

**Classification:** Public

**Key Decision:** No

## **Gravesham Borough Council**

**Report to:** Full Council

**Date:** 21 February 2023

**Reporting officer:** Stuart Bobby, Chief Executive

**Subject:** Review of the Governance Framework for Rosherville Limited

### **Purpose and summary of report:**

To present Members with a proposal to revise the governance framework for the Rosherville group of companies, which has previously been discussed at Cabinet and recommended for Full Council consideration. Specifically to:

- Amend the Rosherville Limited Board structure to remove councillors from the Board and replace them with non-executive Directors (at an officer level). The revised structure will include introduction of an independent non-executive Director and recruitment of a specialist manager/Director at the appropriate time, to drive forward the commercial nature of the group of companies, once the company is in a position to fund these posts themselves.
- Replace the current Shareholder Group with the Rosherville Shareholder Advisory Board which will be formed of councillors and be an advisory Board to the Cabinet.
- Implement a performance management framework for the Rosherville group of companies which will focus on key performance indicators for each entity and include performance reviews of the Directors to ensure they are continuing to deliver against the objectives of the companies.

### **Recommendations:**

Following discussion and subsequent recommendation from Cabinet on 03 January 2023, Full Council are asked to approve:

1. The amended governance framework surrounding the operating model for Local Authority Trading Companies in Gravesham, as set out in section five of this report.
2. Subject to a request coming forward from Rosherville Limited to amend its Articles of Association in line with the revised framework set out within this report, 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.
3. Upon amending the Articles of Association and Shareholder Agreement, officers submit these documents to Cabinet to formally approve the changes in March 2023.
4. The changes outlined in the report formally take effect from 1 April 2023.

<b>Key Implications:</b>	
<b>Item</b>	<b>Implications</b>
<b>Legal</b>	<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"> <li>- The Local Government Act 2003 which allows local authorities to trade in the ordinary day to day functions of the Council.</li> <li>- The Localism Act 2011 which allows local authorities to trade in any area (unless expressly prohibited or limited by statute).</li> </ul> <p>All companies should 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>
<b>Finance and Value for Money</b>	<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>
<b>Corporate Plan</b>	<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>
<b>Climate Change</b>	<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>

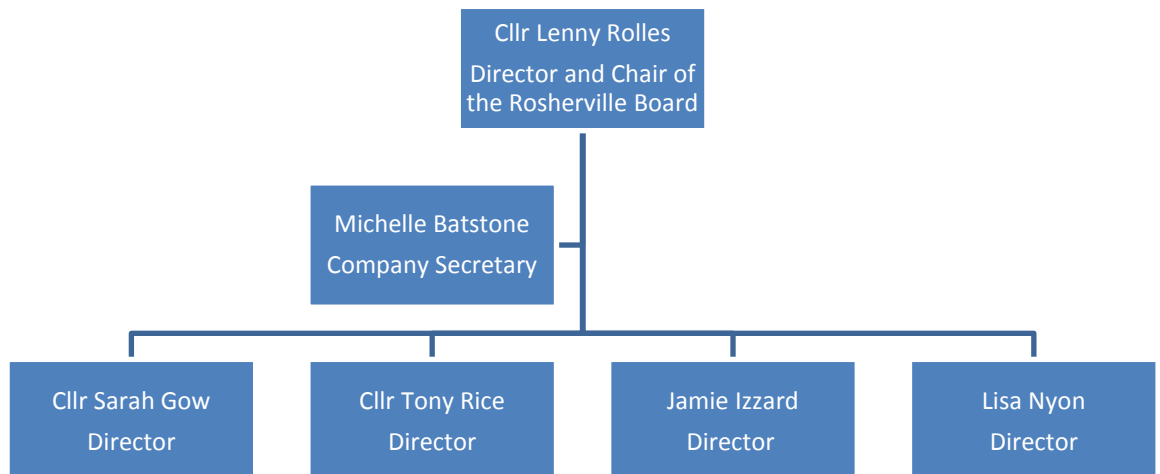
## 1. Background and Introduction to the Review

- 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
- 2.4 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.

### 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.

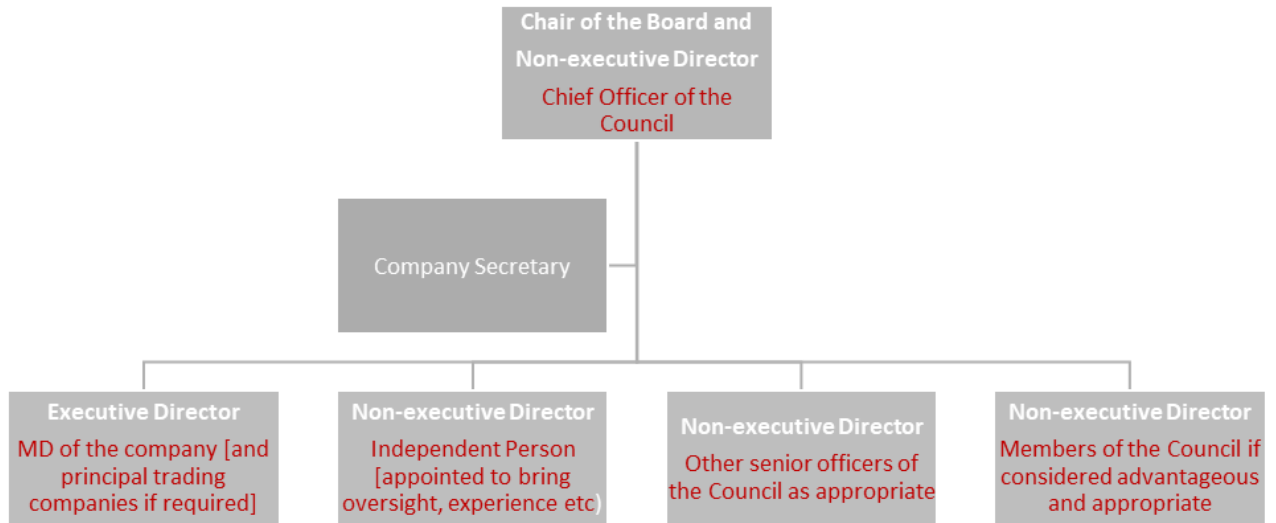
- *Government Guidance suggests that officers are better placed to fulfil the Board Director role as they are better placed to participate directly in the activities of the company. It will therefore be the norm that officers, not Members, will be appointed as directors.*

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. A review of the framework in place at Gravesham was undertaken and 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).

### 3.4 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 Following a thorough review of the 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 and 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.

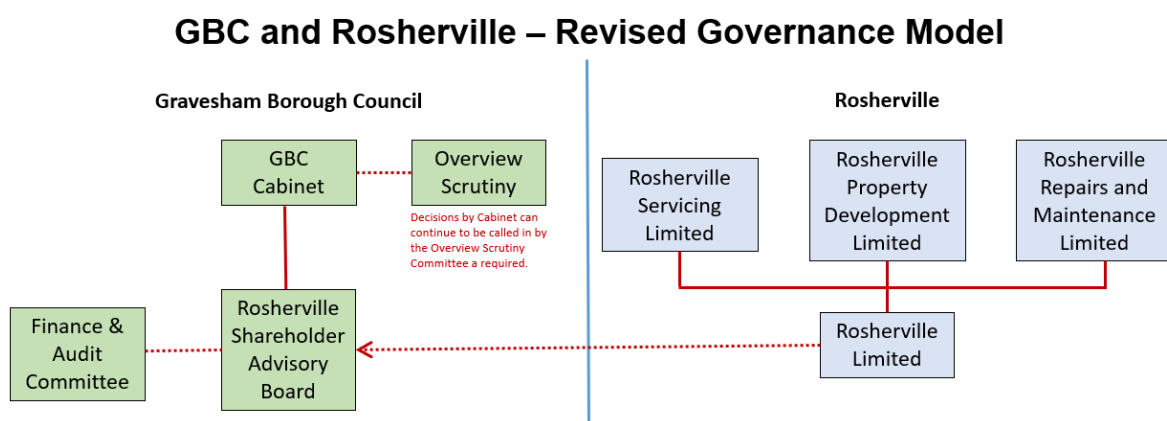
## 4. **The role of Independent Non-executive Directors**

- 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 the structure of the Rosherville Limited Board be revised 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:



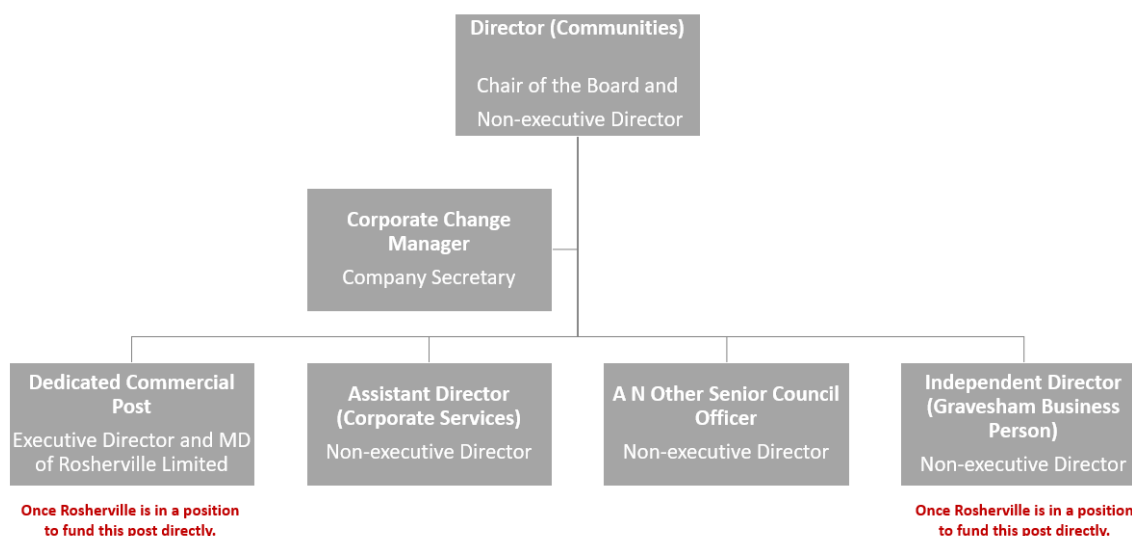
This approach ensures that the Cabinet can maintain the commercial, strategic oversight of the company structure, whilst removing conflicts of interest for councillors, which have always been a concern for the Board.

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.

- 5.10 These proposals were discussed at the meeting of the Cabinet on 03 January 2023. Cabinet were supportive of these proposals and are recommending to Full Council that these changes are approved.

## 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.

## 7. Appendices

- 7.1 There are no appendices.

## 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](mailto:michelle.batstone@gravesham.gov.uk)

<b>Secondary Implications</b>	
<b>Risk Assessment</b>	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.
<b>Data Protection Impact Assessment</b>	<p><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></p> <p>a. Does the project/change being recommended through this paper involve the processing of <a href="#">personal data</a> or <a href="#">special category data</a> or <a href="#">criminal offence data</a>? A definition of each type of data can be found on the Information Commissioner's Office website via the above links. No</p> <p>b. If yes to question a, have you completed and attached a DPIA including Data Protection Officer advice? N/A</p> <p>c. If no to question b, please seek advice from your nominated DPIA assessor or the Information Governance Team at <a href="mailto:gdpr@medway.gov.uk">gdpr@medway.gov.uk</a>. N/A</p>
<b>Equality Impact Assessment</b>	<p>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</p> <p>b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality? If yes, please explain answer. No</p> <p><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></p>
<b>Crime and Disorder</b>	There are no crime and disorder implications arising from this report.
<b>Digital and website implications</b>	The company has a website established – <a href="http://www.roshervilleservices.co.uk">www.roshervilleservices.co.uk</a> – which is developed and kept up to date under a service level agreement with the council for Digital and IT Services.
<b>Safeguarding children and vulnerable adults</b>	There are no safeguarding children and vulnerable adults implications arising from this report.