

**Forward Plan reference number: FP/642/11/16**

<b>Report title:</b> Participation in the North Essex Garden Communities Project - Give governance and decision on the principle of funding .	
<b>Report to:</b> Cabinet	
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<b>Date:</b> 13 December 2016	<b>For:</b> Decision
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<b>Divisions affected:</b> All Essex	

## 1. Purpose of report

- 1.1 This report gives a progress report on the North Essex Garden Communities project since the last report was presented in February 2016 and asks the Cabinet to agree that ECC should enter into joint arrangements with the district and borough councils of Braintree, Colchester and Tendring to create an overarching body to be known as North Essex Garden Communities Limited (NEGC) which will coordinate the development of the proposed new garden communities in North Essex. NEGC will establish a local delivery vehicle (LDV) for each settlement as set out in this report.
- 1.2 The report explains how the development is expected to operate and that there will be a requirement for the LDVs to have funding in order to ensure that the infrastructure is provided at the right time as part of the development. This funding will be repayable out of land receipts as the development progresses. All four Councils are being asked to give governance and decision on the principle of funding, that they will provide proportionate funding to the LDVs in its area. More information is provided in the financial section of the report.
- 1.3 Each of the local planning authorities will be making decisions about their local plan which will include a decision whether or not to allocate garden communities in their district.
- 1.4 The Cabinet is therefore asked to give such agreement in principle on the clear understanding that this will be subject to receipt, scrutiny and approval of specific business cases.

## 2. Recommendations

- 2.1 Note that it is proposed that, if appropriate terms can be agreed, the Local Delivery Vehicles will enter into legal agreements with landowners to enable the delivery of the proposed schemes.

## **North Essex Garden Communities Limited**

- 2.2 Agree to set up and subscribe to North Essex Garden Communities Limited in accordance with the terms set out in the report and Appendix 2.
- 2.3 Approve the North Essex Garden Communities Limited shareholder agreement between the Local Authorities in accordance with the terms set out in the report and Appendix 3.
- 2.4 Appoint Cllr John Spence to represent the Council as a Director on the Board of North Essex Garden Communities Limited and note that future appointments will be made by the Leader.

## **Tendring Colchester Borders Limited**

- 2.5 Endorse the formation of Tendring Colchester Borders Limited by North Essex Garden Communities Limited in accordance with the terms set out in the report and Appendix 4.
- 2.6 Approve the Tendring Colchester Borders Limited shareholder agreement between the Local Authorities in accordance with the terms set out in the report and Appendix 5.
- 2.7 Agree that the Chief Executive may from time to time decide the identity of the Council's appointee as a Director on the Board of Tendring Colchester Borders Limited.
- 2.8 That in principle it agrees to provide an appropriate proportion of necessary funding to the Tendring Colchester Borders Limited (by an appropriate combination of loan or equity) subject to a satisfactory business case setting out the full terms of the arrangement. The latter will need to accord with the approved Business Plans and masterplans for the project and the funding options available at the time any funding is required by the LDV.

## **Colchester Braintree Borders Limited**

- 2.9 Endorse the formation of Colchester Braintree Borders Limited by North Essex Garden Communities Limited in accordance with the terms set out in the report and Appendix 6.
- 2.10 Approve the Colchester Braintree Borders Limited shareholder agreement between the Local Authorities in accordance with the terms set out in the report and Appendix 7.
- 2.11 Agree that the Chief Executive may from time to time decide the identity of the Council's appointee as a Director on the Board of Colchester Braintree Borders Limited.
- 2.12 That in principle it agrees to provide an appropriate proportion of necessary funding to the Colchester Braintree Borders Limited (by an appropriate combination of loan or equity) subject to a satisfactory business case setting out the full terms of the arrangement. The latter will need to accord with the approved Business Plans and masterplans for the project and the funding options available at the time any funding is required by the LDV.

## **West of Braintree Limited**

- 2.13 Endorse the formation of West of Braintree Limited by North Essex Garden Communities Limited in accordance with the terms set out in the report and Appendix 8.
- 2.14 To approve the West of Braintree Limited shareholder agreement between the Local Authorities in accordance with the terms set out in the report and Appendix 9.
- 2.15 Agree that the Chief Executive may from time to time decide the identity of the Council's appointee as a Director on the Board of West of Braintree Limited.
- 2.16 That in principle it agrees to provide an appropriate proportion of necessary funding to the West of Braintree Limited (by an appropriate combination of loan or equity) subject to a satisfactory business case setting out the full terms of the arrangement. The latter will need to accord with the approved Business Plans and masterplans for the project and the funding options available at the time any funding is required by the LDV.

## **3. Background and proposal**

- 3.1 In the work being carried by Braintree District Council, Colchester Borough Council and Tendring District Council on their respective Local Plans, the potential for new major developments in the form of new 'garden communities' has been identified by the Councils as planning authority as a means of meeting future growth requirements. These include three potential new settlements: one crossing the administrative boundary of Tendring and Colchester in the vicinity of the University, the second crossing the administrative boundary of Colchester and Braintree at Marks Tey and the third site is on land to the West of Braintree on the Uttlesford District Council border.
- 3.2 In accordance with the duty to cooperate, the district Councils are working closely with each other and are at similar stages in their respective Local Plan preparation, to plan effectively for the long term. All three councils are also working with Essex County Council. As part of this process, all four Councils are thinking strategically, are not being restricted by current local plan making time horizons and are considering whether Garden Communities could address some of this long term need both within the plan period and beyond.
- 3.3 As part of the development of their Local Plans the three District Planning Authorities have included the three projects as areas of search within their Preferred Options Consultations under the Local Plan. These consultations occurred last summer and will lead to recommendations to the respective Councils in January / February 2017.
- 3.4 At the meeting on 16 February 2016 Cabinet agreed to the continued joint working and development of proposals for the four Councils to take an active role in the development and construction of the new garden settlements. Following this the Council (along with each of the other three Councils) has committed a further £250,000 to support the joint work and funding was

agreed together with a grant from the Department for Communities and Local Government of £640,000.

- 3.5 This joint working has continued with the work undertaken by the Shadow Delivery Board and the Steering Group. These structures will be superseded by the arrangements in this report once they come into effect. Officers from the four Councils will continue to meet during the early stages of implementation as partnership officer groups to aid transition and ensure continuity.
- 3.6 Separate negotiations have occurred with landowners and developers with interests in the three sites. This has been supported by consultants engaged jointly by the four councils.
- 3.7 Therefore, this report seeks Cabinet approval for the Council to enter into joint arrangements with the other Councils to create an overarching body to be known as North Essex Garden Communities Limited (NEGC) to coordinate the development of the sites mentioned above. NEGC will establish a further company (a Local Delivery Vehicle (LDV) for each proposed garden community. The Council is asked to give in principle agreement that it will provide proportionate funding to the LDVs in its area. This funding will be used to pay for delivery of the infrastructure in a more timely and co-ordinated way than can be achieved with a traditional development. The cost of infrastructure will be repaid out of land value as the scheme is developed (referred to as a “waterfall repayment” on which more information is provided under the financial section of this Report).

### **Vision and Objectives**

- 3.8 Addressing growth at any spatial scale must be founded on a clear vision of how and where change should occur. Braintree, Colchester and Tendring are all in the process of evolving new Local Plans to address future need with Preferred Options published by all three Councils in summer 2016. The Councils are thinking strategically for the long term, and are not being restricted by current plan making time horizons or administrative boundaries.
- 3.9 The vision for North Essex at a strategic level has been set out by the local planning authorities within Part 1 of the Preferred Option Local Plans. This addresses both the vision for the wider area together with the role and significance of the proposed Garden Communities. The vision sets out a clear statement of local ambition and establishes a strategic basis from which to move forward. It enables the Councils to plan positively for the future homes and jobs needed across the area, the provision of high quality infrastructure (transport, telecommunications, education, health, community and cultural infrastructure); and the creation of quality places including the conservation and enhancement of the natural and historic environment, including landscape.
- 3.10 Figure 1 illustrates the vision for North Essex as set in Part 1 of the emerging Local Plans. This provides a key part of the rationale underpinning the strategy going forwards.

### **Fig 1 Vision for North Essex Garden Communities**

*North Essex will be an area of significant growth over the period to 2033 and beyond, embracing positively the need to build well-designed new homes, create jobs and improve and develop its infrastructure for the benefit of existing and new communities.*

*Sustainable development principles will be at the core of the strategic area's response to its growth needs, balancing social, economic and environmental issues. Green infrastructure and new and expanded education and health care facilities will be planned and provided; while the countryside and heritage assets will be protected and enhanced.*

*At the heart of our strategic vision for North Essex are new garden communities. The garden communities will attract residents and businesses who value innovation, community cohesion and a high quality environment, and who will be keen to take an active role in managing the garden community to ensure its continuing success. Residents will live in high quality, innovatively designed, contemporary homes, accommodating a variety of needs and aspirations. There will be a network of leafy streets and green spaces, incorporating and enhancing existing landscape features. This will provide safe and attractive routes and sustainable drainage solutions, as well as excellent opportunities for people to play. Open spaces will be attractive areas which offer leisure and recreation opportunities for residents of the garden communities. All Garden City principles will be positively embraced including new approaches to delivery and partnership working and sharing of risk and reward for the benefit of the new communities.*

- 3.11 Alongside the vision set out above are a set of related objectives, designed to help achieve the vision for the area and to provide a basis for achieving the necessary outcomes. The objectives include:

**Delivering for local communities** – to ensure the highest standard of community and stakeholder involvement from the early evolution of proposals, through to the creation of assets of local community value with active local ownership and stewardship;

**Providing New Homes** – to provide for a level and quality of new homes to meet the needs of a growing and ageing population in North Essex;

**Fostering Economic Development** – to strengthen and diversify local economies to provide more jobs; these jobs will be across a wide range of new industries reflecting the changes and trends of the 21<sup>st</sup> century, as well as existing sectors exploiting the opportunities of the A120 growth corridor; and to achieve a better balance between the location of jobs and housing, which will reduce the need to travel and promote sustainable growth.

In the particular case of Essex County Council, these communities- with their focus on high quality commercial space- will underpin our ambition for place - shaping with significant value add employment to drive GVA growth.

**Providing New and Improved Infrastructure** – to make efficient use of existing transport infrastructure and to ensure sustainable transport opportunities are promoted in all new development. Where additional capacity is required in the form of new or upgraded transport infrastructure to support new development, to ensure this is provided when it is needed. The approach must also include addressing education and healthcare needs – to provide good quality educational opportunities and health facilities as part of a

sustainable growth strategy, together with the provision of upgraded broadband infrastructure and services.

**Managing change effectively** –through a genuine and pro-active partnership approach between the public and private sectors, where risk and reward is shared and community empowerment enabled

**Ensuring High Quality Outcomes** – to secure the highest standards of urban and built design which creates attractive places where people want to spend time

**Long Term Stewardship** – appropriate arrangements to secure the management and long term delivery of community infrastructure and facilities.

- 3.12 In addition, a ‘North Essex Garden Communities Charter’ has been prepared by the Councils and published alongside the evidence base supporting Local Plans. This sets out a series of interlinked principles to underpin the evolution of further proposals and provides more detail across 3 key themes including:

**Place & Integration:** including the approach to green infrastructure, the living environment and quality, sustainable place making;

**Community:** including approach to community engagement & long term stewardship);

**Delivery:** including the need for strong and proactive public leadership and innovation in delivery.

- 3.13 The vision and objectives have been encapsulated in the Purpose of the delivery structures and are intrinsic to the Articles of the NEGC Limited and the LDVs.

### **Planning Background**

- 3.14 As part of the new Local Plans being promoted by district Councils, Braintree, Colchester and Tendring have been working on the principle that standalone new settlements are likely to be part of the picture to deliver growth in this Plan period and beyond. This has led to the creation of areas of search in each of the preferred options consultations.
- 3.15 New stand-alone communities are being considered only where they can meet garden city principles and where the Councils are confident that they can and will be delivered. Garden communities (cities) as described by the Town and Country Planning Association (TCPA) as; *“holistically planned new settlements which enhance the natural environment and offer high quality affordable housing and locally accessible work in beautiful, healthy and sociable communities.”* If proposals do not meet these standards then they cannot properly be supported as meeting the aspirations for development.
- 3.16 Standalone settlements must have a critical mass of new homes to ensure that all the facilities necessary can be provided within the new community.
- 3.17 This would include education facilities, including a secondary school, health, retail facilities and other ‘town centre’ type uses such as restaurants and banks, indoor and outdoor recreation facilities, community buildings and facilities such as halls and doctor’s surgeries and significant employment

opportunities. The design of a new community is intended to prioritise walking and cycling journeys within the community, and public transport options for journeys further afield, (although it is noted of course that some people will still use their cars to travel to work in other areas or high order shopping areas etc.). The new community buildings must meet high standards of design, enhance and inhabit the local landscape and environment and deliver an inclusive community.

- 3.18 The approval of the Local Plan has its own statutory process. Each of the Local Planning Authorities will be considering the Pre-Submission Draft of the Local Plan in the New Year 2017.
- 3.19 As noted below it is proposed that the Councils will be supporting the LDV to act as a developer in the schemes through the structures set out in this report. Importantly the Councils will always have a critical role in controlling development and setting the standards which will be applicable through the statutory plan and development management processes for the three Local planning Authorities and the County Council through its statutory planning and highways powers.
- 3.20 It is intended that any garden community taken forward under the Local Plan will be a partnership between the four local authorities, and the private sector, with the public sector taking a key role. The public sector role is intended to provide confidence that the communities will be delivered in accordance with the Local Plan requirements; that infrastructure and social and community facilities that are needed to support the new development will be there from the very start of the community; and that housing and employment can be released more quickly to ensure that there are homes and jobs available for people when they need them.

### **Delivery Models**

- 3.21 In order to give the Councils as planning authorities and the public confidence that the communities will be delivered as intended it is proposed that the public sector will take the primary responsibility – setting up and funding a local development vehicle that will enter into agreements with landowners and secure the necessary infrastructure.
- 3.22 It is accepted that delivery in this way and at this scale is untested since the delivery of the New Towns. However, the Councils have taken advice which has confirmed that the approach is feasible, viable and lawful.
- 3.23 The Councils have considered a wide range of alternative delivery mechanisms and structures.
- 3.24 The principal alternatives would be to allow for the development of the settlements by the private sector or as part of a public/private joint venture. Neither alternative approach can offer the same level of confidence that over a development programme of 30 years that the garden community objectives will be met throughout different economic cycles.
- 3.25 The proposed approach offers sufficient certainty about ambition and delivery to justify the identification of the broad locations for, and size of, the proposed

garden communities. On the basis of the present evidence the other approaches cannot offer a similar level of confidence and are therefore not being pursued. .

- 3.26 The projects will take in the order of 30 years to deliver. The infrastructure which supports the development of the whole project will necessarily have a long payback period. The public sector is well placed to act as a patient investor taking a long term approach to payback enabling higher levels of investment at early stages.

### **Control of Land**

- 3.27 The significant majority of the land within the project areas is not currently in the control of the Councils. The Councils have jointly worked to build working relationships with the relevant landowners and promoters of the sites with a view to securing a controlling interest in the land.
- 3.28 The land deal will be entered into between the relevant landowners / developers and the LDV with the view that the LDV will then have the right to control the delivery of the scheme ensuring that the delivery is undertaken on Garden Community principles.
- 3.29 The commercial negotiations for the land deals are currently ongoing; although reasoned assumptions about the outcomes of these negotiations in respect of the base value of land have been included within the modelling.
- 3.30 Although the LDV will only be in a position to deliver the North Essex Garden Communities project if it makes a suitable deal in relation to the land, there is no obligation on the LDV (or the Councils) to accept a deal on any terms. If it becomes unviable for the proposed development to proceed then the LDV has the ability to decline to take the offered deal. Should a commercially realistic deal which meets the Garden Community principles not be achieved then this will create a risk for the landowner in showing that the site can be viably delivered under the Local Plan which may result in it not being included in the final adopted plan.

### **Conflicts of Interest**

- 3.31 It has been raised by some responders to the local plan consultations that they consider there is a potential conflict between the Council's role as planning authority and its role with respect to the LDV. Given that the councils will be playing a significant role in the delivery of garden communities within their area it has been suggested that this could prejudice proper decision making.
- 3.32 This position has been carefully considered and external legal advice has been obtained. Decision making procedures and arrangements can be put in place that prevent any conflict arising that would justify a successful challenge to decisions. It will, however, be equally important to manage the perception of such conflicts.
- 3.33 Clearly care will need to be taken to ensure that the roles, and decision making processes, are kept separate. As reports for decision are being prepared this will always need to be monitored to ensure clarity of approach.

## Proposed Governance Structure

- 3.34 The Garden Communities Joint Shadow Delivery Board endorsed the proposed arrangements for the structure of Delivery Vehicles for the Garden Communities on which the Term Sheets appended to this report have been based. The corporate structure consists of an overarching body – North Essex Garden Communities Ltd – with a separate Local Delivery Vehicle (“LDV”) for each of the Garden Community areas proposed. A diagram showing the interrelationship between the four local authorities and the new companies is attached as Appendix 1 to this report.
- 3.35 The LDVs will have a high level of autonomy to deliver the development and ensure that a commercially appropriate approach is taken to delivery within the context of the proposal and the Garden Community Principles. The key control mechanism outside of the planning process will be the approval by the Councils / NEGC of the business plans and budgets.
- 3.36 The key elements of the companies’ constitutions (governance structures) have been drafted as ‘Term Sheets’ (Heads of Terms) which are attached as Appendices to this report for information. The companies have now been created but are not yet owned by local authorities pending the approval of this report. A summary of the key elements is set out in the following table

North Essex Garden Communities Limited (NEGC):

Draft Term Sheet and Shareholder Agreement are attached as appendix 2 and 3 respectively.

- NEGC will hold the main shares (called ‘A shares’ in the LDV companies (see below), which oversee and hold to account the LDVs in order to develop each of the locations as garden communities, and co-ordinate funding of the LDV’s.
- The Shareholders of NEGC will be Essex County Council (Essex), Braintree District Council (Braintree), Colchester Borough Council (Colchester) and Tendring District Council (Tendring) (together referred to as “the Councils”) with each hold a 25% shareholding in NEGC.
- Each of the Councils will have the right to appoint or remove a director (a Nominated Director) who will be a Cabinet Member to the NEGC Board. Up to a further 3 Independent Directors can also be appointed to the Board by the NEGC.
- Board Quorum: at least 3 Nominated Directors need to be present. If not, the meeting will be adjourned, and at the adjourned meeting at least 2 Nominated Directors need to be present.
- On any board decision a majority in favour is required, including all Nominated Directors. However, where a decision relates to one LDV only, the Nominated Director of a Council that does not hold B Shares in that LDV (see below) shall not be entitled to vote.
- Business Plan: the directors will from time to time produce a business plan (the Long -term Business Plan for the life of the project conform to the requirements of the Master Plan (the adopted planning policy document for each LDV). This will be refreshed every 5 years and will set out detailed objectives for the following 5 years. The Board will also from time to time produce a budget. Both the Long -term Business Plan and the budget (and any changes) require the approval of each of the relevant Councils through the Cabinet or Cabinet

Member.

- Reserved Matters: there are certain matters that require the consent of all of the Councils through the Cabinet process – these include any changes to the structure of the group, and any significant deviation from the long-term Business Plan or budget.
- Shares can only be transferred with the prior written consent of each of the Councils through the Cabinet or Cabinet Member.
- The Council will have a limited liability to the value of the share capital purchased. Unless additional agreements are entered into there are no liabilities accruing to the Council from holding these shares.

#### Local Delivery Vehicles:

The Term Sheet for each LDV is broadly similar and supported by Shareholder Agreements.

Names: 3 LDVs have been incorporated with working names of:

- a. Tendring Colchester Borders Limited (relevant Term Sheet is attached as appendix 4 and Shareholder Agreement as appendix 5)
  - b. Colchester Braintree Borders Limited (relevant Term Sheet is attached as appendix 6 and Shareholder Agreement as appendix 7)
  - c. West of Braintree Limited (relevant Term Sheet is attached as appendix 8 and Shareholder Agreement as appendix 9)
- The LDV is the operational arm of the structure whose Purpose is to secure the development of the relevant area of land as a garden community. The LDV will be responsible for leading on the preparation of the masterplan and funding the provision of the infrastructure. The LDV will either seek planning permissions for sites or control the sale and planning application process through site specific development agreements.
  - The LDV will recover its infrastructure costs at an appropriate time in accordance with the relevant land agreement with the landowner.
  - Shareholders: NEGC will hold 100 'A' Shares in each LDV. The A Shares will have voting rights on most issues but not rights to a dividend. Each Council investing in the LDV will also hold 'B' Shares (see below). The 'B' Shares will be non-voting (except in exceptional circumstances, principally a breach of any funding agreement) but will carry rights to a dividend. There are no formal requirements for the Councils to hold 'B' Shares or for any to be issued in order for the LDV to deliver the projects.
  - Funding arrangements are to be agreed for each LDV. The expectation is that the LDV will fund the provision of infrastructure at the time when it is needed by the community rather than waiting for development to be completed prior to infrastructure being delivered. In order to do this the LDV will need access to finance. This finance will be repaid from land receipts as the scheme develops. Subject to approvals, the LDVs will be able to obtain finance from any source, but in practice the cheapest way of borrowing is likely to be from local authorities, if they are prepared to lend money to the LDV.
  - There are two main ways in which the councils can provide funding to the LDV:
    - (i) Debt (by way of a funding agreement) which is repayable at a fixed or variable interest rate at a time set out in the agreement.

(ii) Equity funding whereby funding is provided in exchange for B Shares which attract a dividend, with the shares being repaid when the company no longer has the requirement for the funding and is able to do so. Investment via equity will have more risk but potentially more reward, depending on the financial performance of the LDV

- Each of the Councils involved in the LDV have the right to appoint or remove a director (Council Director) who will be an officer of the Council appointed by the Chief Executive. There may also be appointed [2-4] Independent Directors. Landowners/Option-holders can also appoint the same number of directors as the combined Council Directors. The Council Directors will be in a minority on the board.
- An independent chair will be appointed (one of the Independent Directors).
- Board Quorum: at least 3 directors need to be present (one of each category). If not, the meeting will be adjourned, and at the adjourned meeting at least 1 Council Director needs to be present.
- On any board decision a majority in favour is required.
- Business Plan: the directors will from time to time produce a business plan (the Short-term Business Plan). This will conform to the requirements of the Long-term Business Plan and the Master Plan. The board will also produce a budget. These key documents require NEGC approval.
- Reserved Matters: there are certain matters that require the consent of either all of the Councils (acting through the Cabinet or Cabinet Member) or NEGC – these include any changes to the structure of the LDV, and any significant deviation from the Short-term Business Plan or budget.
- Share Transfers: shares can only be transferred with the prior written consent of each of the relevant Councils.
- The Council will have a limited liability to the value of the share capital purchased. Unless additional agreements are entered into there are no liabilities accruing to the Council from the formation of the LDV.
- LDV will take a leading role in the preparation of the Master Plan.

### **Risk Assessment**

- 3.37 The North Essex Garden Communities project team has developed a strategic risk assessment profile. This is attached as Appendix 10.
- 3.38 At the present time there are a significant number of risks, many of which are inherently uncertain given the timescales over which the project will develop. Officers have considered the risks carefully and recommend that these are broadly reflective of the risk profile associated with any project of this scale.
- 3.39 The project has a number of break points particularly the development of the detailed business case. Should this demonstrate a scenario which provides an unacceptable commercial viability, or other significant uncontrolled risk, then it is open to the partner Councils to terminate the project at that juncture.
- 3.40 The two largest risks relate to Land Control and Local Plan. Both of these have the potential to halt progress on a particular scheme. Should landowner agreements not be reached by the time the Pre Submission Draft is agreed by the Council, then this will represent a key change to the relationship between the landowners and the Councils / LDV; the underlying assumptions

in the agreements would then need to be reconsidered and could not be implemented in the form indicated in this report. Equally if a scheme is not included in the Pre Submission Draft of the Local Plan on the basis of appropriate planning Policy determination, then it would not be possible for the LDV to pursue any development and accordingly it would be wound up.

### Implementation

- 3.41 The project is currently seeking the support of the four relevant Councils in order to form the North Essex Garden Communities Limited, and it will then set up the constituent LDV's. It is anticipated that the LDV's will enter into legal agreements with landowners / developers before the end of 2016.
- 3.42 The three local planning authorities are publishing the pre-submission versions of the Local Plans early 2017. Should any of the proposed project sites not receive support in the local planning process this will be a critical point in the project; effectively closing it and the relevant LDV will be wound up.
- 3.43 For clarity the outline timetable for the commencement of the project is set out in the following table:

25 November 2016	Tendring District Council -Cabinet
29 November 2016	Braintree District Council - Cabinet
29 November 2016	Tendring District Council -Council
30 November 2016	Colchester Borough Council - Cabinet
8 December 2016	Colchester Borough Council - Council
12 December 2016	Braintree District Council - Council
13 December 2016	Essex County Council - Cabinet
14 December 2016	Councils sign Shareholder agreements and subscribe to NEGC
Prior to determination of the Local Plan Pre Submission draft.	NEGC Board Meet and agrees the subscription of LDVs including appointment of Directors
Prior to determination of the Local Plan Pre Submission draft.	Each of the LDVs Boards meet and agree the Landowner agreement.
Prior to determination of the Local Plan Pre Submission draft.	Landowner Agreement completed.
January 2017	Local Plan Pre-Submission Draft Published for District Planning Committee Consideration
January / February 2017	District Council meetings to approve Local Plan Pre-Submission Draft
March 2017	Each LDV either wound up on basis of non-allocation or continues the development of the schemes.

## 4 Policy context and Outcomes Framework

- 4.1 This strategically important venture will deliver up to 35,000 homes over a 30 year period: .enabling a step forward in spatial planning for the county, with well-designed communities and homes with nearby jobs The ambition for these Garden Communities is to create exceptional and accessible green spaces, timely investment in infrastructure including integrated and sustainable transport, and to drive public health and wellbeing through good design and strong communities.

- 4.2 This decision will have a direct impact on ECC's Corporate Outcomes Framework 2014-2018 in relation to ECC meeting its commitments by providing key services to support our internal and external customers. The framework will also seek to meet the aims in a *Vision for Essex 2013-17* to spend taxpayers' money wisely, working in partnership, focusing on delivery rather than process and empowering communities to help themselves. It will also provide a way of enabling us to develop and maintain the infrastructure to allow residents to travel and businesses to grow.

## **5 Financial Implications**

- 5.1 The project has developed a detailed financial model of the proposed schemes. This enables early consideration of the viability of the projects and an understanding of the likely scope of funding required.
- 5.2 The model was originally created by the Advisory Team for Large Applications in the Homes & Communities Agency and provides a basis to assess the long term financial performance of the emerging projects. Given the extent of input required to maintain and manage the models, the Councils have secured ongoing direct support from Hyas Associates to provide direct capacity support to the Finance Working Group and continue to manage and evolve the modelling process. This resource is embedded within the project team and working directly with key finance managers and analysts from each of the Councils.
- 5.3 Separate models have been created for each of the proposed Garden Communities. Over recent months these have been reviewed, updated and evolved in light of the outcomes of the 'Garden Communities Concept Feasibility Study' commissioned by the Councils to assess the feasibility and deliverability of the potential sites. This work was undertaken by a consultant team of AECOM (international consultancy in design, planning & engineering) and Cushman & Wakefield (property advisors) and has provided further technical evidence to inform decision making on the Local Plans. For each site, the work has involved assessing the feasibility and deliverability of proposals, and costing all infrastructure requirements including transport, utilities, education, community, open space, etc.
- 5.4 Local property markets have also been reviewed, including the market context for housing and employment alongside a range of broader scheme viability considerations and assumptions. This information has been reviewed and transferred into the financial modelling process and provides the basis to the assessments undertaken to date.
- 5.5 The Councils recently appointed PriceWaterhouse Coopers (PwC) to provide additional corporate finance support to the project. Further work will be undertaken to develop the model. This will notably include looking at the tax and minimum revenue provision (MRP) implications. Their work to date has included an integrity check of the financial modelling process undertaken to date to ensure it is appropriate and fit for purpose, a commercial review of the delivery structure and consideration of optimum approaches to project financing, including key sources of funding and capital/revenue issues.
- 5.6 In addition, further consultancy advice has been commissioned from Cushman & Wakefield to consider in more detail the nature of local property

markets and behaviour of landowners and developers, to further inform the approach to landowner negotiations.

- 5.7 The financial model incorporates assumptions on the cost and phasing of all necessary infrastructure, not only to ensure that new communities are supported by necessary infrastructure, but also to ensure that they can deliver on garden city principles. The model has focussed on the timely delivery of infrastructure to support development. These assumptions will change as the project proceeds. The financial model is based on information known at this point in time.
- 5.8 The Concept Feasibility work has helped to further refine the nature of the schemes being considered, but it will be for LDVs to take on ultimate responsibility for detailed site specific master planning. It will then be possible to better understand detailed scheme cost and value implications and as such costs and values are working assumptions at this stage in the absence of more work and technical testing. All assumptions will be subject to continual refinement.
- 5.9 It should be noted that the approach taken is one of a 'master developer' (each LDV) undertaking the infrastructure delivery, disposing of serviced plots to house builders/commercial developers who would be responsible for physical building construction costs and property sales. Thus the gross costs and values in relation to all built development activity will be far higher than indicated in the modelling overall, generating broader employment and economic impacts across the construction and other local service industries. The approach does not preclude the opportunity for public sector stakeholders to directly deliver development should they wish, however it does enable the Councils and the LDVs to manage their risks.
- 5.10 Current assumptions include some contributions towards strategic infrastructure upgrades (such as towards the creation of new bus/tram rapid transit systems and delivery of an upgraded A120). Such items will however serve broader needs and objectives beyond individual sites, and thus will require additional funding (such as through Central Government, Department for Transport) to be fully realised. Ongoing lobbying for Government grant support in the delivery of key infrastructure will be an ongoing and key part of subsequent processes, especially to present the scale of the opportunity and commitment being shown by the Councils to deliver through innovative means.
- 5.11 The financial model has been based on present day costs and values without inflation in the cost of borrowing, construction, wages, land value or house prices. It must therefore be anticipated that these will be subject to change. Figures presented in this report illustrate a base case position, and a number of sensitivity tests have also been undertaken to consider changes to the most significant variables including alternative infrastructure costs, house values, and the impact of cost inflation and house price changes over time.
- 5.12 Inflation will be a key factor in the changes to the actual position, as against the working assumptions of the model. Historically it has been the case that house prices have increased at a greater rate than costs. This would increase overall returns to the proposed schemes as against the modelled sums. It is not possible to know the future position on inflation, however, based on historic evidence, it is anticipated that this will be favourable to the net returns.

- 5.13 The financial models are reliant upon a broad range of input assumptions and calculations. They are highly sensitive to changes and will always only present a picture based upon the best available information and evidence. In order to better understand the potential range of positions, a number of sensitivity tests have been undertaken to consider changes to the most significant variables including house prices, inflation and infrastructure costs. Despite these caveats, Essex County Council is confident that the proposed garden community developments are viable and deliverable.
- 5.14 Any provision of funding will need to be justified by a satisfactory business case setting out the full terms of the arrangement. The proposals will need to accord with the approved business plans and masterplans for the project and reflect the most appropriate funding options available at the time any funding is required by the LDV. Details of individual proposals are outlined in Appendix 12, based on available information to date.

### **Short term requirements & revenue budget implications**

- 5.15 An initial project budget was agreed in December 2015 and updates were brought to the Shadow Delivery Board in May and July 2016. This primarily related to the original grant funding secured from the DCLG (£640,000) as well as an additional contribution from Essex County Council (£15,000) in 2015/16 alongside forecast expenditure across a series of key workstreams.
- 5.16 A positive working relationship is being maintained with DCLG with a view to further support being provided as the project advances. Following further discussions with DCLG officials it is anticipated that a further £648,000 will be transferred in the current financial year. It is also anticipated that further funding would be available from DCLG for the remaining years of the Spending Review period, but any such amounts would be subject to Treasury approvals on a year by year basis. The Councils have also committed to contribute £250,000 (each) to ensure the work can continue, and have been allocating significant officer time and resource to the project with particular pressures on planning, legal and financial staff together with senior management.
- 5.17 In total, a project budget of circa £2.3m has been committed, of which by the end of 2016/17 circa £1m will have been spent and/or allocated resulting in a residual of circa £1.3m to be carried forward into 2017/18. To date activity has focussed across the following key workstreams:
- **Project Resources**
  - **Legal Support**
  - **Corporate Financial Support**
  - **Planning and Infrastructure**
- 5.18 Moving forward, the approach is to establish a dedicated delivery structure through the creation of NEGC Ltd and individual site focussed Local Delivery Vehicles (LDVs). These bodies will be responsible for bringing the projects forward through further design and planning stages, and into implementation through the direct delivery of infrastructure alongside the disposal of serviced plots to developers.
- 5.19 North Essex Garden Communities Limited (NEGC Ltd) and each of the LDVs will require access to sufficient budget to create sufficient capacity (staff and support) as well as initiate more detailed design and planning consultancy

activities over the first few years of operations. These will be required well in advance of potential land sales and the generation of income.

- 5.20 The extent of work required during 2017/18 will involve further evolution of the approach, community engagement, evidence gathering and LDV business planning. The proposed model of resourcing the approach is based upon the creation of a dedicated technical 'Joint Delivery Team' with senior leadership and experience in project management, development and quality place-making to service NEGC Ltd and the LDVs from the outset prior to preparation of the business plans which will set out the requirements for the next phases of work. It is proposed that the Joint delivery team will continue to be hosted by Colchester Borough Council in the interim whilst the local plans are considered at the Preferred Options Stage, with a view to preparing detailed transition plans and structures which will be implemented no later than the adoption of the Local Plans by Councils. This transition will be subject to further consideration by the Councils.
- 5.21 Initial estimates on resourcing requirements indicate costs of circa £850,000 in 2017/18 in order to fund the team and associated consultancy budgets. This is well within the anticipated carry over budget (£1.3m), and excludes any future assumptions on further grant support from DCLG. It is therefore not anticipated that there will be a requirement for further financial contributions by the Councils in 2017/18.
- 5.22 From 2018/19 onwards the projects will enter a new phase and require more significant funding to start to prepare proposals for planning and all necessary consents. The extent to which such costs can be appropriately covered will be explored as part of the LDVs' business planning process including consideration on how to address the revenue requirements in light of the forecast time lag between upfront expenditure and income from land sales. The overall approach is to ensure that all costs are included in the overall financial model, and paid back during the course of the project.
- 5.23 Figure 2 below illustrates the anticipated overall revenue cost implications for the initial five year period from 2017/18 to 2021/22 based upon the establishment of a Joint Delivery Team and initiation of site specific masterplanning by each LDV.

**Fig 2: Estimated Programme Revenue Budget Implications**

	17/18	18/19	19/20	20/21	21/22	Total
<b>Revenue</b>						
Joint Delivery Team	0.8	1.0	1.1	1.1	1.1	5.1
Tending Colchester Borders LDV		0.6	0.6	0.6	1.5	3.3
West of Braintree LDV			0.8	0.8	0.8	2.4
Colchester Braintree Borders LDV			1	1	1	3
Sub Total: Revenue	0.8	1.6	3.5	3.5	4.4	13.8
Expenditure						
Budget carry over from previous	(1.3)	(0.5)				

<b>Net Revenue Expenditure</b>	<b>(0.5)</b>	<b>1.1</b>	<b>3.5</b>	<b>3.5</b>	<b>4.4</b>	<b>12</b>
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### Funding principles for the LDVs:

- 5.24 The four Councils have been working on the basis of equal partnership in the delivery of the projects; it is proposed that this approach is maintained at this stage.
- 5.25 The decision in principle to fund each of the LDVs does not create a formal legally binding agreement with the LDVs that the Council will fund them. This will be a separate decision for Cabinets and Councils at a later stage once there has been further development of the business case and the detailed funding requirements. The decision before Members is to commit in principle to being a proactive and patient funding provider to the schemes within its area, providing that the schemes meet appropriate business case and viability thresholds.
- 5.26 In light of the information set out in Sections 5.2 to 5.4 of this report, and the relative cashflow and peak debt funding needs of each of the proposals, Figure 3 sets out one potential scenario for the order of magnitude which proportionate funding may require from each of the Councils. This is based upon equal apportionment of requirements based upon the geographic location of each of the proposed Garden Community, and the relevant Councils for them. The scenario is based on the Councils being the only funder, without recourse to any third party funding. It is probably over the period of the development, and as schemes mature, that alternate funding sources will be sourced.

**Fig 3 Illustrative proportionate share of peak debt**

	<b>Tendring Colchester Borders Limited</b>	<b>Colchester Braintree Borders Limited</b>	<b>West of Braintree Limited</b>	<b>Total</b>
<b>Braintree District Council</b>		1/3 of total = £70m	1/2 of total =£75m	£145m
<b>Colchester Borough Council</b>	1/3 of total =£40m	1/3 of total =£70m		£110m
<b>Essex County Council</b>	1/3 of total =£40m	1/3 of total =£70m	1/2 of total =£75m	£185m
<b>Tendring District Council</b>	1/3 of total =£40m			£40m
<b>Total</b>	£120m	£210m	£150m	£480m

Note: Where a Council is involved in more than one scheme, the actual peak debt may be different across the combined schemes due to the combination of separate cashflows.

- 5.27 Each LDV is a separate legal entity with its own financial requirements and delivery aims and objectives. The principle adopted for the illustration above is that each Council will make available funding in equal amounts for the schemes in which it is a partner.
- 5.28 At this stage the Councils are asked to provide an 'in principle' agreement to providing funding. The LDV will in determining its own business plans develop a detailed set of funding requirements; including the scale of funding required and the timescales which will be relevant to each block of funding. It is unlikely that it will seek to borrow the whole amount required in a single funding allocation. The information from specialists indicates that it will be advantageous to split borrowing requirements into phases and deal with these as required. It must be noted that as per the cashflows presented for each project, funding requirements will be phased over the life time of the projects, and reflect the timing and scale of necessary costs, set against the phasing of land sales driving income.
- 5.29 In addition, the Councils will also need to address short term revenue funding implications of the initial planning and design work related to both the operations of the Joint Delivery Team and individual LDVs, as set out at Section 5.10 of this document. Work is ongoing to further consider the optimum approach to addressing such costs with support from Price Waterhouse Coopers (PwC) and financial officers across each of the Councils concerned. This will form a key part of the evolution of more detailed business plans during 2017/18 so as to create suitable funding arrangements and minimise impacts on Council revenue budgets.
- 5.30 Whilst it will be open for the Council to seek a range of funding sources depending on the detailed financial position at the time funding is requested it is likely that if needed the majority of the funding will be in the form of borrowing by the Council. Should the Council borrow funds then this will be subject to the prudential borrowing code requirements and subject to a detailed decision of the Council at the relevant time. The Council would expect to borrow at rates which are preferential to those obtainable by the LDV, given its status as a local government body, but in order to comply with State Aid rules the lending to the LDV would be on commercial terms; therefore, the Council would expect to receive a margin between the rate at which it borrows and that at which it is repaid. This margin would represent a gain to the Council; in part offsetting the risk that it is taking in providing funding. When asked to make any decision, the Council will be mindful of its exposure to capital gearing which is why the option of attracting external and more expensive funding must be retained.
- 5.31 Detailed considerations about the accounting treatment for the loans and the capitalisation of costs are being developed and would form the basis of subsequent detailed decision making.
- 5.32 In terms of affordability there are expected to be opportunities to control costs through changes to the assumptions in the funding model **in order** to react to changing circumstances as the project develops and any decisions made by Councils to provide funding to the LDVs will be made with regard to the Prudential Code as explained in the Legal Powers Section of this report.
- 5.33 It must also be noted that the LDVs will have the right to seek to secure funding from other sources as against the Councils. This could be from

independent financial institutions, the developers or landowners within a scheme or other funding sources. Should the LDVs do this it would reduce the amount sought from the Councils, reducing the call on the Councils' finances. This would however reduce the scope for the Councils to obtain a financial return from the project. Any determination of funding will be determined by prevailing market conditions and the needs of the LDVs for any given element.

## **6 Legal Implications**

- 6.1 The general power of competence ('the Power') provided for by section 1 of the Localism Act 2011 is relied upon as the authority for the County Council to establish and subscribe to North Essex Garden Communities Limited and to subscribe for B shares in relevant Local Delivery Vehicles.
- 6.2 In exercising the General Power of Competence local authorities must do so in a way which does not compromise any pre-existing statutory limitations, and the actions identified in this report do not compromise those restrictions. Any activity which local authorities wish to take for a commercial purpose must be undertaken via a company, given the need for the LDVs to act in a commercially aware way and to develop the projects commercially (although within the requirements of the Garden Community principles the use of a company structure enables reliance on the General Power of Competence in this respect).
- 6.3 A local authority may borrow money or invest (a) for any purpose relevant to its functions under any enactment, or (b) for the purposes of prudent management of its financial affairs. All money borrowed by a local authority, together with any interest on the money borrowed, shall be charged indifferently on all the revenues of the authority. Local authorities must determine and keep under review how much money it can afford to borrow which is set by each Council as an 'Authorised Limit'. This borrowing limit cannot be exceeded without the approval of full Council. Thus the Council will need to keep these indicators under review during the life of the projects.
- 6.4 In setting its borrowing limit, the Council must have regard to the Prudential Code for Capital Finance in Local Authorities (the Prudential Code) published by the Chartered Institute of Public Finance and Accountancy. The Prudential Code has been developed as a professional code of practice to support local authorities in taking decisions on capital investment which can be affordable, prudent, and sustainable. These requirements will need to be demonstrated through the business case developed for each of the Garden Communities.

## **7 Equality Impact Assessment**

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires the local authority to have regard to the need to:
  - a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
  - b) Advance equality of opportunity between people who share a protected characteristic and those who do not.

- c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (a) or (b) although it is relevant for (c).
- 7.3 The proposals are to create an inclusive community which meets the needs of all residents regardless of whether or not they have a protected characteristic. The intention is to provide housing and facilities for all. By participating in the development in the way proposed the local authorities will have a greater influence over the content and layout than a development undertaken in a traditional way. The differing needs of people with different protected characteristics will need to be considered during the design and planning of the development and kept under review as the scheme progresses.

## 8 List of Appendices

1	Diagram showing Corporate Structure
2	Draft Term Sheet North Essex Garden Communities Limited
3	Shareholders Agreement North Essex Garden Communities Limited
4	Draft Term Sheet Tendring Colchester Borders Limited
5	Shareholders Agreement Tendring Colchester Borders Limited
6	Draft Term Sheet Colchester Braintree Borders Limited
7	Shareholders Agreement Colchester Braintree Borders Limited
8	Draft Term Sheet West of Braintree Limited
9	Shareholders Agreement West of Braintree Limited
10	Risk Assessments
11	Equality Impact Assessment
12	Financial details of individual proposals

## 9. List of Background Papers

Shadow Board reports and minutes other than those which include confidential or exempt information.