting Directors, three councillor Directors (two labour and one conservative) and two officer Directors and a non-voting Company Secretary, and is structured as follows:



- 2.2 The Chair of the Board is also the Commercial Cabinet Portfolio Holder, and the other two councillors are also on the Commercial Services Cabinet Committee. The Commercial Services Cabinet Committee was instrumental in assisting with establishing the overall governance framework of Rosherville but since its incorporation, no longer receives papers or reports on the company.

2.3 In addition, there are three subsidiary companies established:

- Rosherville Servicing Limited
- Rosherville Property Development Limited
- Rosherville Repairs & Maintenance Limited

The subsidiary companies are set up with three Directors, all of whom are council officers. The subsidiary Boards report in to the main Rosherville Limited Board on a quarterly basis.

2.4 The council has established a Shareholder Group to consider any points of business which are not reserved to the Cabinet. To date this has been limited with the sole use of the Shareholder's Group being to consider the mid-year performance update report from the Rosherville Group of companies.

3. Summary of review findings

3.1 In undertaking the review of governance arrangements, a number of specific areas were reviewed:

3.2 Best Practice in LATCo Structures

3.2.1 Lawyers in Local Government produced a best practice guide entitled *The Governance of Council Interests in Companies – Code of Practice* to set out the best way of structuring LATCos, whilst ensuring the council and the company are protected. Key points within this document are:

- *The participating Local Authority should be represented on the board of its company; and*

The chair of the board of directors, as Council appointee, will have a deciding say to be exercised through means of a 'golden vote' procedure on the board.

At the moment, the council sends a Shareholder's Representative to the Board meetings, but this is not a formal position on the company Board. The council does not have a direct representative as Chair of the Board, although it is responsible for making all Director appointments.

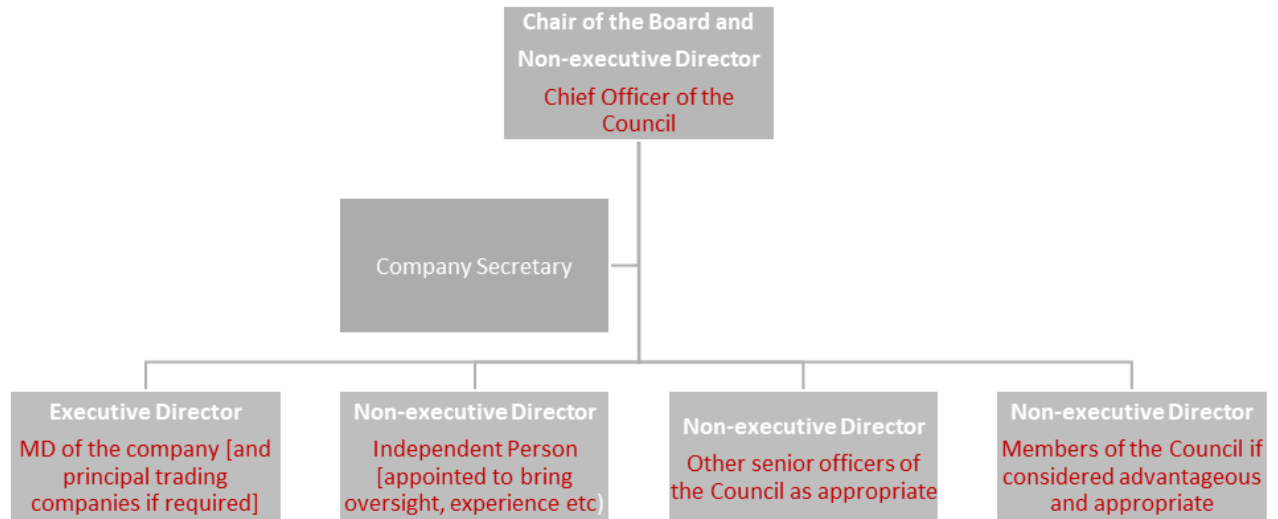
- *Government Guidance suggests that officers are better placed to fulfil the Board Director role as they are better placed to participate directly in the activities of the company. It will therefore be the norm that officers, not Members, will be appointed as directors.*

The Rosherville Board currently consists of officers and Members, whilst the subsidiary Boards are solely made up of officers of the council. Whilst this is not a serious area of concern, it does go against the 'norm' as suggested by Government guidance. It is however recognised that Members have played a significant role in the establishment and successful operation of the companies to date.

- *As the holding company for the group, the Company board of directors will be formed of Executive Directors and Non-executive Directors*

At this stage, there are currently no independent non-executive directors appointed to the Board of the Holding Company.

- A 'Best Practice' Company Structure is suggested as follows:



3.2.2 In undertaking the research into Board structures, consideration was also given to The UK Corporate Governance Code published in July 2018. This Code applies to all private entities, and a number of the principles also apply to local authority trading companies where they are owned by public sector bodies.

3.3 Reviewing existing LATCo Structures – Local Partnerships

3.3.1 Local Partnership have produced a guide to assist local authorities in reviewing their existing governance structures to ensure they are fit for purpose. Appendix one provides a summary of the review process that has been undertaken by Gravesham/Rosherville against this guidance. Specific elements where the council/Rosherville were unable to respond positively were in respect of:

- Independent non-executive directors being in place to bring an independent judgement to bear on matters for discussion and adding value to Board decisions.
- Performance management of senior company staff/Directors against a range of key performance indicators (KPIs).

3.3.2 In addition, there were a number of elements (highlighted in orange in the appendix) where the council/Rosherville were partly able to meet the requirements as per the guidance, but additional actions are required to be fully compliant with the best practice guidance.

3.4 Local Authority Owned Companies: A Good Practice Guide – CIPFA

3.4.1 In June 2022, the Chartered Institute of Public Finance and Accountancy (CIPFA) published a good practice guide for the operation of local authority trading companies. This guidance provides advice and suggested approaches for local authority trading companies, from their very inception to their formal operation.

3.4.2 Appendix two provides a summary of the governance of GBC/Rosherville against the CIPFA guidance. There are a number of areas for consideration as part of the review of the governance arrangements, should it be felt necessary:

- *Integrity, ethical values and the rule of law*
Consideration to be given to developing a code of conduct for Board Directors and the introduction of a performance appraisal process for all Board Directors. Consideration should also be given to a formal policy in relation to the management of conflicts of interest.
- *Determining Interventions*
Consideration to be given to the inclusion of key performance indicators for all Rosherville entities in future performance reports to the Shareholder.
- *Capacity, Leadership and Individuals*
Consideration to be given to the development of job descriptions for Board Members, particularly if independent non-executive Directors are to be introduced, along with a robust selection process.
- *Transparency, reporting, audit and accountability*
Consideration should be given to ensuring a formal review of the Shareholder Agreement is scheduled for once every three years as a minimum.

3.5 Learning from others

- 3.5.1 There are many local authority trading companies in the UK, all delivering a wide variety of services through a number of different operating models. A review of governance arrangements and Board structures for several local authorities was undertaken to inform the review process.
- 3.5.2 Appendix three provides a summary of the research undertaken, which has helped to inform the proposals set out in this report.

3.6 Public Interest and Best Value Report Findings

- 3.6.1 There have been a number of high-profile LATCo failures, which have resulted in public interest reports and best value inspections being undertaken.
- 3.6.2 Those reviewed as part of this review have related to three local authorities across the country; common findings across the three reviews are as follows:
- The governance structures across all three authorities were unclear and did not allow for sufficient challenge of the company and its performance. Where committees or reporting processes were in place, these were not followed.
 - There was a lack of monitoring of performance of the company and/or its subsidiaries by the Shareholder. Rigorous and regular monitoring by the Shareholder is key to ensuring that the company is meeting its objectives and any investments made by the Council are delivering value for money.
 - There was a lack of understanding of risks associated with the companies, investments and the impact this would have on the council. In some cases, the type of industry being entered into was complex and external expertise was not sought which exacerbated the level of risk for the Council through lack of understanding of the market.

- Poor governance, in one council, resulted in a company being dissolved by compulsory strike off by Companies House for a failure to comply with filing financial accounts and the assets of this company were transferred to the Crown.

3.6.3 The themes above confirm that good governance is key to ensuring the success of the company and is overseen by the Shareholder Representative at the meetings who ensures the council's interest in such arrangements is best maintained.

3.7 Conclusions Drawn

3.7.1 The review has found that generally, the governance arrangements that are in place are robust, albeit there are several areas where these could be further strengthened. Consideration should be given to the overall governance structure and operating model for the company and its subsidiaries to ensure that it is able to continue to grow as a commercial entity.

3.7.2 In addition, there is a need to consider the role of independent non-executive directors on the company Boards.

4. **The role of Independent Non-executive Directors**

4.1 The current Board of Rosherville Limited does not have any independent non-executive Board Directors; consideration to the introduction of this role has been given as part of the overall governance review.

4.2 An independent non-executive director does not hold an executive job in the company. They will participate in the governance and will be involved in setting direction and policies. They are usually expected to contribute a wide perspective and to draw on contacts and experience outside the company.

4.3 The valuable role of the independent non-executive director has been increasingly recognised in recent years and it is recognised by the UK Corporate Governance Code. The UK Corporate Governance Code states:

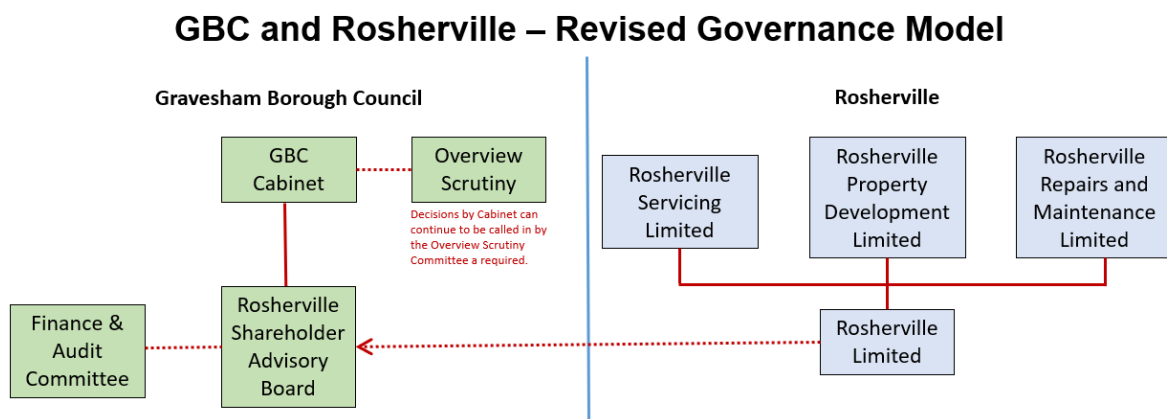
'The Board should include a balance of executive and non-executive directors (including independent non-executives) such that no individual or small group of individuals can dominate the board's decision taking.'

4.4 There is no legal distinction between a non-executive and an executive director; the legal duties and responsibilities are the same for both types of Directors. The Companies Act 2006 places statutory duties on both executive and non-executive directors.

5. **Proposed new governance arrangements and recommendations**

5.1 Following the outcome of the review, it is suggested that consideration be given to revising the structure of the Rosherville Limited Board to reflect best practice by removing councillors from the Board and replacing them with non-executive Directors and a specific Shareholder Representative at an officer level. It is felt that with the current attendance of the Shareholder's representative at all Holding Company Board meetings in an observational capacity discharges the latter element of this recommendation.

- 5.2 It is recognised that the Members who are currently part of the Rosherville Limited Board have played a critical role in ensuring the company has been established with the correct governance framework in place, whilst providing challenge and commercial advice to the subsidiary companies.
- 5.3 Removing councillors from the main Holding Company board, however, would not diminish the role of Members in the trading company activities. It is considered that this is an opportune time to re-evaluate the role of Members on the Board and remove them from direct involvement in the Rosherville entities.
- 5.4 Members will still have a role to play and this will be exercised through the formation of the Rosherville Shareholder Advisory Board. The Advisory Board will ensure that the company can be held to account by the Shareholder (the council) with regular reporting to the Advisory Board, rather than the ad-hoc nature at the moment.
- 5.5 Membership of the Rosherville Shareholder Advisory Board would be reviewed, as it would replace the current Shareholder Group; it is suggested that the membership of the Board include representatives from the political parties making up the Council. Reporting to the council's Finance & Audit Committee would also be put in place as required:



This approach ensures that the Cabinet can maintain the commercial, strategic oversight of the company structure, whilst removing conflicts of interest for councillors, which have always been a concern for the Board.

In addition, with the recent review undertaken by the Boundary Commission, which has resulted in a reduction of elected Members for GBC to 39, removing Members from the Rosherville Board will reduce the need for Members to remove themselves from meetings where a conflict may arise, and ensure consistency in membership of committees. It also frees up time of councillors to be involved in other council-led projects.

- 5.6 To support the ongoing development of the company and the council's commercial interest, consideration should be given to the recruitment of a specialist manager/Director, to drive forward the commercial nature of the group of companies. Given the likely salary for such a post, it is anticipated that the Rosherville group of companies would not be in a position to fund such a post at this stage; however, this should be a future consideration once Rosherville is able to fund this post directly.

- 5.7 To support the development of the Board further in the future, consideration should also be given to the recruitment of an independent non-executive Director to the Board of Rosherville Limited (the holding company). Again, it is recognised that the Rosherville group of companies would not be in a position to fund such a post at this stage, but this role should be built into the overall governance structure for the company so that when the company is in a position to recruit to this post, a proposal can be presented to Cabinet for this to take place (Cabinet has overall responsibility for appointment of all Directors to the company).
- 5.8 In line with the recommendations already set out, should these be acceptable, a revised Board structure to be put in place for the Holding Company, potentially as follows:



In reviewing/implementing the Board structure, a skills audit should be undertaken to ensure that the required skills are provided for across the main Board.

- 5.9 To continually monitor the performance of the Board, it also suggested that:
- 5.9.1 A performance management framework be introduced for the Rosherville group of companies which will focus on key performance indicators for each entity but also including performance reviews of the Directors to ensure they are continuing to deliver against the objectives of the companies.
- 5.9.2 A regular review of the council/company governance arrangements is introduced through the council's Internal Audit team, the results of which will be reported as part of the performance update to the Shareholder and to the Finance & Audit Committee as appropriate. It is anticipated that this forms a regular part of the Internal Audit work programme to be discussed at the appropriate time as part of the Audit Planning process.
- The Shareholder Agreement that is in place already has a provision for council officers to have access to information from the company (paragraph 3.7):
- "...the Council and the Parent Company is given such information and such access to the officers, employees and premises of the Group as it may reasonably require for the purposes of enabling it to monitor its investment in the Group."*

The proposed regular review by Internal Audit will ensure that the Shareholder's investment into the Rosherville Group of companies is monitored on a regular basis, ensuring the appropriate governance arrangements are in place to protect the council's interests.

6. Next steps

- 6.1 In line with the recommendations made within this report, should Full Council approve the amendments to the governance framework, Rosherville Limited will be requested to amend its Articles of Association in line with the revised framework set out within this report.
- 6.2 Subject to the request coming forward from the company, that delegated authority is given to the Chief Executive, in consultation with the Leader of the Executive, the Monitoring Officer, the Section 151 Officer and the Chair of Rosherville Limited to make all necessary amendments to the company Articles of Association and Shareholder Agreement to reflect the agreed changes.
- 6.3 These revised legal agreements will be reported back to Cabinet in March 2023 for formal approval, prior to commencement of the new arrangements from 1 April 2023. This is in line with the current Articles of Association which set out the matters that are reserved to Cabinet, which includes the approval of formal agreements.

7. Appendices

- 7.1 The following documents are to be published with the report:
 - Appendix one – review of performance against the Local Partnerships guidance for Local Authority Trading Companies.
 - Appendix two – review of performance against the CIPFA publication, *Local Authority Owned Companies: A Good Practice Guide*
 - Appendix three – summary of research undertaken in relation to other local authority trading companies.

8. Background Documents

- 8.1 The following background documents were used:
 - The Governance of Council Interests in Companies – Code of Practice* – produced by Lawyers in Local Government
 - Local Authority Company Review Guidance* – produced by Local Partnerships
 - The UK Corporate Governance Code* published in July 2018
 - Local Authority Owned Companies: A Good Practice Guide* – published by CIPFA

Lead Officer: Michelle Batstone, Corporate Change Manager

Email: michelle.batstone@gravesham.gov.uk

| Secondary Implications | |
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| Risk Assessment | The establishment of trading companies on behalf of the Council does present some risk; the key mitigation is ensuring that the correct governance framework is in place to ensure risks are considered and mitigated wherever possible. The recommendations set out in this report look to minimise the risks associated with trading companies to both the council, officers and Members alike. |
| Data Protection Impact Assessment | <i>A data protection impact assessment (DPIA) should be carried out at the start of any major project involving the use of personal data or if you are making a significant change to an existing process.</i> |
| | a. Does the project/change being recommended through this paper involve the processing of personal data or special category data or criminal offence data ? A definition of each type of data can be found on the Information Commissioner's Office website via the above links. No |
| | b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A |
| | c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at gdpr@medway.gov.uk . N/A |
| Equality Impact Assessment | a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community? If yes, please explain answer. No |
| | b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No |
| | <i>In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above</i> |
| Crime and Disorder | There are no crime and disorder implications arising from this report. |
| Digital and website implications | The company has a website established – www.roshervilleservices.co.uk – which is developed and kept up to date under a service level agreement with the council for Digital and IT Services. |
| Safeguarding children and vulnerable adults | There are no safeguarding children and vulnerable adults implications arising from this report. |

Local Partnerships – Review of Existing LATCo Structures

- Gravesham and Rosherville Checklist

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|--|--|---|-----|
| Council Governance Arrangements | | | |
| Governance Aims | | | |
| C1 | There should be evidence that the council and senior management recognise the importance of establishing appropriate and proportionate governance arrangements for the oversight of entities | <p>The council's Constitution clearly sets out the responsibility of the Cabinet in respect of Rosherville and is clearly articulated under Annex 1.4 of the Constitution.</p> <p>A Shareholder Agreement is in place which sets out the level of 'control' the council affords the company and those matters that are reserved to the Council (<i>Council Consent Matters</i>).</p> | ✓ |
| C2 | There should be evidence of a culture of challenge and clarity relating to the purpose, efficiency, effectiveness, specific objectives, and freedoms of the entity | <p>The Business Plan for the holding company, which encompasses a summary of the business plans or the subsidiary companies, is presented to the Cabinet each year where the Shareholder can review the objectives and priorities of the entities and challenge these accordingly.</p> <p>The company is, however, a separate entity to the Council and is given sufficient freedoms to operate in the most effective way.</p> | ✓ |
| The council's Shareholder role | | | |
| C3 | There should be a clearly designated council shareholder role or function which is both understood and recognised by the council and the entity (and documented in terms of reference) | <p>The Rosherville group of companies are wholly owned by the council as the sole shareholder. The council's Constitution clearly sets out the responsibility of the Cabinet in respect of Rosherville and is clearly articulated under Annex 1.4 of the Constitution.</p> <p>The role of the council is also clearly articulated in the Shareholder's Agreement that is in place.</p> <p>A performance report is taken to the Shareholder in November each year, followed by the business plan in March each year.</p> | ✓ |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|--|--|---|-----|
| C4 | There should be clarity regarding the role of shareholder, with reserved matters clearly documented and updated as required, reflecting any changes made as the entity has developed, in a shareholder's agreement, or as set out in the company's governing articles of association | The Shareholder Agreement clearly sets out the role of the Shareholder and has a specific section – <i>Council Consent Matters</i> – which articulates the specific decision that require approval by the Cabinet. | ✓ |
| C5 | There should be evidence that the individual undertaking the shareholder role is provided with suitable training and support commensurate with the role | Specific training regarding companies and their governance was provided to not only company Directors but GBC representatives when the company was established. Refresher training has been arranged for June 2022. | ✓ |
| C6 | There should be evidence of formal periodic shareholder/ Chair/CEO meetings with effective supporting papers to inform subsequent company board meetings | A formal meeting of the Shareholder Group is held in November each year to review the mid-year performance report of the company. Additional reports are brought to the Shareholder, via the Cabinet, as required. Informal meetings also take place between the shareholder representative at the Board, the Chair of the Board and the Leader of the Executive to discuss the company as required. | ✓ |
| Council oversight, scrutiny, and governance framework | | | |
| C7 | There should be documented evidence of transparent member and officer scrutiny, oversight, and approval of business plans | The business plan for Rosherville Limited is approved by Cabinet on an annual basis in line with the Shareholder Agreement and company Articles of Association. As a formal decision by Cabinet, the item can be called in to the Overview Scrutiny committee, should the Scrutiny Members wish to review this in more detail. | ✓ |
| C8 | There should be evidence of a clear set of KPIs that fall out of the business planning process | There are no specific KPIs included in the Rosherville Limited business plan as the holding company. However, each of the subsidiary companies have a set of KPIs which are reported to the Rosherville Limited Board on a quarterly basis | -- |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/✗ |
|-----|--|---|-----|
| C9 | There should be evidence that senior company staff are performance managed against KPIs | At the moment, there is no formal evaluation of the Board, Directors/Chair. | ✗ |
| C10 | There should be evidence of ongoing assessment of value-for-money and quality offered by the entity through an adequately resourced monitoring function | Monitoring of the subsidiary companies takes place on a quarterly basis by the main Rosherville Limited Board. Rosherville Limited report to the Cabinet on a six-monthly basis. The Business Plan is presented in March each year and a mid-year performance update is also presented to the Shareholder Group in November each year to provide the Shareholder with regular monitoring opportunities. | ✓ |
| C11 | There should be ongoing assessment of risks relating to the entity, supported by processes to ensure that risks are managed as part of the council's overall risk management approach, with appropriate escalation and reporting | The council has a robust process in place for reviewing risks on an annual basis. Should it be felt that the commercial entities of the council were a risk to the council itself, this would be recorded and reported to Members in line with the risk management process in place. Risks associated with the individual subsidiary companies are first reported in the business case put forward to establish the company and then monitored through business plans. The subsidiary business plans are summarised within the main Rosherville Limited Business Plan which is presented to the shareholder. | ✓ |
| C12 | There should be evidence of a consistent approach across the council when it comes to engaging with its entities | All of the company entities are managed in a consistent manner. All have adopted the Articles of Association for the group and the same Company Secretary is appointed across all companies to ensure consistency. There is sufficient flexibility to enable each entity to operate within the market it is trading to ensure it can operate with flexibility. | ✓ |
| C13 | The council should have clear and unfettered access to audited accounts for its entities | The Articles of Association of the group of companies clearly states that the council's Designated Officers have access to all company accounts and information as necessary. This includes the council's internal audit team having unfettered access to the company documents should there be a need for them to view these. At the moment, the shareholder's audit committee do not have access to the company accounts. | -- |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|-------------------------------------|---|--|-----|
| Business case for the entity | | | |
| C14 | It should be possible to review the business case which assessed the risk involved in establishing the entity and recommended its establishment, taking account of other potential delivery models | No new business entities can be established without the consent of the council. The business case template that is in place clearly sets out the potential risks associated with the company and will only be presented where it is felt the company operating model is the right approach. | ✓ |
| C15 | Objectives of the entity should be clearly defined and documented, and regularly reviewed to ensure that its operation continues to support council policy and strategy, including periodically reviewing the business case to ensure it is still valid | The business case includes the objectives for the new business entity, which are then reviewed as part of the annual review of the business plans. The business case itself has a section for completion which specifically identifies the implications for the Shareholder, so these are considered as part of the decision to create the new entity. | ✓ |
| Agreements with the entity | | | |
| C16 | Agreements should be documented between the council and the entity for any support or services provided by either party to the other party | Formal service level agreements are in place between the council and Rosherville setting out the support services that will be provided and the recharge basis for these services. These are reviewed on annual basis by the Chair of Rosherville Limited and the shareholder representative. A separate works order is to be agreed for any works outside of the scope of the SLA. The formal SLA sets out an escalation process should there be any issues that require resolution. | ✓ |
| C17 | All agreements should be clear, up-to-date, and regularly monitored and reviewed, with any changes to agreements documented so that a clear audit trail exists | As above, the SLAs are reviewed on an annual basis. Each new version is dated and reference as a new version to ensure a clear audit trail of change is held. | ✓ |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|--|---|---|-----|
| Avoiding and managing conflicts of interest | | | |
| C18 | There should be evidence that a culture exists whereby actual or potential conflicts of interests are identified, declared, and acted upon, including evidence of appropriate training across the organisation | Training has been provided to all current Directors of Rosherville and its subsidiaries and additional training is scheduled for June 2022 as a refresher training but also to provide training to new Directors. In addition, all agendas have a standing item to enable declarations of interest to be made and recorded accordingly. | ✓ |
| C19 | The council should have clear and up-to-date policies and processes to consistently manage actual conflicts or potential conflicts of interest, including a clear process for investigations and procedures for appropriate disciplinary actions in the event of breaches | The Articles of Association for the company clearly articulate how conflicts of interest are to be dealt with and include a process by which the Shareholder can authorise these moving forward. There is a need to more clearly set out the process for investigating concerns and appropriate action in the event of a breach. | -- |
| C20 | The roles, responsibilities and reporting lines of officers and members who are involved in council oversight of the entities, the provision of services between the entities or the running of the entities should be clearly defined and documented | The formal agreements in place stipulate who are the 'Designated officers' of the company and who is able to speak in respect of company affairs. Officers who undertake the Director role attend council Management Team meetings as necessary, as well as Cabinet and Scrutiny meetings where it is required. | ✓ |
| Council appointments to the board | | | |
| C21 | There should be evidence that appointments to the board are subject to a documented formal, rigorous, and transparent procedure based on merit and published objective criteria which also promote diversity | Declaration forms have been completed by all Directors. All of the appointments to the Board are specific to a post rather than individual officers and is written into officer job descriptions accordingly. It is clearly set out within the company agreements that when a Director ceases to be employed by the council or an elected Member, their company role ceases. All appointments to the company are reserved to the Shareholder. | ✓ |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|---|--|---|-----|
| Entity Governance Arrangements | | | |
| Articles of Association | | | |
| E1 | The entity's articles of association should be clear, up-to-date, and reflective of how the entity is run | The Articles of Association were originally drafted by Trowers & Hamblins. They were updated in February 2021 to reflect changes to the Board structure and updated on Companies House accordingly. | ✓ |
| Business Planning | | | |
| E2 | There should be evidence of an up-to-date business plan that is reflective of the current circumstances and environment in which the entity operates | The business plans for Rosherville Limited and its subsidiaries are updated on an annual basis. The subsidiary business plans are signed off by the Rosherville Limited Board and the main holding company business plan is approved by the Shareholder as per the agreements in place. | ✓ |
| Role and behaviours of the board | | | |
| E3 | There should be evidence that the board meets regularly to consider, review and record discussions and conclusions | The Board of the subsidiary companies and Rosherville Limited meet on <u>at least</u> a quarterly basis, with additional meetings arranged as necessary. The meetings are documented and a formal register of minutes for each entity held by the Company Secretary. | ✓ |
| E4 | There should be evidence of delivery of strategies and plans, including scrutinising key operational and finance performance information | The Board of the holding company meet regularly to challenge the performance of the subsidiary companies accordingly and provides commercial challenge to the entities in line with their duties under the Companies Act. At this stage, there is no specific delegation for scrutiny. One of the company Directors leads on financial management of the company and reports to the Board accordingly. | ✓ |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|----|---|---|-----|
| E5 | There should be evidence of the desired culture and behaviours | <p>The minutes of the Board meeting demonstrate clear challenge of h subsidiary companies by the Holding Company Directors, to ensure the success of the company is promoted and that risks are assessed as a collective.</p> <p>The Board receive regular performance reports from each subsidiary to monitor performance as well as budget, as well as regular monitoring reports on its own budget.</p> <p>Clear leadership in terms of company objectives, such as modern slavery, is provided by the main Board.</p> | ✓ |
| E6 | The company structures should be regularly scrutinised in order to ensure they remain fit for purpose | The company was established in January 2020. The purpose of the current review is to look at the current structures that are in place to ensure they are robust given the current direction of the company. | -- |
| E7 | There should be evidence that the board has clear policies and procedures for its members to ensure that actual or potential conflicts of interests are identified, declared, and acted upon | All agendas for the Board meetings for the Holding companies and subsidiaries have a standing item ensuring all Directors have the opportunity to declare interests as appropriate which are duly minuted. A register of interests is maintained by the Company Secretary as necessary. | ✓ |
| E8 | There should be evidence that directors have sufficient skills and experience to run the entity | All Directors have received training in respect of their duties under the Companies Act and code of conduct. Those Directors on the Board have a background in specific skills such as finance, commercial perspective, marketing and community involvement which support the work of the Board and the group of companies. Subsidiary company Boards are made up of service specialists as well as a non-specialist, 'critical friend' Director to provide a broader perspective. | ✓ |
| E9 | There should be evidence that directors' behaviours are aligned with the requirements of the Companies Act 2006 and the Nolan Principles as well as Cabinet Office's Code of Conduct for Board Members of Public Bodies | All Directors have received training in respect of their duties under the Companies Act and code of conduct. The Company Secretary attends all meetings of the holding company to provide advice and guidance to Board Members as necessary in terms of meeting their obligations. | ✓ |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/✗ |
|--------------------------------------|---|--|-----|
| E10 | The scope of directors' authorities should be documented and clear to all parties | The Board operates within a scheme of delegation from the Shareholder. There are a number of specific matters which are reserved for the Shareholder but outside of these, the company is allowed to operate within its own powers, having due regard to the Shareholder. | ✓ |
| Company board composition | | | |
| E11 | There should be evidence that the board has a diverse membership with the collective skills and attributes needed to lead the entity effectively | The Holding company board is made up of five Directors. However, there are no non-executive Directors currently on the Board. | ✗ |
| E12 | There should be evidence that board membership is reviewed regularly for composition and fitness for purpose | The company was established in January 2020. The purpose of the current review is to look at the current structures that are in place to ensure they are robust given the current direction of the company. | -- |
| The board and risk management | | | |
| E13 | There should be evidence that the board understands the organisation's risk profile and the effectiveness of key controls and regularly reviews risks and risk appetite | Risks associated with the companies are first reported in the business case put forward to establish the company and then monitored through business plans. The holding company monitors the risks associated with the subsidiary companies through the quarterly reporting process but also through the annual review of the business plan. Decisions by the Board are based upon a number of issues including the associated risks. The risks associated with the holding company are summarised as part of the annual business plan which is reported to the Shareholder as necessary. | ✓ |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|--|---|---|-----|
| Board members' skills and development | | | |
| E14 | There should be documented evidence that the board regularly undertakes a skills audit to ensure that it has an appropriate balance of skills and experience | There is no specific skills audit undertaken. However when establishing the holding company and the subsidiary companies, consideration was given to the requirements of each individual company. As part of this review, there is a need to consider the skills sets required in any new structure. | -- |
| E15 | There should be evidence of ongoing professional training provided to ensure that all board members are up to date in their understanding and supported in their roles | Specific training regarding companies and their governance was provided to not only company Directors but GBC representatives when the company was established. Refresher training has been arranged for June 2022. | ✓ |
| The role of executive directors and non-executive directors | | | |
| E16 | There is evidence that the role of executive directors is clearly defined and documented | The Articles of Association for the company, clearly sets out the powers and responsibilities for the Directors of the companies, including powers of delegation, decision making and required participation amongst other things. | ✓ |
| E17 | Non-executive directors are in place to bring an independent judgement to bear on issues of subject matter expertise, strategy, performance, resources including key appointments, and standards of conduct | There are currently no independent Non-executive Directors on the Board of Rosherville Limited and/or its subsidiaries. | x |
| E18 | There is documented evidence that the board values the role of non-executive directors, and their views are influential in the board's decisions | There are currently no independent Non-executive Directors on the Board of Rosherville Limited and/or its subsidiaries. | x |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|------------------------------------|---|--|-----|
| The role of the board chair | | | |
| E19 | There is evidence that the chair provides clear board leadership, supporting the directors and chief executive and taking account of the shareholders views | <p>The Chair provides clear support and direction both at the formal Board meetings and informally outside of the Board meetings. All Board members are encouraged to participate in all discussions and to provide their thoughts and view to ensure a wide variety of views are sought. Regular liaison with the Company Secretary ensures Board meetings cover all required items.</p> <p>The Chair has a full understanding of the requirements of the Shareholder and ensures these are articulated at Board meetings to ensure all Directors are aware of what is required by the Shareholder.</p> | ✓ |
| Financial management | | | |
| E20 | There should be a fully documented and approved business plan that is consistent with and no more than 12 months older than the previous business plan. The changes within the updated business plan should accord with the trajectories that are apparent from monthly financial and non-financial performance reports | The business plans for Rosherville Limited and its subsidiaries are updated on an annual basis. The subsidiary business plans are signed off by the Rosherville Limited Board and the main holding company business plan is approved by the Shareholder as per the agreements in place. | ✓ |
| E21 | The financial transactions and values attributable to the company within the council's medium term financial plan should agree with the projections in the business plan | <p>Regular financial monitoring of the company's finances takes place (including the subsidiaries). This is included in the performance reports to the council.</p> <p>The financial arrangements feed into the council's financial plans, specifically in terms of income due from the service level agreements and future loan repayments in relation to the Property development company.</p> | ✓ |
| E22 | Board reports should include clear presentation of the monthly income and expenditure position of the company as well as a cash flow statement and balance sheet | Financial updates are provided to the Board (and the subsidiary Boards) on a quarterly basis which cover cash flow and an overall balance sheet. | ✓ |

| | Local Partnerships Suggested Evidence | Current Position/Evidence | ✓/x |
|-----|---|---|-----|
| E23 | There should be evidence of an annual audit letter from the council's external auditors, confirming the degree of confidence they hold in respect of consolidation or treatment of financial instruments entered by the company | At the time of the review, the latest annual audit letter (audit findings report) provided by the external auditor is for the period 2018-19 and therefore does not cover the period for which the company was established. | -- |
| E24 | Documented financial policies and procedures should be available | <p>Each company has a separate bank account, separate from the council accounts and managed through the Quickbooks system i.e., not a council system. Signatories are specific to each company.</p> <p>The formal agreements set out the financial requirements of the company, with specific legal agreement in place for individual loan arrangements in place as necessary.</p> <p>In addition, the company has agreed its own financial authorisation levels to ensure efficient and effective payment of invoices.</p> | ✓ |
| E25 | There should be evidence of an effective annual internal audit programme | <p>There is no specific programme of internal audits. However, an internal audit of the governance arrangements of the Shareholder with the company was undertaken in 2021 which identified a number of recommendations to further strengthen the arrangements in place for the company <u>and</u> between the company and the Shareholder. This will form part of the review programmes as necessary.</p> <p>External auditors are engaged on an annual basis to undertake the formal audit of accounts as required.</p> | -- |

Local Authority Owned Companies: A Good Practice Guide - CIPFA

- Gravesham and Rosherville Checklist

| Alignment with good governance principles | Application in GBC/Rosherville |
|--|--|
| <p>Integrity, ethical values and the rule of law</p> | <p>Currently, all Directors of the company are either Councillors or Employees of Gravesham Borough Council and as such, act within the code of conduct for Members and Officers. However, it may be necessary to consider a specific 'company code should the Board membership expand to include independent, non-executive directors on the Board.</p> <p>Performance appraisals of council officers are undertaken as part of their employment of the council, but these focus on GBC activities. There are currently no specific performance appraisals for the Directors on the Board.</p> <p>Declarations of interest are made, as necessary, at the start of all Board meetings and are recorded by the Company Secretary. All Directors have received training specifically regarding their role and the Companies Act requirements and as such, are aware of their duties to the company.</p> <p>The company's Articles of Association reference the consideration of conflicts of interest but there is not a specific policy in place to manage these. This is something that could be considered moving forward.</p> |
| <p>Openness and Stakeholder Engagement</p> | <p>The current Shareholder Group that is in place consists of Members (including the Leader of the Opposition and Chair of the Overview Scrutiny Committee) along with key officers from around the council. The Overview Scrutiny Committee can 'call on' decisions by the Cabinet in relation to the Rosherville group of companies and have exercised this right in the past.</p> <p>The decision-making process of the company is very clearly set out in the Articles of Association for the company. The Company Secretary records all decisions and maintains a record of decisions that have been delegated to other Board Members. Where specific professional advice has been received, this is minuted accordingly.</p> <p>The company has a website which provides details on the services that are being provided by the Rosherville group of companies and enables engagement with stakeholders. The council has also publicised the Rosherville entity through its <i>Your Borough</i> magazine which goes to all households.</p> |

| Alignment with good governance principles | Application in GBC/Rosherville |
|---|--|
| Defining Outcomes | <p>In defining the outcomes of the companies, the business case for each new entity must be signed off by the Shareholder before the company can be incorporated. The business case clearly sets out the purpose for the company and its long-term plans. As well as its contribution to the objectives of the Council as a whole A business plan is prepared each year which, for the subsidiary companies is approved by the Holding Company. The business plan for the Holding Company, which encapsulates the key information from the subsidiary companies is presented to the Shareholder for review and approval.</p> |
| Determining Interventions | <p>The council, as Shareholder, receives a mid-year update on the performance of all the entities that it is involved in and as such, is able to monitor the outcomes of the companies as necessary. At this stage, there are no key performance indicators included as part of these reports which could be consideration for future performance reports.</p> |
| Capacity, Leadership and Individuals | <p>The company has Articles of Association in place which are based upon the model articles suggested for use by Companies House but have been tailored to meet the needs of the company and the Shareholder. These clearly set out the mechanisms for the governance of the company including conducting Board meetings (including quorum details), appointment and termination of Directors and financial management.</p> <p>Training was provided to all Directors when Rosherville Limited and the two first subsidiaries were introduced. Refresher training has also taken place so that all Directors have received training regarding their roles on local authority trading company. The training packs provided also form the basis for additional sessions that may be required should new Directors be brought into the company structure.</p> <p>An appointment process should be in place for all new Directors. As the Shareholder appoints all Directors, this is undertaken as part of the recruitment process for the council employees. However, should non-executive Directors be introduced to the Board, there is a need to ensure a robust selection process is in place.</p> |

| Alignment with good governance principles | Application in GBC/Rosherville |
|--|---|
| <p>Managing risks, performance, internal control and strong financial management</p> | <p>Risks are considered for each entity at the time at which they are established and then reviewed on a regular basis. Each entity brings performance updates to the main Rosherville Board where risks are monitored, and these are reviewed as part of the annual business planning process. There is a shareholder representative at each Board meeting and any serious risk concerns can be discussed and raised as necessary with the Shareholder.</p> <p>Finance is managed through a service level agreement with the Shareholder. The council's Finance Team provides financial management through provision of budget monitoring reports, advice and guidance as necessary and preparation of final year accounts for audit. Where speciality advice is needed by the company, this is sourced as necessary. The company also has a Board Director with financial expertise.</p> <p>As mentioned, the Board receive quarterly reports from each of the subsidiaries to ensure performance is monitored accordingly. The Board can call additional meetings should there be a need to do so. The company provides the Shareholder with a mid-year report in October/November each year which provides an update on performance, risk and budget. All subsidiaries and the main holding company also update their business plans on an annual basis with approval of these by the Holding company/Shareholder respectively.</p> |
| <p>Transparency, reporting, audit and accountability</p> | <p>Reference is made to the company structure within the Annual Governance Statement. Specific reference is made to the governance structures in place and in the 2021-22 statement, reference is made to the review of governance structures that is currently underway.</p> <p>There is a formal Shareholder Agreement in place which was agreed in February 2020. A formal date for the review of the Shareholder Agreement has not been set. It is anticipated that this will be reviewed once every three years (in line with current Shareholder review processes) or when necessity arises.</p> <p>The Rosherville Board provide a mid-year performance update to the Shareholder, along with a Business Plan which is reviewed every year. The Business Plan looks back at achievements in the previous year across the group of Rosherville companies as well as setting out the forward plan</p> |

Review of other Local Authority Trading Companies

Ashford Borough Council

Up until recently, the Board of the council's Property Companies was made up of four Directors; the Leader of the Council, the Chief Executive, the Deputy S151 Officer and an independent, non-executive Director. This was reviewed and the Leader of the Council was removed from the Board and a further non-executive director was recruited to the Board. All Board members are of a significant level of seniority within the council.

The council has in place a Trading and Enterprise Board which has been established with delegated authority to carry out a number of specific functions on behalf of the Cabinet specifically in relation to the trading companies of the Council. The Board is made up of four councillors all of whom are portfolio holders. Four meetings of the TEB are held each year (May, June, September and February).

The company employs one member of staff directly. This is the Commercial Development Manager whose specific role is to drive forward the growth of the Property Company. The focus of the role is very narrow, looking at the development side of the business and ensuring projects get 'off the ground'. This person is managed by the Deputy S151 officer at the council but is paid directly by the company. The Commercial Development Manager is paid directly by the company, from the profits that are generated through the developments that are progressed.

Wiltshire Council

In 2021, Wiltshire Council commissioned a review into the governance arrangements of its group of companies, Stone Circle, as commissioned by the Cabinet. The review produced a number of recommendations but specifically:

- Create a Shareholder Group as a sub-Committee of Cabinet with the Leader as Chair with two other Cabinet Members as members with the option to co-opt external commercial expertise to enable the Shareholder Group (after consideration of performance reporting by Corporate Leadership Team and Scrutiny) to conduct its role on behalf of the shareholder.
- Review the appointments to the Board. It was felt that now is the time to focus on delivery and therefore the current appointments, although assisting in set-up and initial trading activity, should be amended over a 12-month transitional period. This should include replacing the elected Members on the company Boards; with the advent of the Shareholder Group which will carry out a scrutiny and challenge function, expanding the membership of non-executive appointments with specific housing sector commercial experience and increasing the general non-executive membership to the Housing and Development companies by two. The Director of Housing and Commercial Development also be appointed to the companies.
- Request the company to develop and implement an appropriate staffing structure for the companies, to oversee the operations and to drive commercial delivery at pace. This structure could be resourced incrementally and phased against specific trading data. Specifically looking for the company to employ someone with commercial expertise to drive the company forward.
- Annual presentation of governance arrangements to the Audit & Governance Committee.

The recommendations suggested, follows best practice with the removal of councillors from the Board and the creation of a Shareholder Group as a sub-committee of Cabinet to oversee the company. In addition, the revised governance model (shown below) also includes reporting to the Audit & Governance Committee of the Council to ensure that consideration is given on a regular basis to the appropriateness of the arrangements the

company has in place. This has resulted from the review into the failings of other LATCos across the country.

East Suffolk Council

East Suffolk Council is launching a new local authority trading and are currently (February 2022) recruiting to a role of Managing Director to head up the company and are using Tile-Hill Executive Recruitment in the process. The focus of the company is effective waste collection and a high standard of maintenance of public spaces. The council sees the company as an integral part of the council's long-term strategy to support growth of the local economy, exceed expectations of residents and businesses and address the climate emergency.

The Managing Director will be required to shape the new company to deliver against its business plan and key strategic priorities including the successful transition to a new delivery model, maintaining and improving service delivery and increasing income generation across the company's portfolio of services.

The detailed outline for the role can be found here -

<https://static1.squarespace.com/static/61d425957ad9413a15ba5c3d/t/61f959a3a360c33d5dcfd6b4/1643731374834/Tile+Hill+East+Suffolk+LATCo+MD+Applicant+Information+01.02.22+Final.pdf>

The company is due to be launched in July 2023 and as such, this post will be employed by East Suffolk Council directly.

Surrey County Council

Twelve15 is a trading department of Surrey County Council, delivering traded services in education and other settings.

In December 2021, Surrey County Council advertised for a Head of Commercial with the specific responsibility for the entirety of the commercial performance driving success in retention and growth. This is a full-time position (36 hours per week) with a salary of £71,252 per annum. The role sits on the Senior Leadership Team of the council.

Specifically, this role is responsible for:

1. Being responsible for business development to maximise income generation within existing and new business opportunities;
2. Act to acquire new clients and management of client relationships (new and existing) to ensure opportunities for growth and efficiencies are seized as appropriate;
3. Understanding market sector, capture industry intelligence & validate the requirements of existing clients & customers to develop and implement business & marketing planning strategies;
4. Lead the development and implementation of communication strategies to accelerate market share & presence;
5. Monitoring performance of commercial activities using key metrics & providing regular reports to Twelve15 Leadership Team & other stakeholders.

Rugby Borough Council

Rugby Borough Council is currently recruiting to the position of *Chief Officer for Operations and Traded Services* who will form part of the council's Senior Management Team (closing date 28 February 2022). The salary range for the post is £55,000-£65,000. The purpose of the role is to take forward the council's operational and traded services, and to maximise the commercial and traded opportunities which they present. In addition, the post will also be responsible for identifying and implementing new models of delivery, which maximise traded / commercial opportunities and deliver financial efficiency. A copy of the details job description has been saved for future reference if required.