

<b>Key Decision Required:</b>	<b>Yes</b>	<b>In the Forward Plan:</b>	<b>Yes</b>
-------------------------------	------------	-----------------------------	------------

## CABINET

25 NOVEMBER 2016

### REPORT OF LEADER OF THE COUNCIL

#### **A.2 THE ESTABLISHMENT OF GARDEN COMMUNITIES LOCAL DELIVERY VEHICLES AND FUNDING REQUIREMENTS**

(Report prepared by Martyn Knappett, Lisa Hastings and Richard Barrett)

#### **PART 1 – KEY INFORMATION**

##### **PURPOSE OF THE REPORT**

To provide Members with a comprehensive overview of the proposals which have been developed over the past twelve months jointly with Colchester Borough Council, Braintree District Council and Essex County Council for Garden Communities in North Essex including one on the Tendring / Colchester border close to the University and, in particular to provide Members with information and recommendations to enable them to:

- Establish governance arrangements for the project;
- Agree in principle to be a long term funder for the project, in partnership with the other Councils, subject to the terms and requirements set out in this report.

##### **NOTE TO MEMBERS**

*The proposals set out in this report are being submitted to the Cabinets of all four of the Councils involved in the North Essex Garden Communities project in the coming weeks. The presentation of the reports have been tailored to reflect the report formats of the different Councils and focus on the proposals as they affect each of the Councils but the core of the report is identical and the recommendations being made to each Council seek the same commitments from each of them.*

*Similar recommendations to those proposed to Full Council below will also be recommended to go to the Full Councils of Colchester and Braintree.*

##### **EXECUTIVE SUMMARY**

Tendring District Council, Braintree District Council, Colchester Borough Council and Essex County Council are collaborating to identify an agreed strategic approach to the allocation and distribution of large scale housing led, mixed use development, including employment opportunities and infrastructure provision, in the form of Garden Communities.

The Councils have collaborated closely on the preparation of their Local Plans, with the draft Part 1 – which sets out the approach to Garden Communities across North Essex from a Planning perspective – being identical in all three Plans.

This report sets out proposals whereby the Councils can take a much more direct approach to ensuring that the proposed Garden Communities are delivered and that they meet the high standards expected of them – in terms of housing quality and design, open space provision, roads, schools, healthcare facilities and sustainable transport systems.

The key elements in the approach are

- A Company – North Essex Garden Communities Ltd - owned equally by the four Councils to oversee the project across North Essex and to drive the delivery of the three planned communities.
- Legally binding deals with local landowners to secure a share in the land value which will arise from the development in return for the Local Delivery Vehicles providing early infrastructure for the developments (with the infrastructure costs being paid for in due course from the land sales)
- A Local Delivery Vehicle for each of the planned Communities with Council, landowner and independent Membership and with the clear purpose of delivering a Garden Community. (Tendring Colchester Borders Ltd)
- Clear Masterplans for each Community to be developed.

The issues associated with a project of this scale and complexity are many and varied and the topics covered in the report are as follows:

## **PART 1**

Purpose  
Executive Summary  
Recommendations  
Delivering Priorities

## **PART 2 – SUPPORTING INFORMATION**

Section 1 Background  
Section 2 Vision and Objectives  
Section 3 Planning Background  
Section 4 Delivery Models  
Section 5 Control of Land  
Section 6 Conflicts of Interest  
Section 7 Proposed Governance Structure

## **PART 3 - IMPLICATIONS**

Section 8 Summary of the Financial Model  
Section 9 Short term requirements and revenue budget implications  
**Section 10 Proposals for Tendring Colchester Borders Ltd**  
Section 11 Funding principles for the LDVs  
Section 12 Legal Powers  
Section 13 Risk Assessment  
Section 14 Equalities Impact Assessment  
Section 15 Implementation

## **RECOMMENDATION(S)**

**Recommendations to Cabinet:**

1. **Note the external legal advice received that these decisions cannot and do not prejudice the outcome of any future decisions that the Council may make about the Local Plan to be made by Council in relation to the allocation of any Garden Community.**

- 2. 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

3. In line with Executive Decision No. 2636 on 22<sup>nd</sup> January 2016 (minute 130) Cabinet agrees to set up and subscribe to North Essex Garden Communities Ltd in accordance with the terms set out in the report and Appendix 2.
4. To approve the North Essex Garden Communities Ltd shareholder agreement between the Local Authorities in accordance with the terms set out in the report and Appendix 3.
5. To appoint Councillor Neil Stock, in his capacity as the Leader of the Council, to represent the Council as a Director on the Board of North Essex Garden Communities Limited.

#### Tendring Colchester Borders Limited

6. In line with Executive Decision No. 2636 on 22<sup>nd</sup> January 2016 (minute 130), Cabinet endorses 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.
7. To 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.
8. To appoint Martyn Knappett to represent the Council as a Director on the Board of Tendring Colchester Borders Limited, and gives Delegated Authority to the Chief Executive of the Council to terminate the appointment and to undertake any future appointments.
9. 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, which 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. Such commitment to be subject to Council approval.

#### **That Cabinet Recommends to Council that it:**

10. Notes the decision of the Cabinet to set up and subscribe to the North Essex Garden Communities Limited.
11. Notes the Cabinets endorsement of the formation of the Tendring Colchester Borders Limited
12. Endorses the in principle decision of Cabinet 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, which 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.
13. Notes the external legal advice received that these decisions cannot and do not prejudice the outcome of any future decisions that the Council may make about the Local plan to be made by Council in relation to the allocation of any Garden settlement.

## **DELIVERING PRIORITIES**

The development of a Garden Community on the Tendring / Colchester border will deliver Community Leadership in a multitude of ways. It will deliver against all of the key elements of the Corporate Plan in significant ways over a sustained period of time:

The vision set out in the Corporate Plan is “To put community leadership at the heart of everything we do through delivery of high quality, affordable services and working positively with others”.

In particular the proposals will deliver the following specific elements in the Plan at significant scale:

### **Health and Housing**

- A quality living environment
- Local Regeneration
- Improved Community Health
- The opportunity for Council House building
- Healthier lifestyles and wellbeing

### **Employment and Enjoyment**

- Support business growth
- Enable better job prospects
- Facilitate improved qualification and skills
- First rate Leisure facilities

## **PART 2 – SUPPORTING INFORMATION**

### **BACKGROUND AND CONTEXT**

#### **1. Background:**

- 1.1. 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. The third site is on land to the West of Braintree on the Uttlesford District Council border.
- 1.2. 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.
- 1.3. 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 over the summer and will lead to recommendations to the respective Councils in January / February 2017.

- 1.4. At the meeting on 22<sup>nd</sup> January 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.
- 1.5. 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.
- 1.6. 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.
- 1.7. 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. 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).
- 1.8. The decisions in this report do not commit any council to allocate any sites within the Local Plan. A separate decision making process will be undertaken by the three Local Planning Authorities in accordance with the statutory requirements and material considerations at the relevant time.

## **2. Vision & Objectives**

- 2.1. 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.
- 2.2. The vision for North Essex at a strategic level has been set out by the Councils 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.

- 2.3. 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 forward.

Figure 1: The North Essex Strategic Vision

*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.*

- 2.4. Alongside the vision 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.

- **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.
- **Ensuring High Quality Outcomes** – to secure the highest standards of urban and built design which creates attractive places where people want to spend time.
- **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.
- **Long Term Stewardship** – appropriate arrangements to secure the management and long term delivery of community infrastructure and facilities.

2.5. 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.

2.6. 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.

### 3. Planning Background:

3.1. As part of the new Local Plan, Members will be aware 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.

3.2. 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.

3.3. Standalone settlements must have a critical mass of new homes to ensure that all the facilities necessary can be provided within the new community. 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.

3.4. 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.

3.5. 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 powers.

3.6. It is intended that any garden community taken forward under the Local Plan will be a partnership between the local authorities, county council, 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 AND GOVERNANCE STRUCTURES**

### **4. Delivery Models:**

4.1. 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.

4.2. 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.

4.3. The Councils have considered a wide range of alternative delivery mechanisms and structures.

4.4. 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.

4.5. 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. .

- 4.6. The projects will take in the order of 30 years to deliver; 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.

## **5. Control of Land:**

- 5.1. 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.
- 5.2. 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 rights to control the delivery of the scheme ensuring that the delivery is undertaken on Garden Community principles.
- 5.3. The commercial negotiations for the land deals is 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.
- 5.4. Although the LDV will only be in a position to deliver the 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 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.

## **6. Conflicts of Interest:**

- 6.1. 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.
- 6.2. 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.
- 6.3. 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.

## **7. Proposed governance structure:**

- 7.1. 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.

7.2. 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.

7.3. 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.
- The LDV to take a leading role in the preparation of the Master Plan.

### **PART 3 – IMPLICATIONS OF THE DECISION**

#### **FINANCIAL MODEL INCLUDING PROPOSALS FOR TENDRING COLCHESTER BORDERS LIMITED AND RISK ASSESSMENT**

##### **8. Summary of the Financial Model:**

- 8.1. 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.
- 8.2. 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.
- 8.3. 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.

- 8.4. 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.
- 8.5. The Councils have also appointed Price Waterhouse Coopers (PWC) to provide additional corporate finance support to the project. Their work 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.
- 8.6. 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.
- 8.7. 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. Particularly in relation to the timely delivery of infrastructure to support development.
- 8.8. 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.
- 8.9. It should be noted that the approach taken is one of a 'master developer' (the LDV/s) 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.
- 8.10. It should also be noted that the 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.

- 8.11. All modelling has been done on present day costs and values without any modelling for 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.
- 8.12. 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. Given the long term nature of the projects and the potential variability in inflation and costs it is not possible to give a detailed accurate assessment; however it is anticipated that the outcome would be favourable on the testing done with likely future rates.
- 8.13. 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 such as:
- **House values:** to assess baseline house prices being either 10% under or over present day values. The latter could illustrate a potential garden community premium based upon the high quality nature of the environment to be created;
  - **Infrastructure costs:** the base case includes a 5% contingency allowance on infrastructure costs. Scenario tests have been run to consider lower infrastructure costs, a zero contingency rate, and a 10% contingency rate (with contingency being used as a proxy for higher or lower costs);
  - **Inflation:** the base case has been created on present day costs and values. Three scenarios have been run. 2% cost and 2% value inflation – this is to represent things changing as per Bank of England target, with no assumption that house values outpace costs; 2% cost and 4% value – as above but to make allowance for potential house prices outpacing cost inflation; and 3.4% cost and 6% value – based upon historic trends over past 30 years (1985-2015- Bank of England inflation data and Halifax house price index data).
- 8.14. 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. Despite these caveats the Councils are confident that the proposed garden community developments are viable and deliverable.

## 9. Short term requirements & revenue budget implications:

- 9.1. 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.
- 9.2. 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 HM 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.

9.3. 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:** dedicated support for project and programme management and a range of focussed inputs to planning, transport, infrastructure, funding and legal topics;
- **Legal Support:** External legal support with respect to the planning process, establishment of LDV/s and evolution of legal agreements with landowners;
- **Corporate Financial Support:** Commissioned work to investigate corporate financing, funding opportunities, and tax implications;
- **Planning and Infrastructure:** Concept feasibility work and subsequent evolution of concept frameworks for each of the sites, infrastructure planning including transport modelling, property market advice, together with wider evidence gathering to support plan examinations;
- **Others:** Other communications and consultation activities, secretariat services to the Shadow Delivery Board, Steering Group and project Working Groups.

9.4. 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.

9.5. 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.

9.6. The extent of work required during the next year 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 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.

9.7. Initial estimates on resourcing requirements indicate costs of circa £850,000 in 2017/18 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.

- 9.8. 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.
- 9.9. Figure 10.1 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.

*Figure 10.1: 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
Tendring 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 Expenditure	0.8	1.6	3.5	3.5	4.4	13.8
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>

## **10. Proposals for Tendring Colchester Borders Limited:**

### *Scheme Overview*

- 10.1. A detailed financial model has been created to assess the costs, income and overall viability of the Tendring Colchester Borders proposal. The modelling has been based upon Option 1 of the AECOM Concept Feasibility work, which delivers circa 6,600 residential units together with employment space, social infrastructure (including 4 new primary schools and 1 new secondary school, health and community facilities), local retail, and generous amounts of open space to accord to Garden City principles. The total site area is circa 300 hectare, located between the A133 to the south, Bromley Road to the north and the A120 to the east.
- 10.2. The Concept Feasibility set out several options in this location, with growth potentially running northwards up to and beyond the railway line and onto to the boundary of Severalls industrial area. For the time being Option 1 provides a baseline scenario for testing but any increase in scheme size will have associated impacts on the scale of costs and values.
- 10.3. The precise details of the development will be subject to ongoing evolution and refinement as proposals are further considered through work that has recently been commissioned to prepare a Concept Framework for the site, and on into subsequent planning policy making and eventual planning applications in due course. All future stages will involve further community and stakeholder



engagement, to ensure proposals deliver on the level of ambition as set out in the current Garden Communities Charter and vision as established in Part 1 of Preferred Option Local Plans. As such both the quantum of development and scale of land is subject to further change; although it must be recognised that some key infrastructure requirements will drive a need for a certain minimum scale to ensure viability.

### *Financial Modelling Headlines*

- 10.4. Financial modelling indicates that the scheme is viable overall, generating a positive residual surplus of £10m over the life of the project after accounting for all strategic infrastructure costs, set against income from land sales. Importantly, this is based upon a base case scenario based upon high level assumptions and present day costs and values. Figure 11.1 sets out the base case financial headlines relating to the scheme:

Figure 11.1: Base Case Financial Headlines

	Tendring Colchester Border
Houses	6,608
Jobs <sup>1</sup>	2,253
Total Scheme Costs <sup>2</sup>	£583m
Total Scheme Income <sup>3</sup>	£593m
Residual <sup>4</sup>	£10m
Residual equivalent per hectare <sup>5</sup>	£283k
Start on Site	2021/22
Years to complete	26
Year cashflow goes positive	2046/47
Peak Debt	£122m

1 Jobs forecast from B1, B2, B8 and retail uses only. There will be considerable additional job opportunities created in social infrastructure, community facilities and a broad range of home based employment activities. The aspiration is for there to be 1 job per household within the community or within a sustainable commuting distance.

2 Scheme costs relate to all strategic infrastructure costs, enabling works, purchasing of land at minimum price provisions, professional fees, contingency and LDV running costs but exclude direct building construction.

3 Scheme values relate to disposals of serviced land to plot developers.

4 Residual is the balance between costs and income and illustrates viability.

5 Residual spread over total gross site area.

- 10.5. Figure 11.2 sets out further detail around the breakdown of costs included within the financial modelling. The analysis has been broken down to:

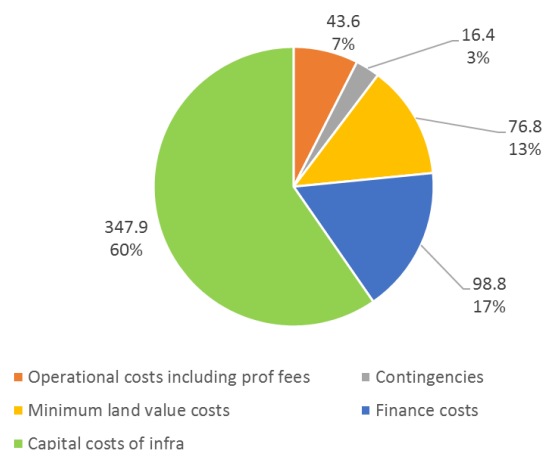
- **Operational costs:** including all cost related to operations such as LDV running costs (staff, administration, engagement & communications, business support, etc.); professional fees (scheme wide masterplanning & planning applications, infrastructure design, project management, legal fees, property disposal fees);
- **Minimum land values:** to allow for contractual obligations to pay minimum land values as land is acquired, serviced and sold on for development.;
- **Capital costs of infrastructure:** All physical infrastructure required to deliver serviced development plots (including utilities, transport, schools, community space, open space, etc.); and

- **Contingencies** to allow for uncertainties and potential cost overruns;
- **Finance costs:** interest costs on negative cash balances. Work is ongoing to assess the optimum approach to project financing. It is anticipated that the rate of finance levied on the LDVs will include a margin above the rates such finance could be secure.

10.6. As illustrated in Figure 11.2 the majority of costs relate to the physical provision of infrastructure (60%). Minimum land value payments will also form a sizeable proportion, and the rate of finance will have a key impact on both the scale of interest charges and overall scheme viability.

Figure 11.2: Scheme Cost breakdown by cost heading

Type	Tendring Colchester Border
Operational costs	£44m
Land costs	£77m
Capital costs of infra	£348m
Contingencies	£16m
Finance costs	£99m
<b>Total Costs</b>	<b>£584m</b>



### Key infrastructure

10.7. A key aspect of the Garden Communities approach is to secure the delivery of a full range of infrastructure in a timely manner to ensure new communities are served by a full and extensive range of services and facilities at the point of need. This is a key component of the delivery model and underpins part of the rationale for the Councils engaging more directly in the process to secure positive outcomes for local communities.

10.8. The financial modelling for the Tendring Colchester Borders Garden Community includes allowances to address a broad range of needs including but not limited to:

- **Education Facilities:** including the provision of 4 Primary Schools, 1 Secondary School and 10 Early Years Facilities (overall totalling circa £60m);
- New Community & health centres (£15m);
- **Leisure & Sports** facilities (£18m);
- New **Country Park** with facilities (£10m);
- Sustainable **transport (travel plan) measures, bus service subsidies, new on site** public transport hub, & contribution to strategic public transit system (£28m);
- New **link road** between A133 and A120 (£17m);
- Upgraded **pedestrian & cycle links** including greenways & bridge over A133 (£6m)

### Phasing & Cashflow

- 10.9. The approach to the delivery of large scale strategic sites generally involves early, upfront delivery of infrastructure followed by a steady disposal of plots to housebuilders/developers enabling them to deliver houses to the market. Delivery of the Garden Communities will accord to this profile, as illustrated in Figure 11.3 which illustrates the scale of costs and returns on an annual basis throughout the course of the delivery of the East Colchester Garden Community.
- 10.10. As indicated in Figure 11.3, the net funding requirement will quickly rise to a potential peak debt position of circa £120m. As income from land sales outpace costs, the debt would reduce to get to a cashflow positive position towards the end of the development period.
- 10.11. As indicated across the various figures in this report, the costs will build up over time with the LDVs requiring access to substantial funding via equity/loan finance to enable them to deliver the necessary infrastructure (and all other related costs). It will be for the LDVs to source the optimum funding arrangements (which could be a blend of public and private finance/equity).
- 10.12. Clearly not all funding will be needed from the outset of the project, and requirements will closely relate to key project stages and milestones and the scale and type of activity that will be undertaken, in the following general sequence:
- 2017/18 to 2021/22: design and planning stage, mainly requiring revenue funding to prepare planning applications (site wide and initial infrastructure) and secure related approvals;
  - 2021/22: first phase acquisition of land and on site implementation of capital works in utilities and site access (initial outlay of circa £25m);
  - 2022/23 onwards: ongoing land purchases and implementation of infrastructure delivery, partly offset by income from serviced land sales to the market. The debt would rise over time to circa £75m in 2025/26, £100m by 2030/31, and peaking at £120m in 2033/34.
  - 2033/34 debt would be reducing to circa £100m in 2037/38, £75m in 2040/41 and £25m in 2044/45.

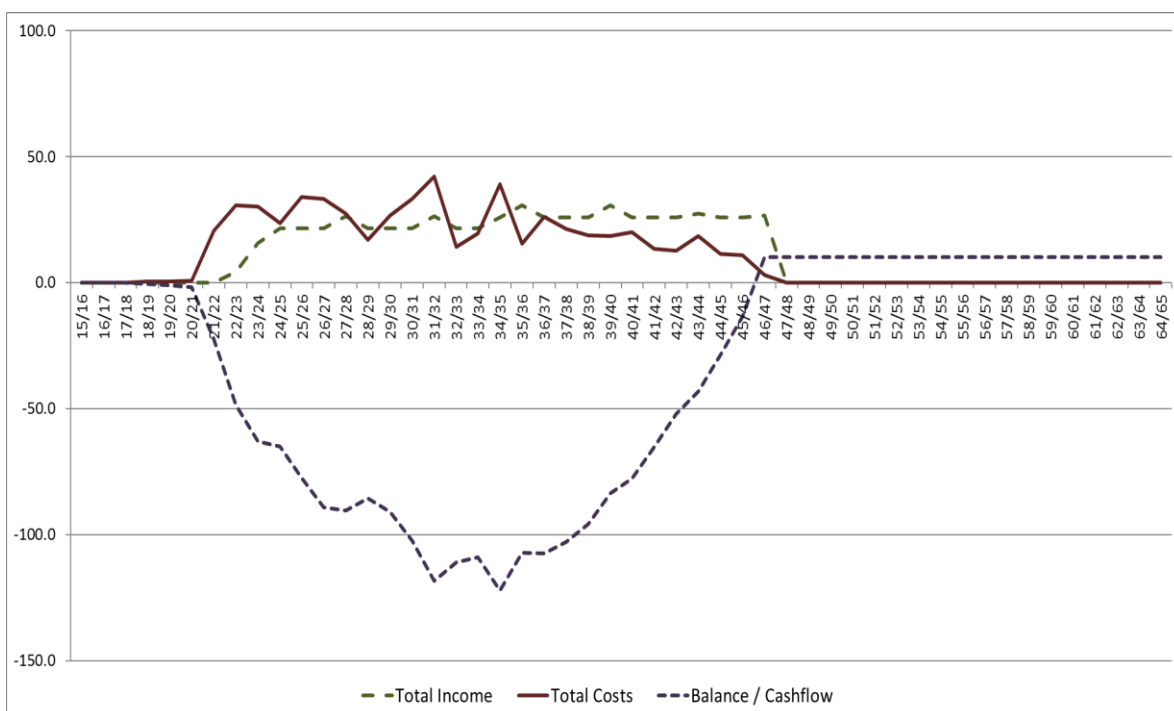


Figure 11.3: Tendring Colchester Borders Cashflow

## Sensitivity Tests

10.13. The sensitivity tests indicate that a careful approach will be required, and that if house prices were to fall or infrastructure cost overrun then viability will become challenging. However, the impact of inflation would be significant under all scenarios, potentially considerably boosting the residual surplus and bringing down peak debt and the timescale for the scheme to go cashflow positive.

### 11. Funding principles for the LDVs:

11.1. 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.

11.2. 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 Cabinet and Council 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.

11.3. In light of the information set out in Sections 11 to 13 of this report, and the relative cashflow and peak debt funding needs of each of the proposals, Figure 14.1 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.

Figure 14.1: Illustrative proportionate share of peak debt

	Tendring Colchester Borders Limited	Colchester Braintree Borders Limited	West of Braintree Limited	Total
Braintree District Council		1/3 of total = £70m	1/2 of total =£75m	£145m
Colchester Borough Council	1/3 of total =£40m	1/3 of total =£70m		£110m
Essex County Council	1/3 of total =£40m	1/3 of total =£70m	1/2 of total =£75m	£185m
Tendring District Council	1/3 of total =£40m			£40m
Total	£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.

11.4. 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.

- 11.5. At this stage the Councils are providing an in principle commitment 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.
- 11.6. 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 Figure 10.1 of this document. Work is ongoing to further consider the optimum approach to addressing such costs with support from Price Waterhouse Coopers, 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.
- 11.7. 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.
- 11.8. Detailed considerations about the accounting treatment for the loans and the capitalisation of costs is being developed and would form the basis of subsequent detailed decision making.
- 11.9. In terms of affordability there are expected to be opportunities to control costs through changes to the assumptions in the funding model 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.
- 11.10. It must also be noted that the LDV 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 LDV 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 LDV for any given element.

## **12. Risk Assessment:**

- 12.1. The project has developed a strategic risk assessment profile. This is attached as appendix 10.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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 are not able to 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.

## **LEGAL**

### **13. Legal Powers:**

- 13.1. The General Power of Competence (“the Power”) provided for by the Localism Act 2011 is relied upon as the authority for the District/Borough/County Council to establish and subscribe to North Essex Garden Communities Limited and to subscribe for B shares in relevant Local Delivery Vehicles.
- 13.2. 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).
- 13.3. Deciding to establish a company, in the context of this report, being North Essex Garden Community is an Executive Function in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). The ‘in principle’ funding decisions are in accordance with the Council’s Budget and Policy Framework [subject to Council approval as set out in the recommendations].
- 13.4. The statutory framework for local authority borrowing and investments is set out in Chapter 1 of the Local Government Act 2003, supplemented by the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended).

- 13.5. 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.
- 13.6. 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. [In the event that the Council agrees to provide funding to the LDV's as illustrated in paragraph 14.3 then its borrowing limits will need to be revised accordingly].
- 13.7. In setting its borrowing limit, Regulations require a local authority to 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.

#### **OTHER IMPLICATIONS**

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

#### **14. Equalities Impact Assessment:**

- 14.1. 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.
- 14.2. 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).
- 14.3. 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.

## IMPLEMENTATION

### 15. Implementation:

- 15.1. 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 the year.
- 15.2. The three local planning authorities are publishing the pre-submission versions of the Local Plans in the New Year. 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.
- 15.3. For clarity the outline timetable for 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 agree 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 Committee Consideration
January / February 2017	Council meetings to approve Local Plan Pre-Submission Draft
March 2017	Relevant LDVs either wound up on basis of non-allocation; Or continues the development of the schemes.

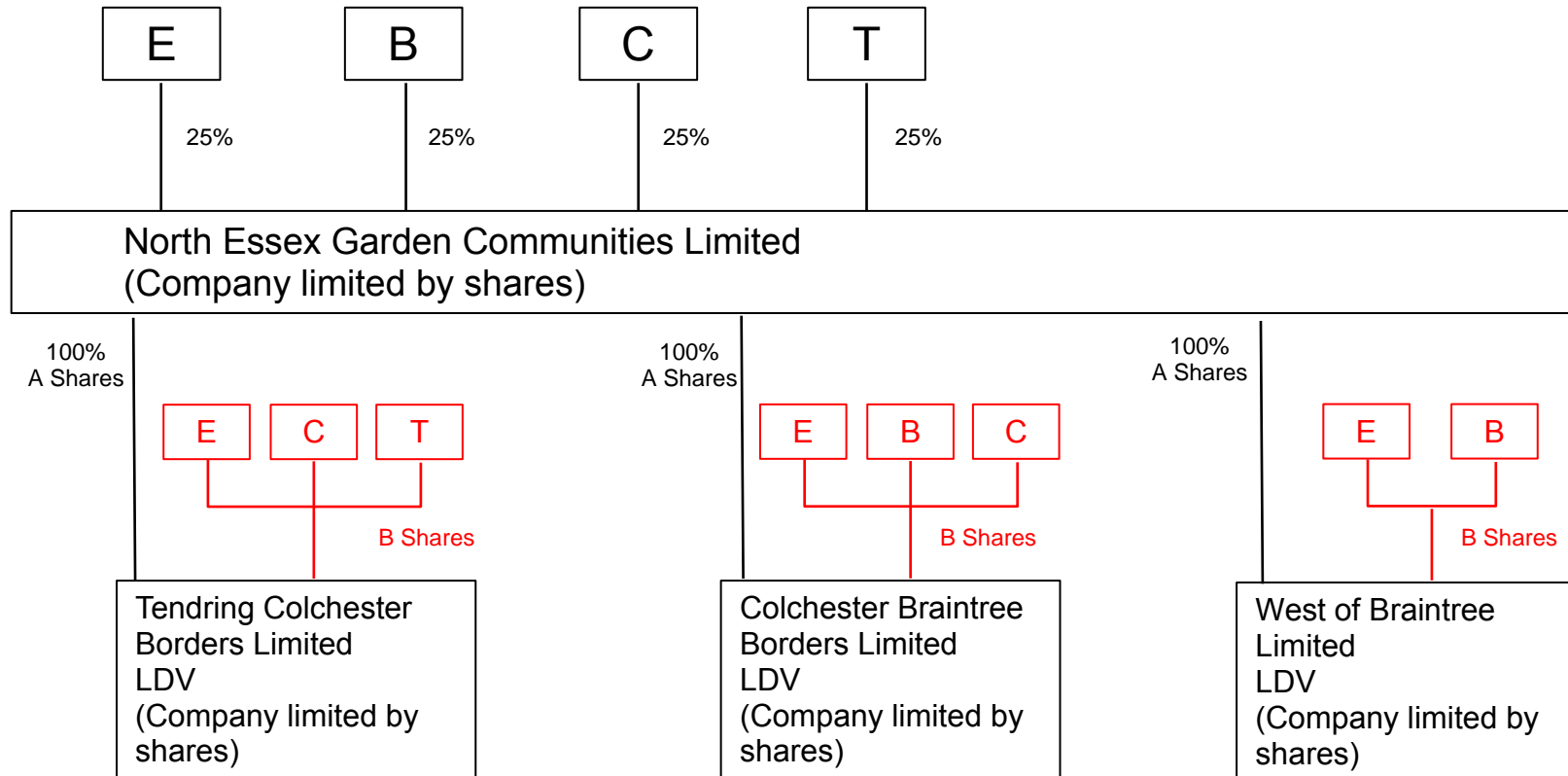
## APPENDICES

- 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 Strategic Risk Assessment Profile



**A.2 - Appendix 1:**

**Diagram showing Corporate Structure:**



A Shares - voting shares; no right to dividend

B Shares - non-voting shares; right to dividends; principal right to capital return

## Appendix 2

### DRAFT TERM SHEET

#### North Essex Garden Communities Limited

<b>1. Definitions</b>	<p><b>Articles</b> means the articles of association of the Company from time to time</p> <p><b>B Share</b> means a B share of nominal value £1 in the capital of an LDV</p> <p><b>B Shareholder</b> means a holder of B Shares</p> <p><b>Board</b> means the board of Directors</p> <p><b>Braintree</b> means Braintree District Council</p> <p><b>Budget</b> means a budget (including revenues, operating and capital expenditures, and cash flow) of the Company for a relevant financial period</p> <p><b>Colchester</b> means Colchester Borough Council</p> <p><b>Company</b> means North Essex Garden Communities Limited, a joint strategic private company entity which is owned equally by each Local Authority</p> <p><b>Director</b> means a director of the Company</p> <p><b>Director Letter</b> means an engagement letter to be entered into between the Company and each Director</p> <p><b>Essex</b> means Essex County Council</p> <p><b>Financial Procedure Rules</b> means the financial procedure rules adopted by the Company from time to time<sup>1</sup></p> <p><b>Funding Agreement</b> means any funding agreement entered into from time to time between (1) Essex, Braintree, Colchester or Tendring as lender, and (2) the Company as borrower<sup>2</sup></p> <p><b>Independent Director</b> means a director who is not a Nominated Director</p> <p><b>LDV</b> means each of:</p> <ul style="list-style-type: none"><li>(i) Tendring Colchester Borders Limited</li><li>(ii) Colchester Braintree Borders Limited; and</li><li>(iii) West of Braintree Limited</li></ul>
-----------------------	--

<sup>1</sup> Set of financial procedures to be drafted.

<sup>2</sup> How will NEGC be funded?

	<p>each a private company limited by shares</p> <p><b>LDV Budget</b> means a budget (including revenues, operating and capital expenditures, and cashflow) of an LDV for a relevant financial period</p> <p><b>LDV Business Plan</b> means a 2 year business plan as adopted and amended by each LDV (with the approval of the Company) from time to time; such business plan covering delivery of the Project and such other matters as the board of directors of the LDV determines, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.</p> <p><b>Local Authority</b> means each of Essex, Braintree, Colchester or Tendring</p> <p><b>Long-term Business Plan</b> means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) as adopted by the Company from time to time; such business plan covering infrastructure requirements, finance, planning and such other matters as the Board determines, and consistent with the aims and requirements of the Master Plans</p> <p><b>Master Plan</b> means the planning policy document adopted in relation to each property which set out proposals for buildings, spaces, movement strategy and land use in three dimensions and matches these proposals to a delivery strategy and development programme</p> <p><b>Nominated Director</b> means a Director appointed by Essex, Braintree, Colchester or Tendring</p> <p><b>Project</b> means the development of the Properties as garden community in accordance with the Purpose</p> <p><b>Property</b> means each of the properties [<i>location descriptions</i>], each of which is approximately identified in the plan attached in Schedule 2</p> <p><b>Purpose</b> has the meaning given in paragraph 2 below</p> <p><b>Share</b> means an ordinary share of nominal value £1 in the capital of the Company</p> <p><b>Shareholder</b> means a holder of Shares</p> <p><b>Shareholders' Agreement</b> means the shareholders' agreement to be entered into in relation to the business and operation of the Company between Essex, Braintree, Colchester, Tendring and the Company</p> <p><b>Tendring</b> means Tendring District Council</p>
<p><b>2. Purpose</b></p>	<ul style="list-style-type: none"> <li>• The purpose of the Company is (i) to hold shares in the LDVs, and (ii) to co-ordinate funding of the LDVs, and to oversee and hold to account the LDVs as set out in Schedule 1 (the <b>Purpose</b>)</li> <li>• The Purpose (as set out in Schedule 1) will be included in the following</li> </ul>

	<p>documents:</p> <ul style="list-style-type: none"> <li>- the Shareholders' Agreement</li> <li>- the Articles (perhaps in an abbreviated form)</li> <li>- the Director Letters</li> </ul> <ul style="list-style-type: none"> <li>• The Purpose can only be changed with the prior consent of all of the Local Authorities</li> </ul>
<p><b>3. Shares</b></p>	<p><b>Initial Shareholders:</b> At closing each Local Authority will subscribe for 25 Shares at £1 each</p> <p><b>Voting:</b> The Articles should be drafted so that in relation to any decision of the Shareholders or Board specifically affecting one LDV only, the Local Authorities (or their Nominated Directors) who do not hold B Shares in that LDV shall not be entitled to vote on that decision</p>
<p><b>4. Directors</b></p>	<p><b>Appointment/Removal:</b> The directors shall be appointed as follows:</p> <ul style="list-style-type: none"> <li>• Each of Essex, Braintree, Colchester and Tendring have the right to appoint and remove a Director (each a <b>Nominated Director</b>)</li> <li>• The Board shall be entitled, if it feels it is appropriate to do so (e.g. in order to introduce any required skills, experience or expertise to the Board), to appoint up to a further three independent Directors (each an <b>Independent Director</b>)</li> <li>• Any Director other than a Nominated Director may be removed by notice sent by a majority of the Shareholders to the Company</li> <li>• On appointment, each Director and the Company will enter into a Director Letter</li> </ul> <p><b>Chair:</b> The Board will appoint a chair from amongst the Directors. Any such appointment will be for a maximum 2 year term. The Chair shall not have a casting vote.</p> <p><b>Operation:</b> The Directors will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the Business Plans (other than the Short-term Business Plans).</p> <p><b>Board Meetings:</b> It is expected that Board meetings will be held four times a year, or more frequently as the Board may decide</p> <p><b>Notice:</b> There will be seven days' notice of any Board meeting (or shorter notice if agreed by a majority of the Directors)</p> <p><b>Quorum:</b> The quorum for Board meetings will be at least three Nominated Directors. If the quorum is not present at the appointed time for the meeting, an adjourned meeting will be called. At that adjourned meeting, at least two Nominated Directors need to be present for a quorum</p> <p><b>Voting:</b> On any Board decision a majority in favour is required including all</p>

	<p>Nominated Directors, save that where a decision relates to one LDV only, the Nominated Directors appointed by a Local Authority who does not hold B Shares in that LDV shall not be entitled to vote</p> <p><b>Conflicts:</b> In relation to a Director's conflict:</p> <ul style="list-style-type: none"> <li>• The Director is obliged to declare his or her conflict at the beginning of any Board meeting</li> <li>• If that declaration indicates a dispute or possible dispute, the Board may decide whether or not the conflicted Director should withdraw from all or part of that meeting</li> </ul> <p><b>Alternate Directors:</b> It is expected that each Director will make every effort to attend Board meetings, and will only miss Board meetings in exceptional circumstances. Each Director Letter will name an alternate to attend, speak and vote in Board meetings in the appointing Director's absence</p> <p><b>Indemnity:</b> The Articles will contain a standard permission to allow a Director to receive the benefit of an indemnity from the Company</p>
<p><b>5. Business Plan<sup>3</sup></b></p>	<p>The Company's business will be operated in accordance with, and to achieve the aims set out in the Long-term Business Plan. The initial Long-term Business Plan will be attached to the Shareholders' Agreement. The Board will be responsible for (i) preparing the Long-term Business Plan and Budget and (ii) monitoring progress against the Long-term Business Plan and Budget, and may suggest changes to the Long-term Business Plan and Budget from time to time. Any Long-term Business Plan or Budget, and any changes to either must be approved by all of the Local Authorities. In addition, any such changes need to be consistent with the Master Plans and the Purpose. If there are any changes made to the Master Plans or the Purpose, the Board will meet to discuss whether any changes are required to the Long-term Business Plan and Budget, subject to the Local Authorities' approval</p> <p>If the Company undertakes any business which is outside the remit of the Long-term Business Plan or Master Plans, or incurs any expenditure or liability that means the Company will breach the budget, or is likely to be in breach of the Budget, the Board will promptly notify the Local Authorities in writing</p>
<p><b>6. Reserved Matters</b></p>	<p>Schedule 3 contains a number of reserved matters. Subject to interpolated voting, before the Company undertakes any of the reserved matters in Schedule 3, it needs the prior written approval of each of the Local Authorities (save that where the matter relates to one LDV only, a Local Authority who does not hold B Shares in that LDV shall not be required to provide its prior written approval).</p>
<p><b>7. Share Transfers</b></p>	<p>No Shares may be transferred without the prior written consent of each of the Local Authorities, save that Shares may be transferred to successor bodies (including any new town development corporation)</p>

<sup>3</sup> The intention is to give NEGC, through flexible drafting of the Long-term Business Plan and the Budget (in the context of the Financial Procedures Rules), sufficient operational freedom.

<b>8. Termination</b>	<p>The Company shall continue until such time as:</p> <ul style="list-style-type: none"> <li>• The Purpose has been achieved; or</li> <li>• The Company is wound up pursuant to a statutory process</li> </ul> <p>On a termination, any assets of the Company may transfer to a successor (or other appropriate) body (including any new town development corporation)</p>
<b>9. Disputes</b>	<p>If there is any dispute in relation to the Company, either at Board or Shareholder level, any party may call a meeting of the CEOs/Leaders of each Local Authority to try to resolve that dispute. If the dispute is still unresolved 21 days after that meeting any party may refer the matter to mediation. If the dispute is still unresolved 42 days after that meeting, any party may refer the matter to arbitration</p>
<b>10. Documentation</b>	<p>Following the agreement of this term sheet, Dentons will prepare the following documentation:</p> <ul style="list-style-type: none"> <li>• Shareholders' Agreement – in addition to the provisions referred to above, that agreement will also contain provisions in relation to: <ul style="list-style-type: none"> <li>– set-up arrangements</li> <li>– business housekeeping (company books, insurance etc)</li> <li>– information provision to the Local Authorities</li> <li>– confidentiality and announcements</li> </ul> </li> <li>• Articles</li> <li>• Director Letters – in addition to the provisions referred to above, each letter will also contain the following details: <ul style="list-style-type: none"> <li>– the period of the appointment</li> <li>– name of alternate director</li> <li>– costs and expenses</li> <li>– indemnity</li> </ul> </li> </ul>

## Schedule 1 – Purpose

To co-ordinate the funding of the LDVs and to oversee and hold to account the LDVs in order to develop each of the Properties as garden communities, being self-sustaining communities which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

---

A garden community should:

- Be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
- Be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
- Be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
- Have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
- Provide beautifully and imaginatively designed homes with easy access to great green spaces, combining the very best of town and country living;
- Provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
- Contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
- Ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
- Provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
- Promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall;
- Secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## **Schedule 2 – Property Plan**

*To be included in the final Term Sheet.*

## **Schedule 3 – Reserved Matters**

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.
- 7 Changing the Company's auditors.
- 8 Changing the Company's accounting reference date or accounting policies.
- 9 Adopting or approving the Company's annual accounts.
- 10 Approving the Long-term Business Plan or Budget, or amending the Long-term Business Plan or Budget.
- 11 Approving or amending the Financial Procedure Rules.
- 12 Transferring the whole or any material part of the undertaking of the Company.
- 13 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
- 14 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 15 Save as set out in the Long-term Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.
- 16 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any borrowings or creating any encumbrance upon or in respect of the whole or part of the business or the Company's assets.



- 17 Entering into any agreement not on bona fide arms' length terms, or (same as set out in the Long-term Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
- 18 Other than as set out in the Long-term Business Plan, entering into, or varying, any agreement.
- 19 Save as set out in the Long-term Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
- 20 Save as set out in the Long-term Business Plan or Budget, granting any service or consultancy agreement to any employee or varying or terminating any such agreement.
- 21 Paying any Directors' remuneration, fees or expenses other than pursuant to a Director Letter.
- 22 Save as set out in the Long-term Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, the Company or any LDV, or
  - (ii) the ability of the Company to achieve the Purpose.
- 23 Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.
- 24 Giving any approval for and on behalf of the Company required under Part A of Schedule 3 of each LDV term sheet.<sup>4</sup>

---

<sup>4</sup> This will cover the NEGC consent matters set out in the list of reserved matters for each LDV. Is any more required? Will there be anything else in the LDV term sheet/shareholders' agreement/articles that required a reference here? In relation to each LDV what NEGC consents are expected, and which of these also need Local Authority consent?

## Appendix 3:



### Shareholders' agreement in relation to North Essex Garden Communities Limited

#### Dated

**Essex County Council**  
(Essex)

**Colchester Borough Council**  
(Colchester)

**Tendring District Council**  
(Tendring)

**Braintree District Council**  
(Braintree)

**North Essex Garden Communities Limited**  
(The Company)

## Contents

<b>1</b>	<b>Definitions and Interpretation</b>	<b>13</b>
1.1	Definitions	13
1.2	Interpretation	15
<b>2</b>	<b>Purpose of the Company</b>	<b>16</b>
<b>3</b>	<b>Completion arrangements</b>	<b>16</b>
3.1	Completion	16
3.2	Completion Obligations	17
3.3	No partial Completion	17
<b>4</b>	<b>The Board</b>	<b>17</b>
4.1	Decisions to be referred to the Board	17
4.2	Action by the Board	17
4.3	Nominated Directors	17
4.4	Independent Director	17
4.5	Alternate Directors	18
4.6	Chair	18
4.7	Board meetings	18
4.8	Quorum	18
4.9	Voting at Board meetings	19
4.10	Compliance with Agreement	19
4.11	Shareholders to procure Director's resignation	19
4.12	Indemnity	19
4.13	Directors may pass information to their appointor	19
4.14	[Removal of a director	19
<b>5</b>	<b>Business Plans and Budget</b>	<b>20</b>
<b>6</b>	<b>Financing the Company</b>	<b>20</b>
<b>7</b>	<b>Information and Operation of the Company</b>	<b>21</b>
7.1	Information	21
<b>8</b>	<b>Reserved matters</b>	<b>22</b>
<b>9</b>	<b>Transfer of Shares</b>	<b>22</b>
<b>10</b>	<b>Protection of Name: Intellectual Property</b>	<b>22</b>
10.1	Shareholders' rights to their intellectual property	22
10.2	Company's rights to its intellectual property	22
<b>11</b>	<b>Freedom of Information</b>	<b>22</b>
<b>12</b>	<b>Announcements and Confidentiality</b>	<b>23</b>
12.1	No announcements without agreement	23
12.2	Shareholders' confidentiality obligations	23
12.3	Company's confidentiality obligations	23
12.4	Duration of confidentiality obligations	23
<b>13</b>	<b>Relationship between Shareholders and the Company</b>	<b>23</b>
13.1	Shareholders' procurement obligation	23

13.2	No partnership	24
<b>14</b>	<b>Entire Agreement and Severance</b>	<b>24</b>
14.1	Entire agreement	24
14.3	Conflict with the Articles	24
14.4	Severance	24
<b>15</b>	<b>Amendments</b>	<b>24</b>
<b>16</b>	<b>No assignment</b>	<b>25</b>
<b>17</b>	<b>Remedies and Waivers</b>	<b>25</b>
17.1	No waiver or discharge	25
17.2	Saving for future waivers	25
17.3	Failure to exercise etc. not a waiver	25
17.4	Rights and remedies cumulative	25
<b>18</b>	<b>Third party rights</b>	<b>25</b>
<b>19</b>	<b>Costs</b>	<b>25</b>
<b>20</b>	<b>Termination</b>	<b>25</b>
<b>21</b>	<b>Duration</b>	<b>26</b>
<b>22</b>	<b>Notices</b>	<b>26</b>
22.1	Service	26
22.2	Receipt	26
<b>23</b>	<b>Disputes</b>	<b>26</b>
<b>24</b>	<b>Governing Law and Jurisdiction</b>	<b>27</b>
24.1	Governing law	27
24.2	Jurisdiction	27
<b>25</b>	<b>Execution of different copies</b>	<b>27</b>
	<b>Schedule 1 – The Purpose</b>	<b>27</b>
	<b>Schedule 2 - Particulars of the Company</b>	<b>29</b>
	<b>Schedule 3 – Property Plans</b>	<b>30</b>
	<b>Schedule 4 – Reserved Matters</b>	<b>30</b>

#### **List of Agreed Form Documents**

- Articles (Clause 3.2(a))
- Financial Procedure Rules
- Director's Letter (Clause 3.2(b))

# Shareholders' Agreement

## Dated

## Between

- (1) **Essex County Council (Essex)** of County Hall, Market Road, Chelmsford, CM1 1QH;
- (2) **Colchester Borough Council (Colchester)** of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG;
- (3) **Tendring District Council (Tendring)** of Town Hall, Station Road, Clacton-On-Sea, Essex, CO15 1SE;
- (4) **Braintree District Council (Braintree)** of Causeway House, Bocking End, Braintree, Essex, CM7 9HB;  
and
- (5) **North Essex Garden Communities Limited (the Company)** a company incorporated in England and Wales with registered number 10319743 having its registered office at \*\* .

## Recitals

- A. The Company is a joint strategic entity which is equally owned by each Local Authority.
- B. The parties have agreed to incorporate the LDV's which will develop the Properties in accordance with the Purpose, through the Company and the LDVs.

## It is agreed

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement the following definitions shall apply.

**Act** means the Companies Act 2006.

**Articles** means the articles of association of the Company in the agreed form and as subsequently amended time to time in accordance with this Agreement.

**Board** means the board of Directors.

**Borrowings** means [bank and other loans, and finance provided under hire purchase, factoring, leasing acceptance credits and similar arrangements.]

**Budget** means a budget (including revenues, operating and capital expenditures and cash flow) of the Company for a relevant financial period.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for the transaction of general business.

**Chair** means the chair from time to time of the Board.

**Completion** means completion of the matters specified in Clause 3.

**Director** means a director of the Company from time to time.

**Director's Letter** means an engagement letter in the agreed form to be entered into between the Company and each Director.

**Encumbrance** means any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set-off, counterclaim, trust arrangement or other security, preferential right or agreement to confer security, or any equity or restriction (but excluding liens arising by operation of law) and **Encumber** shall be construed accordingly.

**Financial Procedure Rules** means the financial procedure rules in the agreed form adopted by the Board [with the approval of the Shareholders] (as amended from time to time).

**Funding Agreement** means any debt funding agreement entered into from time to time between a Local Authority (as lender) and the Company (as borrower).

**Independent Director** means a director who is not a Nominated Director, such director being appointed by the Board.

**Intellectual Property** means patents, trade marks, service marks, trade names, domain names, rights in designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights (including rights in computer software), rights in know-how and other intellectual or industrial property rights (whether registered or unregistered and including applications for the registration of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**Joint Delivery Group** means a joint delivery group established by the Company to provide the Services

**LDV** means Tendring Colchester Borders Limited, Colchester Braintree Borders Limited and West of Braintree Limited.

**LCIA Rules** means the LCIA Arbitration Rules 2014.

**Local Authority** means Essex, Braintree, Colchester or Tendring.

**Long-term Business Plan** means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years in relation to the Company as adopted from time to time by the Company with the prior consent of Essex, Braintree, Colchester and Tendring; such business plan covering, infrastructure requirements, finance, planning and such other matters as the Company determines, and consistent with the aims and requirements of the Master Plan.

**Master Plan** means a document in relation to the Project as adopted by the relevant local planning authority that sets out proposals for land uses buildings, spaces, access and movement and other spatial components and sets the basis for planning applications.

**New Town Development Corporation** means a corporation established under section 1 of the New Towns Act 1981 or similar future legislation, as amended from time to time.

**Nominated Director** means a Director appointed by a Local Authority.

**Project** means the development of each of the Properties as a garden community in accordance with the Purpose.

**Property** means each of the properties which are approximately identified in the plans attached in Schedule 4.

**Purpose** has the meaning given in Clause 2.1 below.

**Senior Employee** means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.

**Services** means management and technical support and such other support and services the LDVs may require, and the Company may provide, from time to time.

**Share** means an ordinary share of £1 each in the capital of the Company.

**Shareholder** means a holder of Shares.

## 1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time;
- (c) references to any recital, clause, paragraph or Schedule are to those contained in this Agreement, and all Schedules to this Agreement are an integral part of this Agreement;
- (d) the expression **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (e) references to a **party** mean a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (f) references to a **director** shall, where the context allows, include reference to the alternate of such director;
- (g) references to a **subsidiary** shall include reference to a subsidiary and a subsidiary undertaking, each as defined in the Act, but on the basis that a company is to be treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) of the Act even if its shares in that other company are registered in the name of:
  - (i) its nominee or any other person acting on its behalf, or
  - (ii) another person by way of security over those shares;

- (h) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Shareholders on or before the date of this Agreement;
- (i) references to any gender shall include the others; and words in the singular include the plural and vice versa;
- (j) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time and to any legislation replacing it or made under it;
- (k) references to a **person** (or to a word importing a person) shall be construed so as to include:
  - (i) an individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality); and
  - (ii) that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (l) the words and expressions defined in sections 250, 390, 391, 471, 540, and 1173 of the Act have the same meanings;
- (m) **in writing** includes any communication made by letter, e-mail or other forms of electronic communication;
- (n) the words **include**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- (o) the words **other** and **otherwise** shall not be construed ejusdem generis with any foregoing words where a wider construction is possible.

## **2 Purpose of the Company**

- 2.1 The parties hereby agree that the purpose of the Company is to hold shares in each of the LDVs, to coordinate funding of the LDVs and to oversee and hold to account the LDVs as set out in Schedule 1.
- 2.2 The Company will set up a Joint Delivery Group to provide services to the LDVs.
- 2.3 The Purpose can only be amended with the prior written consent of all of the Local Authorities.

## **3 Completion arrangements**

### **3.1 Completion**

Completion shall take place immediately following signature of this Agreement at [*insert relevant address*].



### **3.2 Completion Obligations**

At Completion:

- (a) the parties shall procure that:
  - (i) the Company is established, organised and financed as detailed in Schedule 3;
  - (ii) the Company adopts the Articles; and
  - (iii) **[others?]**.
- (b) the Company shall, and the Shareholders shall procure that the Company shall, enter into the following:
  - (i) Director's Letters;
  - (ii) [Any other contracts to be entered into at Completion];
- (c) Each [LDV/Local Authority] shall enter into the following agreements:
  - (i) [list]

### **3.3 No partial Completion**

No party shall be obliged to complete its obligations under Clause 3.2 unless all of the obligations listed in Clause 3.2 are completed with simultaneous effect.

## **4 The Board**

### **4.1 Decisions to be referred to the Board**

- 4.1.1 The Board will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the Long-term Business Plan.
- 4.1.2 All policy and management decisions of the Company (including the matters set out in Clause 8) shall be referred to the Board before implementation.

### **4.2 Action by the Board**

The Board shall act by majority vote, except in relation to any matter listed out in Clause 8 in which case no decision or action shall be taken unless any prior written consent required under Clause 8 has been received by the Company and if such consent is so received each of the Directors shall, unless otherwise constrained by their fiduciary duties, vote in favour of such matter.

### **4.3 Nominated Directors**

Each Local Authority shall have the exclusive right to appoint, remove or replace a Nominated Director.

### **4.4 Independent Director**

The Board shall have the right to appoint up to three Independent Directors if it feels it is appropriate to do so.

#### **4.5 Alternate Directors**

It is expected that each Director will make every effort to attend Board meetings, and shall only miss Board meetings in exceptional circumstances. Each Director's Letter will contain details of an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.

#### **4.6 Chair**

The Board will appoint a chair from amongst the Directors. Any such appointment will be for a maximum 2 year term.

#### **4.7 Board meetings**

Board meetings shall be held at such location as a quorum of the Directors agree at intervals of not more than three months. Save as otherwise agreed by a majority of the Directors:

- (a) Board meetings shall be convened by any Director by not less than 7 days' notice, or where the particular circumstances require a shorter period, such shorter period as the circumstances reasonably require, if agreed by a majority of Directors;
- (b) each notice shall be sent to each Director to the address, and/or e-mail address notified to the Company for these purposes, and if notice is required to be sent by e-mail a copy of such notice shall also be sent by post (and air mail if the address is overseas);
- (c) each notice of a Board meeting shall be accompanied by a full agenda and supporting papers;
- (d) each Board meeting shall only deal with the business set out in the agenda which accompanied the notice convening that Board meeting; and
- (e) minutes of each meeting of the Board shall be taken and kept by the company secretary in the books of the Company. Copies of the minutes of each such meeting shall be delivered to each member of the Board as soon as practicable. If a member has not been present at the meeting copies of all papers considered by the Board at the meeting shall be sent to him with the minutes.

#### **4.8 Quorum**

The quorum for a Board meeting shall be at least three Nominated Directors present in person or by his alternate (but so that not less than three individuals shall constitute the quorum). If within 30 minutes of the time appointed for a Board meeting there is no quorum, the Director(s) present shall adjourn the meeting to a place and time not less than five Business Days later provided that at such adjourned meeting the requirement that such Director(s) shall be present shall not apply, and two Nominated Directors present and shall constitute a quorum and may conduct the business of the meeting.

#### **4.9 Voting at Board meetings**

- 4.9.1 At each Board meeting the Directors present shall be entitled to cast one vote on each issue put to a vote.
- 4.9.2 On any Board decision a majority (including all Nominated Directors) in favour is required for the vote to pass, save that:
- (a) where a decision relates to Tendring Colchester Borders Limited only, any Nominated Director appointed by Braintree shall not be entitled to vote, and shall not be required in the majority for the vote to pass;
  - (b) where a decision relates to Colchester Braintree Borders Limited only, any Nominated Director appointed by Tendring shall not be entitled to vote, and shall not be required in the majority for the vote to pass;
  - (c) where a decision relates to West of Braintree Limited only, any Nominated Director appointed by Colchester or Tendring shall not be entitled to vote, and shall not be required in the majority for the vote to pass; and
  - (d) where a decision relates to Tendring Colchester Borders and West of Braintree Limited but not Colchester Braintree Borders Limited, any Nominated Director appointed by Tendring shall not be entitled to vote, and shall not be required in the majority for the vote to pass.

#### **4.10 Compliance with Agreement**

The Company shall procure that any person who is appointed a Director after the date of this Agreement shall immediately upon becoming a Director of the Company enter into a Director's Letter with the Company to comply with and implement the terms of this Agreement.

#### **4.11 Shareholders to procure Director's resignation**

If a Shareholder ceases to be a Shareholder, it shall procure that every Director appointed by it under this Clause 4 is removed.

#### **4.12 Indemnity**

Each Shareholder shall procure that any Director appointed by it who vacates his office as director (whether by virtue of being removed by that Shareholder or otherwise) shall do so without cost to the Company. That Shareholder shall indemnify the Company and any other Shareholder from and against all claims, demands and rights which any such Director may have against the Company in respect of removal, dismissal, redundancy or otherwise.

#### **4.13 Directors may pass information to their appointor**

A Director may from time to time disclose to the Party who appointed him and its representatives such information as he has regarding the Company.

#### **4.14 Removal of a director**

Any Independent Director may be removed by notice sent by a majority of the Shareholders to the Company.

## **5 Business Plans and Budget**

### **5.1 Interim business plans**

Until such time as a Long-term Business Plan is adopted in accordance with this Clause 5, the Company may operate under such business plan as the relevant Board shall determine.

### **5.2 Business plans**

5.2.1 Within three months of a full Board being appointed (being at least four Directors) the Company shall, subject to the approval of the Local Authorities, formally adopt an Long-term Business Plan.

5.2.2 The Board shall submit any draft Long-term Business Plan to the Local Authorities no later than two months before the end of the period to which the then current Long-term Business Plan relates. Such draft Long-term Business Plan shall not be adopted by the Company until such time as the Local Authorities' approval has been received.

5.2.3 Any amendments to a Long-term Business Plan or Budget must first be approved in writing by the Local Authorities. In order to obtain the Local Authorities' written approval, the Board shall submit to the Local Authorities in writing the Long-term Business Plan or Budget together with a proposal setting out the amendments, and an explanation for the amendments. Any such amendments need to be consistent with the Master Plan and the Purpose.

5.2.4 Subject always to the Local Authorities' approval, if there are any amendments made to the Master Plan or the Purpose, the Board will meet to discuss whether any amendments are required to the Long-term Business Plan and Budget.

5.2.5 If the Company undertakes any business which is outside the remit of the Long-term Business Plan or Master Plan, or incurs any expenditure or liability that means the Company will breach or exceed the Budget, or is likely to be in breach of the Budget, the Board will promptly notify the Local Authorities in writing. Such notification will provide:

- (a) detailed information in relation to such expenditure or liability, including an explanation of the circumstances; and
- (b) suggested remedial action.

### **5.3 Budget**

5.3.1 The Board shall submit any draft Budget to the Local Authorities no later than two months before the start of each financial period of the Company. Such Budget shall not be adopted by the Company until such time as the Local Authorities' approval has been received.

5.3.2 If, at the end of any financial period, the Budget for the next financial period has not been agreed, the Company should comply with the requirements of the Financial Procedure Rules until such time as the relevant Budget has been approved by the Local Authorities.

## **6 Financing the Company**

### **6.1 Financing**

The Company shall be financed through the moneys subscribed for issued shares and lent under any Funding Agreement, or otherwise as the Shareholders may agree.

## **6.2 Borrowing limit**

The parties shall procure that the Company does not exceed any borrowing limit contained in the Budget or Financial Procedure Rules.

## **6.3 No Shareholder obligations to fund**

No Shareholder shall be obliged to advance any loan to the Company except in accordance with a Funding Agreement.

# **7 Information and Operation of the Company**

## **7.1 Information**

The Company shall provide to each Shareholder and Director and where requested, to their representatives, the following:

- (a) a profit and loss account estimate for the Company within 10 Business Days of the end of each month;
- (b) unaudited management accounts for the Company within 20 Business Days from the end of each month including a profit and loss account for that month and for the financial year to date (in each case measured against the budget for the relevant period) and 12 month forecast cash flows;
- (c) audited statutory accounts for the Company within 60 Business Days from the end of the financial year;
- (d) access to the Company's books, records and auditors at such times as may reasonably be requested; and
- (e) such other information relating to the Company as any Shareholder may reasonably request from time to time,

and without prejudice to the foregoing, the Company shall keep the Shareholders fully and promptly informed of all material developments regarding the Company's financial and business affairs and all significant events (including any litigation or arbitration) which will or may affect the Company.

## **7.2 Operation of the Company**

The Company shall, and the Shareholders shall procure that the Company, shall:

- (a) carry on and conduct its business on a commercial basis in a proper lawful and efficient manner for its own benefit;
- (b) transact all business on arm's length terms;

- (c) ensure that all its business other than routine business is undertaken or supervised by the Directors;
- (d) obtain and maintain all necessary licences and approvals required in order to carry on the business; and
- (e) observe and perform its obligations under each contract referred to in Clause 3.2(b).

## **8 Reserved matters**

The Company agrees so far as it lawfully may, and the Shareholders agree to procure, so far as is within their powers as Shareholders, that before the Company undertakes any of the matters listed in Schedule 4 the prior written consent of each of the Local Authorities is required, save that where the matter relates to one LDV only, a Local Authority who does not hold B ordinary shares in the relevant LDV shall not be required to provide its prior written consent.

## **9 Transfer of Shares**

No Shareholder shall assign, transfer, exchange, encumber or otherwise dispose of any of the Shares held by it or any interest in them without the prior written consent of the other Shareholders. Save that Shares may be transferred to successor bodies (including any New Town Development Corporation).

## **10 Protection of Name: Intellectual Property**

### **10.1 Shareholders' rights to their intellectual property**

The Shareholders hereby acknowledge and agree that all Intellectual Property Rights used in the Business but owned or provided by a Shareholder or any associate of a Shareholder (not being the Company) shall unless specifically otherwise agreed in writing remain the property of that Shareholder, shall be deemed licensed to the Company on such terms as agreed by the Shareholder and the Company, or if there is no agreement on a non-exclusive royalty-free basis for so long as the party remains a Shareholder.

### **10.2 Company's rights to its intellectual property**

Any Intellectual Property Rights which arise in the course of the Company's activities and are developed by the Company, its Directors, employees or agents shall belong to the Company and shall be deemed licensed to each of the Shareholders on such terms as are agreed by the Company and the relevant Shareholder or if there is no agreement, on a non-exclusive royalty-free basis for so long as the relevant Shareholder remains a Shareholder.

## **11 Freedom of Information**

The parties acknowledge that the parties to this Agreement may be subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and may be required to disclose information in response to requests within the terms of that legislation. Where appropriate the relevant party shall rely on any applicable exemptions in that legislation to justify not disclosing such information. Each party agrees to consult with the other parties to this Agreement as soon as reasonably practicable after receiving any such request and before disclosing any information concerning the Company.

## **12 Announcements and Confidentiality**

### **12.1 No announcements without agreement**

Save as required by law or with the prior written consent of the other parties no statement or announcement of any nature relating to the subject matter of or the transaction referred to in this Agreement or the establishment or operations of the Company shall be made to the public, the press or otherwise unless in a form previously agreed between the Shareholders.

### **12.2 Shareholders' confidentiality obligations**

12.2.1 Subject to Clause 11 each Shareholder shall (and shall procure that their representatives shall) at all times keep confidential and shall not use (other than for the benefit of the Company) any confidential information which it or they may have or acquire in relation to the business, finances, assets or affairs of the Company or any other party, save for any information:

- (a) which is publicly available or becomes publicly available otherwise than as a result of a breach of this Clause12;
- (b) which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;
- (c) which is required to be disclosed by law or the rules of any recognised investment exchange (as that term is used in section 285 of the Financial Services and Markets Act 2000) to which that Shareholder.

12.2.2 No Shareholder shall use any confidential information acquired in relation to another Shareholder pursuant to the performance of this Agreement for any purpose without the prior consent in writing of that Shareholder.

### **12.3 Company's confidentiality obligations**

The Company shall observe a similar obligation of confidence to that set out in Clause 12.2.1 in favour of each Shareholder.

### **12.4 Duration of confidentiality obligations**

The obligations in this Clause 12 shall continue to apply after termination of this Agreement and after any party has ceased to be party to this Agreement without limit in time.

## **13 Relationship between Shareholders and the Company**

### **13.1 Shareholders' procurement obligation**

Each of the Shareholders agrees it shall exercise its rights hereunder and as a Shareholder in the Company in such manner as could reasonably be expected to prevent, and shall not exercise those rights in any manner which could reasonably be expected to result in, a breach by the Company of any of its obligations under this Agreement or any Funding Agreement or any restrictions imposed upon it under its Articles (whether or not enforceable against the Company itself).

### **13.2 No partnership**

Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the parties or (save as otherwise stated herein) otherwise authorise any party to bind any other party for any purpose.

## **14 Entire Agreement and Severance**

### **14.1 Entire agreement**

This Agreement together with the documents referred to in it sets out the entire agreement between the parties, and supersedes any previous agreement between them in relation to the subject matter of this Agreement and those documents.

### **14.2 Acknowledgment by parties**

Each party acknowledges that:

- (a) in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation (whether negligent or otherwise) made to it by any person (whether a party to this Agreement or not) which is not expressly set out or referred to in this Agreement;
- (b) the only remedy available to it in respect of any representation or warranty expressly set out or referred to in this Agreement shall be for breach of contract in respect of that term of this Agreement; and
- (c) nothing in this Clause 14 shall operate to exclude or restrict any liability for fraudulent misrepresentation.

### **14.3 Conflict with the Articles**

The parties intend that the provisions of this Agreement shall prevail over the Articles in the event of conflict and, accordingly, the Shareholders shall, if necessary, exercise all voting and other rights and powers available to them as Shareholders or under this Agreement to procure any amendment to the Articles required to give effect to the provisions of this Agreement.

### **14.4 Severance**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

## **15 Amendments**

This Agreement may not be amended, changed, altered, waived or, save as provided in Clause 20, terminated without the written consent of the parties.



## **16 No assignment**

No party may assign its rights under this Agreement without the prior written consent of all other parties.

## **17 Remedies and Waivers**

### **17.1 No waiver or discharge**

No default by any party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of all other parties.

### **17.2 Saving for future waivers**

No waiver by any party of any default by another party in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

### **17.3 Failure to exercise etc. not a waiver**

No failure to exercise, nor delay or omission by any party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

No single or partial exercise by any party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

### **17.4 Rights and remedies cumulative**

The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

## **18 Third party rights**

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## **19 Costs**

Each party shall bear the costs and expenses incurred by it in connection with the preparation and implementation of this Agreement.

## **20 Termination**

20.1 The Company shall continue until such time as:

- a) the Purpose has been achieved; or

b) the Company is wound-up pursuant to a statutory process.

20.2 If the Purpose is achieved a Board meeting shall be called to decide whether the Company should ask the Shareholders to liquidate the Company.

20.3 On termination of this Agreement, any assets of the Company may transfer to a successor (or other appropriate) body, including a New Town Development Corporation.

## **21 Duration**

The rights and obligations of each Shareholder shall continue and be enforceable by or against it only while it is a Shareholder of the Company save for rights and obligations in respect of antecedent breaches of this Agreement or the Articles.

## **22 Notices**

### **22.1 Service**

22.1.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid first class, recorded delivery or registered post, and shall be addressed to the party to be served in the case of:

- (a) a company at its registered office for the time being;
- (b) Essex's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**];
- (c) Colchester's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**];
- (d) Braintree's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**]; and
- (e) Tendring's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**].

22.1.2 Any claim form, application notice, judgment, order, or other notice of legal process relating to this agreement may be served on a Local Authority by posting it first-class to the address for service specified above, or to such other address for service within England as the relevant party may notify to the other parties from time to time.

### **22.2 Receipt**

Any notice or other communication under this Agreement shall only be effective when received.

## **23 Disputes**

23.1 In the event of a dispute in relation to the Company, or arising out of or relating to this Agreement (including any question regarding its existence, validity or termination) either at the Board or between

the Shareholders, any party shall be entitled to call a meeting of the CEOs/Leaders of each Local Authority with the aim of resolving the dispute (**CEO Meeting**).<sup>1</sup>

- 23.2 If the dispute is not settled within 21 days of the CEO Meeting to resolve the dispute, any party may refer the matter to mediation in accordance with the LCIA Mediation Rules, which are deemed to be incorporated by reference into this Clause 23.
- 23.3 If the dispute is not settled by mediation within 42 days of the CEO Meeting or such further period as the parties to the dispute shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which are deemed to be incorporated by reference into this Clause 23.
- 23.4 In any arbitration commenced pursuant to this Clause 23,
- (a) the number of arbitrators shall be one;
  - (b) the seat, or legal place, of arbitration shall be London, England; and
  - (c) the language to be used in the arbitral proceedings shall be English.

## **24 Governing Law and Jurisdiction**

### **24.1 Governing law**

This Agreement is governed by and is to be construed in accordance with English law.

### **24.2 Jurisdiction**

Subject to Clause 23 the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising out of or in connection with this Agreement.

## **25 Execution of different copies**

The parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one instrument.

**Signed** on the date appearing at the beginning of this Deed.

## **Schedule 2 – The Purpose**

The purpose of the Company is to co-ordinate the funding of the LDVs and to oversee and hold to account the LDVs in order to develop each of the Properties as garden communities, being self-sustaining communities which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

A garden community should:

---

<sup>1</sup> RB: Should we include further provisions in respect of such meeting e.g. every LA must have a representative present, notice etc.

1. be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
2. be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
3. be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
4. have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
5. provide beautifully and imaginatively designed homes with easy access to great green spaces , combining the very best of town and country living;
6. provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
7. contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
8. ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
9. provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
10. promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall; and
11. secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## Schedule 3 - Particulars of the Company<sup>2</sup>

<b>Name:</b>	North Essex Garden Communities Limited			
<b>Registered Number:</b>	10319743			
<b>Registered office:</b>	**			
<b>Directors:</b>				
Nominated Directors:	**	**	**	**
Independent Director:	**	**	**	
<b>Company Secretary:</b>	**			
<b>Share Capital:</b>	25 Shares Essex			
	25 Shares Braintree			
	25 Shares Colchester			
	25 Shares Tendring			
No. and type of Shares subscribed:	100 Shares			
Total subscription price (including any premium)	£100			
<b>Auditors:</b>	**			
<b>Accounting Reference Date:</b>	**			
<b>Bankers:</b>	**		**	

---

<sup>2</sup> All to be confirmed.

## **Schedule 4 – Property Plans**

*To be included in the final Shareholders' Agreement.*

## **Schedule 5 – Reserved Matters**

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.
- 7 Changing the Company's auditors.
- 8 Changing the Company's accounting reference date or accounting policies.
- 9 Adopting or approving the Company's annual accounts.
- 10 Approving the Long-term Business Plan or Budget, or amending the Long-term Business Plan or Budget.
- 11 Approving or amending the Financial Procedure Rules.
- 12 Transferring the whole or any material part of the undertaking of the Company.
- 13 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
- 14 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 15 Save as set out in the Long-term Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.
- 16 Save as set out in the Long-term Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any Borrowings or creating any Encumbrance upon or in respect of the whole or part of the business or the Company's assets.

- 17 Entering into any agreement not on bona fide arms' length terms, or (same as set out in the Long-term Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
- 18 Other than as set out in the Long-term Business Plan, entering into, or varying, any Agreement.
- 19 Save as set out in the Long-term Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
- 20 Save as set out in the Long-term Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
- 21 Paying any Directors' remuneration, fees or expenses other than pursuant to a Director's Letter.
- 22 Save as set out in the Long-term Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, the Company or any LDV, or
  - (ii) the ability of the Company to achieve the Purpose.
- 23 Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.
- 24 Giving any approval for or on behalf of the Company required under Part A Schedule 4 (Reserved Matters) of each LDVs shareholders' agreement.

**Signed by \*\*** authorised )  
 for **ESSEX COUNTY COUNCIL** )

**Signed by \*\*** authorised )  
 for **COLCHESTER** )  
**BOROUGH COUNCIL** )

**Signed by \*\*** authorised )  
 for **TENDRING DISTRICT COUNCIL** )

**Signed by \*\*** authorised )  
 for **BRAINTREE DISTRICT COUNCIL** )

)  
**Signed by \*\*** authorised )  
 for **NORTH ESSEX** )  
**GARDEN COMMUNITIES LIMITED** )

## Appendix 4:

### DRAFT TERM SHEET

#### North Essex Garden Communities: LDV1

#### Tendring Colchester Borders Limited

<b>1. Definitions</b>	<p><b>A Share</b> means an A share of nominal value £1 in the capital of the Company.</p> <p><b>A Shareholder</b> means a holder of A Shares.</p> <p><b>Articles</b> means the articles of association of the Company from time to time.</p> <p><b>B Share</b> means a B share of nominal value £1 in the capital of the Company.</p> <p><b>B Shareholder</b> means a holder of B Shares.</p> <p><b>Board</b> means the board of Directors.</p> <p><b>Braintree</b> means Braintree District Council.</p> <p><b>Budget</b> means a budget (including revenues, operating and capital expenditures, and cash flow) of the Company for a relevant financial period.</p> <p><b>Chair</b> means Chair of the Board.</p> <p><b>Colchester</b> means Colchester Borough Council.</p> <p><b>Company</b> means Tendring Colchester Borders Limited, a private company limited by shares.</p> <p><b>Director</b> means a director of the Company.</p> <p><b>Director Letter</b> means an engagement letter to be entered into between the Company and each Director.</p> <p><b>Essex</b> means Essex County Council.</p> <p><b>Financial Procedure Rules</b> means the financial procedure rules adopted by the Company from time to time with the approval of NEGC.<sup>1</sup></p> <p><b>Funding Agreement</b> means any funding agreement entered into from time to time between (1) Essex, Colchester or Tendring as lender, and (2) the Company as borrower.</p> <p><b>Independent Director</b> means a director who is not a Nominated Director or a Landowner Director.</p> <p><b>Landowner/Optionholder</b> means [ ] (for so long as [it/they]</p>
-----------------------	--

<sup>1</sup> Set of financial procedures to be drafted.



	<p>[has/have] any interest in the Property), and/or such other person as NEGC determines.</p> <p><b>Landowner Directors</b> means a person nominated by the Landowner/Optionholder and appointed as a Director.</p> <p><b>LDV Business Plan</b> means a 2 year business plan as adopted and amended by the Board (with the approval of the Shareholders) from time to time; such business plan covering delivery of the Project and such other matters as the Board may determine, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.</p> <p><b>Local Authority</b> means Essex, Braintree, Colchester or Tendring.</p> <p><b>Long-term Business Plan</b> means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) as adopted by NEGC from time to time; such business plan covering infrastructure requirements, finance, planning and such other matters as NEGC determines, and consistent with the aims and requirements of the Master Plan.</p> <p><b>Master Plan</b> means the planning policy document adopted by the relevant local planning authority in relation to the Property which set out proposals for buildings, spaces, movement strategy and land use in three dimensions and matches these proposals to a delivery strategy and development programme.</p> <p><b>NEGC</b> means North Essex Garden Communities Limited, a joint strategic entity which is owned equally by each Local Authority.</p> <p><b>Nominated Director</b> means a Director appointed by Essex, Colchester or Tendring.</p> <p><b>Project</b> means the development of the Property as a garden community in accordance with the Purpose.</p> <p><b>Property</b> means the property [<i>location description</i>] which is approximately identified in the plan attached in Schedule 2.</p> <p><b>Purpose</b> has the meaning given in paragraph 2 below.</p> <p><b>Senior Employee</b> means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.</p> <p><b>Share</b> means an A Share or a B Share.</p> <p><b>Shareholder</b> means an A Shareholder or a B Shareholder.</p> <p><b>Shareholders' Agreement</b> means the shareholders' agreement to be entered into in relation to the business and operation of the Company between NEGC, Essex, Colchester, Tendring and the Company.</p> <p><b>Tendring</b> means Tendring District Council.</p>
<p><b>2. Purpose</b></p>	<ul style="list-style-type: none"> <li>The purpose of the Company is to secure the development of the Property in accordance with the Project Plan, the Master Plan and the</li> </ul>

	<p>principles set out in Schedule 1 (the <b>Purpose</b>)</p> <ul style="list-style-type: none"> <li>• The Purpose (as set out in Schedule 1) will be included in the following documents: <ul style="list-style-type: none"> <li>– the Shareholders' Agreement</li> <li>– the Articles (perhaps in an abbreviated form)</li> <li>– the Director Letters</li> </ul> </li> <li>• The Purpose can only be changed with the prior consent of all of the Local Authorities</li> </ul>
<p><b>3. Shares</b></p>	<p><b>Initial Shareholders:</b> At closing:</p> <ul style="list-style-type: none"> <li>• NEGC will subscribe for 100 A Shares at £1 each</li> <li>• Essex will subscribe for • B Shares at £• each</li> <li>• Colchester will subscribe for • B Shares at £• each</li> <li>• Tendring will subscribe for • B Shares at £• each</li> </ul> <p><b>A Share rights:</b> The A Shares shall have the following rights:</p> <ul style="list-style-type: none"> <li>• Each A Share will entitle the holder to one vote on any Shareholder resolution</li> <li>• The A Shares will carry no right to receive dividends</li> <li>• On a return of capital, the A Shares will entitle the holder to a return of nominal value, but no more</li> </ul> <p><b>B share rights<sup>2</sup>:</b> The B Shares shall have the following rights:</p> <ul style="list-style-type: none"> <li>• The B Shares will carry no right to vote save that each B share shall carry the right to 2 votes on any vote which: <ul style="list-style-type: none"> <li>– materially affects, or is likely to materially affect, the delivery of the Project, or the infrastructure for the Project, in accordance with the timetable set out in the Business Plans; or</li> <li>– materially affects, or is likely to materially affect, the Company's ability to repay any sums due under any Funding Agreement when due; or</li> <li>– is likely to result in a material breach of any Funding Agreement by the Company</li> </ul> </li> <li>• The B Shares shall carry a right to receive dividends</li> <li>• The B Shares shall be entitled to receive (on a pro-rata basis) any capital</li> </ul>

<sup>2</sup> It may also be that B Shares are issued to an external funder

return to Shareholders (subject to the A Share rights mentioned above)

**Interpolated voting:** The NEGC constitution should be drafted so that in relation to any decision of the NEGC shareholders or board specifically affecting the Company only, only Essex, Colchester and Tendring shall be entitled to vote on that decision.

**4. Directors**

**Appointment/Removal:** The directors shall be appointed as follows:

- Each of Essex, Colchester and Tendring have the right to appoint and remove a Director (each a **Nominated Director**)
- The Landowner/Optionholder shall have a right to appoint up to 3 Directors; provided that any replacement Director must be approved by NEGC before they are appointed (each a **Landowner Director**). If a Landowner/Optionholder ceases to have any interest in the Property, the Landowner Director nominated by that Landowner/Optionholder shall (unless NEGC otherwise requires) immediately resign as a Director
- NEGC shall be entitled to appoint a further 3 independent Directors (each an **Independent Director**)
- Any Director other than a Nominated Director may be removed by notice sent by NEGC to the Company
- On appointment, each Director and the Company will enter into a Director Letter

**Chair:** The Board will either (i) appoint an appropriate person as Chair (and Independent Director) or (ii) appoint a chair from amongst the Directors with the expectation that an Independent Director will be elected. If the proposed Chair is not an Independent Director the approval of all Nominee Directors will be needed for the appointment. Any such appointment will be for a maximum 2 year term. The Chair shall not have a casting vote.

**Operation:** The Directors will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the LDV Business Plan and the Long-term Business Plan.

**Board Meetings:** It is expected that Board meetings will be held four times a year, or more frequently as the Board may decide.

**Notice:** There will be seven days' notice of any Board meeting (or shorter notice if agreed by a majority of the Directors).

**Quorum:** The quorum for Board meetings will be at least one Nominated Director, one Landowner Director, and one Independent Director. If the quorum is not present at the appointed time for the meeting, an adjourned meeting will be called. At that adjourned meeting, at least one Nominated Director needs to be present for a quorum.

**Conflicts:** In relation to a Director's conflict:

	<ul style="list-style-type: none"> <li>• The Director is obliged to declare his or her conflict at the beginning of any Board meeting</li> <li>• If that declaration indicates a dispute or possible dispute, the Board may decide whether or not the conflicted Director should withdraw from all or part of that meeting</li> </ul> <p><b>Alternate Directors:</b> It is expected that each Director will make every effort to attend Board meetings, and will only miss Board meetings in exceptional circumstances. Each Director Letter will name an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.</p> <p><b>Indemnity:</b> The Articles will contain a standard permission to allow a Director to receive the benefit of an indemnity from the Company.</p>
<p><b>5. Business Plan<sup>3</sup></b></p>	<p>The Company's business will be operated in accordance with, and to achieve the aims set out in, the Long-term Business Plan and the LDV Business Plan. The Board will be responsible for (i) preparing the LDV Business Plan and Budget and (ii) monitoring progress against the LDV Business Plan and Budget, and may suggest changes to the LDV Business Plan and Budget from time to time. Any LDV Business Plan or Budget, and any changes to either must be approved by NEGC. In addition, any such changes need to be consistent with the Long-term Business Plan, Master Plan and the Purpose. If there are any changes made to the Long-term Business Plan, Master Plan or the Purpose, the Board will meet to discuss whether any changes are required to the LDV Business Plan and Budget, subject to NEGC approval.</p> <p>If the Company undertakes any business which is outside the remit of the Long-term Business Plan or the LDV Business Plan, or incurs any expenditure or liability that means the Company will breach the Budget, or is likely to be in breach of the Budget, the Board will promptly notify NEGC in writing.</p>
<p><b>6. Reserved Matters</b></p>	<p>Schedule 3 contains a number of reserved matters. Before the Company undertakes any of the reserved matters in Part A of Schedule 3, it needs the prior written approval of Essex, Colchester and Tendring. Before the Company undertakes any of the reserved matters in Part B of Schedule 3, it needs the prior written approval of NEGC.</p>
<p><b>7. Share Transfers</b></p>	<p>No Shares may be transferred without the prior written consent of Essex, Colchester and Tendring, save that Shares may be transferred to successor bodies (including any new town development corporation).</p>
<p><b>8. Termination</b></p>	<p>The Company shall continue until such time as:</p> <ul style="list-style-type: none"> <li>• The Purpose has been achieved; or</li> <li>• The Company is wound up pursuant to a statutory process</li> </ul> <p>On a termination, any assets of the Company may transfer to a successor (or</p>

<sup>3</sup> The intention is to give the LDV, through flexible drafting of the LDV Business Plan and the Budget (in the context of the Financial Procedure Rules), sufficient operational freedom

	other appropriate) body (including any new town development corporation).
<b>9. Disputes</b>	If there is any dispute in relation to the Company, either at Board or Shareholder level, that dispute will be escalated to the NEGC board. If the dispute is still unresolved 21 days after the NEGC board has met to discuss, Essex, Colchester or Tendring may refer the matter to mediation. If the dispute is still unresolved 42 days after the NEGC board has met to discuss, Essex, Colchester or Tendring may refer the matter to arbitration.
<b>10. Documentation</b>	<p>Following the agreement of this term sheet, Dentons will prepare the following documentation:</p> <ul style="list-style-type: none"> <li>• Shareholders' Agreement – in addition to the provisions referred to above, that agreement will also contain provisions in relation to: <ul style="list-style-type: none"> <li>- set-up arrangements</li> <li>- business housekeeping (company books, insurance etc)</li> <li>- information provision to NEGC, Essex, Colchester and Tendring</li> <li>- confidentiality and announcements</li> </ul> </li> <li>• Articles</li> <li>• Director Letters – in addition to the provisions referred to above, each letter will also contain the following details: <ul style="list-style-type: none"> <li>- the period of the appointment</li> <li>- name of alternate director</li> <li>- remuneration (if any)</li> <li>- costs and expenses</li> <li>- indemnity</li> </ul> </li> </ul>

## Schedule 1 – Purpose

To secure the development of the Property to create a garden community, being a self-sustaining community which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

---

A garden community should:

- Be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
- Be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
- Be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
- Have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
- Provide beautifully and imaginatively designed homes with easy access to great green spaces, combining the very best of town and country living;
- Provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
- Contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
- Ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
- Provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
- Promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall;
- Secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## **Schedule 2 - Property Plan**

*To be included in the final Term Sheet.*

## **Schedule 3 – Reserved Matters**

### Part A

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.

### Part B

- 1 Changing the Company's auditors.
- 2 Changing the Company's accounting reference date or accounting policies.
- 3 Adopting or approving the Company's annual accounts.
- 4 Approving the LDV Business Plan or Budget, or amending the LDV Business Plan or Budget.
- 5 Approving or amending the Financial Procedure Rules.
- 6 Transferring the whole or any material part of the undertaking of the Company.
- 7 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
- 8 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
- 9 Save as set out in the LDV Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.

- 10 Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any borrowings or creating any encumbrance upon or in respect of the whole or part of the business or the Company's assets.
- 11 Entering into any agreement not on bona fide arms' length terms, or (same as set out in the LDV Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
- 12 Other than as set out in the LDV Business Plan, entering into, or varying, any Agreement.
- 13 Save as set out in the LDV Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
- 14 Save as set out in the LDV Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
- 15 Paying any Directors' remuneration, fees or expenses other than pursuant to a Director Letter.
- 16 Save as set out in the LDV Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, NEGC or the Company, or
  - (ii) the ability of the Company to achieve the Purpose.
- 17 Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.



## Appendix 5:



### Shareholders' agreement in relation to Tendring Colchester Borders Limited

#### Dated

**North Essex Garden Communities Limited**  
(NEGC)

**Essex County Council**  
(Essex)

**Colchester Borough Council**  
(Colchester)

**Tendring District Council**  
(Tendring)

**Tendring Colchester Borders Limited**  
(The Company)

# Contents

<b>1</b>	<b>Definitions and Interpretation</b>	<b>44</b>
1.1	Definitions	44
1.2	Interpretation	46
<b>2</b>	<b>Purpose of the Company</b>	<b>48</b>
<b>3</b>	<b>Completion arrangements</b>	<b>48</b>
3.1	Completion	48
3.2	Completion Obligations	48
3.3	No partial Completion	49
3.4	Shareholders' services	49
<b>4</b>	<b>The Board</b>	<b>49</b>
4.1	Decisions to be referred to the Board	49
4.2	Action by the Board	49
4.3	Nominated Directors	49
4.4	Landowner Director	49
4.5	Independent Director	50
4.6	Alternate Directors	50
4.7	Chair	50
4.8	Board meetings	50
4.9	Quorum	51
4.10	Voting at Board meetings	51
4.11	Compliance with Agreement	51
4.12	Shareholders to procure Director's resignation	51
4.13	Indemnity	51
4.14	Directors may pass information to their appointor	51
4.15	Removal of a director	51
<b>5</b>	<b>Business Plans and Budget</b>	<b>51</b>
<b>6</b>	<b>Financing the Company</b>	<b>53</b>
<b>7</b>	<b>Information and Operation of the Company</b>	<b>53</b>
7.1	Information	53
7.2	Operation of the Company	54
<b>8</b>	<b>Reserved matters</b>	<b>54</b>
<b>9</b>	<b>Transfer of Shares</b>	<b>54</b>
<b>10</b>	<b>Protection of Name: Intellectual Property</b>	<b>54</b>
10.1	Shareholders' rights to their intellectual property	54
10.2	Company's rights to its intellectual property	54
<b>11</b>	<b>Freedom of Information</b>	<b>55</b>
<b>12</b>	<b>Announcements and Confidentiality</b>	<b>55</b>
12.1	No announcements without agreement	55
12.2	Shareholders' confidentiality obligations	55
12.3	Company's confidentiality obligations	55
12.4	Duration of confidentiality obligations	56

<b>13</b>	<b>Relationship between Shareholders and the Company</b>	<b>56</b>
13.1	Shareholders' procurement obligation	56
13.2	No partnership	56
<b>14</b>	<b>Entire Agreement and Severance</b>	<b>56</b>
14.1	Entire agreement	56
14.3	Conflict with the Articles	56
14.4	Severance	57
<b>15</b>	<b>Amendments</b>	<b>57</b>
<b>16</b>	<b>No assignment</b>	<b>57</b>
<b>17</b>	<b>Remedies and Waivers</b>	<b>57</b>
17.1	No waiver or discharge	57
17.2	Saving for future waivers	57
17.3	Failure to exercise etc. not a waiver	57
17.4	Rights and remedies cumulative	57
<b>18</b>	<b>Third party rights</b>	<b>58</b>
<b>19</b>	<b>Costs</b>	<b>58</b>
<b>20</b>	<b>Termination</b>	<b>58</b>
<b>21</b>	<b>Duration</b>	<b>58</b>
<b>22</b>	<b>Notices</b>	<b>58</b>
22.1	Service	58
22.2	Receipt	59
<b>23</b>	<b>Disputes</b>	<b>59</b>
<b>24</b>	<b>Governing Law and Jurisdiction</b>	<b>59</b>
24.1	Governing law	59
24.2	Jurisdiction	59
<b>25</b>	<b>Execution of different copies</b>	<b>59</b>
	<b>Schedule 1 – The Purpose</b>	<b>60</b>
	<b>Schedule 2 - Particulars of the Company</b>	<b>61</b>
	<b>Schedule 3 – Property Plan</b>	<b>62</b>
	<b>Schedule 4 – Reserved Matters</b>	<b>62</b>
	<b>List of Agreed Form Documents</b>	
-	Articles (Clause 3.2(a))	
-	Financial Procedure Rules	
-	Director's Letter (Clause 3.2(b))	
-	Landowners' Agreement	

# Shareholders' Agreement

## Dated

## Between

- (1) **North Essex Garden Communities Limited (NEGC)** a company incorporated in England and Wales with registered number 10319743 having its registered office at \*\* ;
- (2) **Essex County Council (Essex)** of County Hall, Market Road, Chelmsford, CM1 1QH ;
- (3) **Colchester Borough Council (Colchester)** of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG;
- (4) **Tendring District Council (Tendring)** of Town Hall, Station Road, Clacton-On-Sea, Essex, CO15 1SE; and
- (5) **Tendring Colchester Borders Limited (the Company)** a company incorporated in England and Wales with registered number 10320201 having its registered office at \*\* .

## Recitals

- A. NEGC is a joint strategic entity which is equally owned by each Local Authority.
- B. The parties have agreed to develop the Property in accordance with the Purpose through the Company.

## It is agreed

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement the following definitions shall apply.

**A Share** means an ordinary share of £1 each in the capital of the Company.

**A Shareholder** means a holder of A Shares.

**Act** means the Companies Act 2006.

**Articles** means the articles of association of the Company in the agreed form and as subsequently amended from time to time in accordance with this Agreement.

**B Share** means a B ordinary share of £1 each in the capital of the Company.

**B Shareholder** means a holder of B Shares.

**Board** means the board of Directors.

**Borrowings** means [bank and other loans, and finance provided under hire purchase, factoring, leasing acceptance credits and similar arrangements.]

**Budget** means a budget (including revenues, operating and capital expenditures and cash flow) of the Company for a relevant financial period.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for the transaction of general business.

**Chair** means the chair from time to time of the Board.

**Completion** means completion of the matters specified in Clause 3.

**Director** means a director of the Company from time to time.

**Director's Letter** means an engagement letter in the agreed form to be entered into between the Company and each Director.

**Encumbrance** means any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set-off, counterclaim, trust arrangement or other security, preferential right or agreement to confer security, or any equity or restriction (but excluding liens arising by operation of law) and **Encumber** shall be construed accordingly.

**Financial Procedure Rules** means the financial procedure rules in the agreed form adopted by the Company with the approval of NEGC (as amended from time to time).

**Funding Agreement** means any debt funding agreement entered into from time to time between a Local Authority and the Company.

**Independent Director** means a director who is not a Nominated Director or a Landowner Director, such director being appointed by NEGC.

**Initial Shareholders** means together NEGC, Essex, Colchester and Tendring.

**Intellectual Property** means patents, trade marks, service marks, trade names, domain names, rights in designs, semiconductor topography rights, database rights of unfair extraction and reutilisation, copyrights (including rights in computer software), rights in know-how and other intellectual or industrial property rights (whether registered or unregistered and including applications for the registration of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**Joint Delivery Group** means a joint delivery group established by NEGC to provide the Services.

**Landowner** means [each of ][\*\* ] (for so long as [it/they] [has/have] any interest in the Property), and/or such other person as NEGC may determine.<sup>1</sup>

**Landowners' Agreement** means an agreement [in the agreed form] entered into from time to time between each of the [Landowners] [Optionholders] and the Company.

---

<sup>1</sup> TBD

**Landowner Director** means a person nominated by the [Landowner/Optionholder] and appointed as a Director.

**LCIA Rules** means the LCIA Arbitration Rules 2014.

**LDV Business Plan** means a 2 year business plan as adopted and amended by the Board (with the approval of NEGC) from time to time; such business plan covering delivery of the Project, a detailed short-term action plan and such other matters as the Board may determine, and consistent with the aims and requirements of the Master Plan and the Long-term Business Plan.

**Local Authority** means Essex, Braintree District Council, Colchester or Tendring.

**Long-term Business Plan** means a business plan for the lifetime of the Project (with a higher level of detail for the next 5 years) relation to the Company as adopted from time to time by NEGC with the prior consent of Essex, Colchester and Tendring; such business plan covering, infrastructure requirements, finance, planning and such other matters as NEGC determines, and consistent with the aims and requirements of the Master Plan.

**Master Plan** means a document in relation to the Project as adopted by the relevant local planning authority that sets out proposals for land uses buildings, spaces, access and movement and other spatial components and sets the basis for planning applications.

**New Town Development Corporation** means a corporation established under section 1 of the New Towns Act 1981 or similar future legislation, as amended from time to time.

**Nominated Director** means a Director appointed by Essex, Colchester or Tendring.

**[Optionholder** means [each of ]\*\* ] (for so long as [it/they] [has/have] an option in respect of the Property), and/or such other person as NEGC may determine.]

**Project** means the development of the Property as a garden community in accordance with the Purpose.

**Property** means the property [*location description*] which is approximately identified in the plan attached in Schedule 4.

**Purpose** has the meaning given in Clause 2.1 below.

**Senior Employee** means an employee whose total annual remuneration exceeds or is likely to exceed £75,000.

**Services** means management and technical support and such other support and services the Company may require, and NEGC may provide, from time to time.

**Share** means an A Share or a B Share in the share capital of the Company.

**Shareholder** means an A Shareholder or a B Shareholder.

## 1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) the index and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document as amended, varied, novated, supplemented or replaced from time to time;
- (c) references to any recital, clause, paragraph or Schedule are to those contained in this Agreement, and all Schedules to this Agreement are an integral part of this Agreement;
- (d) the expression **this Clause** shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the sub-clause, paragraph or other provision) in which the expression occurs;
- (e) references to a **party** mean a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (f) references to a **director** shall, where the context allows, include reference to the alternate of such director;
- (g) references to a **subsidiary** shall include reference to a subsidiary and a subsidiary undertaking, each as defined in the Act, but on the basis that a company is to be treated as a member of another company for the purposes of subsections 1159(1)(b) and (c) of the Act even if its shares in that other company are registered in the name of:
  - (i) its nominee or any other person acting on its behalf, or
  - (ii) another person by way of security over those shares;
- (h) a document is in the **agreed form** if it is in the form of a draft agreed between and initialled by or on behalf of the Shareholders on or before the date of this Agreement;
- (i) references to any gender shall include the others; and words in the singular include the plural and vice versa;
- (j) references to **legislation** include any statute, bye-law, regulation, rule, subordinate or delegated legislation or order; and reference to any **legislation** is to such legislation as amended, modified or consolidated from time to time and to any legislation replacing it or made under it;
- (k) references to a **person** (or to a word importing a person) shall be construed so as to include:
  - (i) an individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality); and

- (ii) that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- (l) the words and expressions defined in sections 250, 390, 391, 471, 540, and 1173 of the Act have the same meanings;
- (m) **in writing** includes any communication made by letter, e-mail or other forms of electronic communication;
- (n) the words **include, including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- (o) the words **other** and **otherwise** shall not be construed ejusdem generis with any foregoing words where a wider construction is possible.

## **2 Purpose of the Company**

- 2.1 The parties hereby agree that the purpose of the Company is to secure the development of the Property in accordance with the Master Plan and the principles set out in Schedule 2.
- 2.2 The Purpose can only be amended with the prior written consent of all of the Local Authorities.

## **3 Completion arrangements**

### **3.1 Completion**

Completion shall take place immediately following signature of this Agreement at [*insert relevant address*].

### **3.2 Completion Obligations**

At Completion:

- (a) the parties shall procure that:
  - (i) the Company is established, organised and financed as detailed in Schedule 3;
  - (ii) the Company adopts the Articles; and
  - (iii) [*others?*].
- (b) the Company shall, and the Shareholders shall procure that the Company shall, enter into the following:
  - (i) Director's Letters;
  - (ii) [Any other contracts to be entered into at Completion];
- (c) NEGC shall enter into the following agreements:



(i) [list]

(d) Each of Essex, Colchester and Tendring shall enter into the following agreements:

(i) [list]

### **3.3 No partial Completion**

No party shall be obliged to complete its obligations under Clause 3.2 unless all of the obligations listed in Clause 3.2 are completed with simultaneous effect.

### **3.4 Shareholders' services**

Any Services reasonably required by the Company shall, at the discretion of the board of directors of NEGCG, be delivered by the Joint Delivery Group at rates to be agreed between the parties.

## **4 The Board**

### **4.1 Decisions to be referred to the Board**

4.1.1 The Board will manage the business of the Company to achieve the Purpose and in accordance with the requirements of the Long-term Business Plan and the LDV Business Plan.

4.1.2 All policy and management decisions of the Company (including the matters set out in Clause 8) shall be referred to the Board before implementation.

### **4.2 Action by the Board**

The Board shall act by majority vote, except in relation to any matter listed out in Clause 8 in which case no decision or action shall be taken unless any prior written consent required under Clause 8 has been received by the Company and if such consent is so received each of the Directors shall, unless otherwise constrained by their fiduciary duties, vote in favour of such matter.

### **4.3 Nominated Directors**

4.3.1 Each of Essex, Colchester and Tendring shall have the exclusive right to appoint, remove or replace a Nominated Director.

4.3.2 The Directors at the date of Completion shall be as specified in Schedule 3.

### **4.4 Landowner Director<sup>2</sup>**

4.4.1 The [Landowner/Optionholder] shall have the right to appoint up to three Landowner Directors. If any of the initial Landowner Directors ceases to be a Director, any replacement Landowner Director can only be appointed following receipt by the Company of the prior written consent of NEGCG.

4.4.2 In the event a [Landowner][Optionholder] ceases to have any interest in the Property, the Landowner Director shall, unless NEGCG otherwise requires, immediately resign as a Director of the Company.

---

<sup>2</sup> We will need to reflect this in the Landowners' Agreement.

#### **4.5 Independent Director**

NEGC shall have the exclusive right to appoint up to three Independent Directors.

#### **4.6 Alternate Directors**

It is expected that each Director will make every effort to attend Board meetings, and shall only miss Board meetings in exceptional circumstances. Each Director's Letter will contain details of an alternate to attend, speak and vote in Board meetings in the appointing Director's absence.

#### **4.7 Chair**

4.7.1 The Board will either:

- (a) appoint an appropriate person as Chair (being an Independent Director); or
- (b) appoint a chair from amongst the Directors with the expectation that an Independent Director will be elected.

Any such appointment will be for a maximum 2 year term.

4.7.2 If the proposed Chair is not an Independent Director the approval of all Nominated Directors will be needed for the appointment. The Chair shall not have a second or casting vote.

#### **4.8 Board meetings**

Board meetings shall be held at such location as a quorum of the Directors agree at intervals of not more than three months. Save as otherwise agreed by a majority of the Directors:

- (a) Board meetings shall be convened by any Director by not less than 7 days' notice, or where the particular circumstances require a shorter period, such shorter period as the circumstances reasonably require, if agreed by a majority of Directors;
- (b) each notice shall be sent to each Director to the address, and/or e-mail address notified to the Company for these purposes, and if notice is required to be sent by e-mail a copy of such notice shall also be sent by post (and air mail if the address is overseas);
- (c) each notice of a Board meeting shall be accompanied by a full agenda and supporting papers;
- (d) each Board meeting shall only deal with the business set out in the agenda which accompanied the notice convening that Board meeting; and
- (e) minutes of each meeting of the Board shall be taken and kept by the company secretary in the books of the Company. Copies of the minutes of each such meeting shall be delivered to each member of the Board as soon as practicable. If a member has not been present at the meeting copies of all papers considered by the Board at the meeting shall be sent to him with the minutes.

#### **4.9 Quorum**

The quorum for a Board meeting shall be at least one Nominated Director, one Landowner Director (if any are appointed) and one Independent Director (if any are appointed) present in person or by his alternate (but so that not less than three individuals shall constitute the quorum). If within 30 minutes of the time appointed for a Board meeting there is no quorum, the Director(s) present shall adjourn the meeting to a place and time not less than five Business Days later provided that at such adjourned meeting the requirement that such Director(s) shall be present shall not apply, and one Nominated Director present and shall constitute a quorum and may conduct the business of the meeting.

#### **4.10 Voting at Board meetings**

At each Board meeting the Directors present shall be entitled to cast one vote on each issue put to a vote.

#### **4.11 Compliance with Agreement**

The Company shall procure that any person who is appointed a Director after the date of this Agreement shall immediately upon becoming a Director of the Company enter into a Director's Letter with the Company to comply with and implement the terms of this Agreement.

#### **4.12 Shareholders to procure Director's resignation**

If a Shareholder ceases to be a Shareholder, it shall procure that every Director appointed by it under this Clause 4 is removed.

#### **4.13 Indemnity**

Each Shareholder shall procure that any Director appointed by it who vacates his office as director (whether by virtue of being removed by that Shareholder or otherwise) shall do so without cost to the Company. That Shareholder shall indemnify the Company and any other Shareholder from and against all claims, demands and rights which any such Director may have against the Company in respect of removal, dismissal, redundancy or otherwise.<sup>3</sup>

#### **4.14 Directors may pass information to their appointor**

A Director may from time to time disclose to the Party who appointed him and its representatives such information as he has regarding the Company.

#### **4.15 Removal of a director**

Any director may be removed by notice sent by NEGC to the Company.

### **5 Business Plans and Budget**

#### **5.1 Interim business plans**

Until such time as an LDV Business Plan is adopted by the Company in accordance with this Agreement, the Company may operate under such business plan as the Board shall determine

---

<sup>3</sup> Do we need the Landowner to sign up to a similar provision in the Landowners' Agreement?

(provided that such business plan is not in conflict with any Long-term Business Plan adopted by NEGC at that time).

## **5.2 Business plans**

5.2.1 Within three months of a full Board being appointed (being three Nominated Directors and at least three other Directors) the Company shall, subject to NEGC approval, formally adopt an LDV Business Plan.

5.2.2 The Company's business will also be operated in accordance with, and to achieve the aims set out in, the Long-term Business Plan.

5.2.3 The Board shall be responsible for, amongst other things:

- (a) preparing the LDV Business Plan and Budget; and
- (b) monitoring progress against the LDV Business Plan and Budget,

and may suggest amendments to the LDV Business Plan and Budget from time to time.

5.2.4 In addition, the Board shall submit any draft LDV Business Plan to NEGC no later than two months before the end of the period to which the current LDV Business Plan relates. Such LDV Business Plan shall not be adopted by the Company until such time as NEGC approval has been received.

5.2.5 Any amendments to the LDV Business Plan or Budget must first be approved in writing by NEGC. In order to obtain NEGC written approval, the Board shall submit to NEGC in writing the LDV Business Plan or Budget together with a proposal setting out the amendments, and an explanation for the amendments. Any such amendments need to be consistent with the Long-term Business Plan, Master Plan and the Purpose.

5.2.6 If there are any amendments made to the Long-term Business Plan, Master Plan or the Purpose, the Board will meet to discuss whether any amendments are required to the LDV Business Plan and Budget, subject always to NEGC's approval.

5.2.7 If the Company undertakes any business which is outside the remit of the Long-term Business Plan or LDV Master Plan, or incurs any expenditure or liability that means the Company will breach or exceed the Budget, or is likely to be in breach of the Budget, the Board will promptly notify NEGC in writing. Such notification will provide:

- (i) detailed information in relation to such expenditure or liability, including an explanation of the circumstances; and
- (ii) suggested remedial action.

5.2.8 Where there is any amendment to the Long-term Business Plan, Master Plan or the Purpose, the Board shall ensure that any corresponding amendments necessary to the remaining LDV Business Plan are also made.

## **5.3 Budget**

- 5.3.1 The Board shall submit any draft Budget to NEGC no later than two months before the start of each financial period of the Company. Such Budget shall not be adopted by the Company until such time as NEGC approval has been received.
- 5.3.2 If, at the end of any financial period, the Budget for the next financial period has not been agreed, the Company should comply with the requirements of the Financial Procedure Rules until such time as the relevant Budget has been approved by the NEGC.

## **6 Financing the Company**

### **6.1 Financing**

The Company shall be financed through the moneys subscribed for issued shares and lent under any Funding Agreement, or otherwise as the Shareholders may agree.

### **6.2 Borrowing limit**

The parties shall procure that the Company does not exceed any borrowing limit contained in the Budget or the Financial Procedure Rules.

### **6.3 No Shareholder obligations to fund**

No Shareholder shall be obliged to advance any loan to the Company except pursuant to any Funding Agreement.

## **7 Information and Operation of the Company**

### **7.1 Information**

The Company shall provide to each Shareholder and Director and where requested, to their representatives, the following:

- (a) a profit and loss account estimate for the Company within 10 Business Days of the end of each month;
- (b) unaudited management accounts for the Company within 20 Business Days from the end of each month including a profit and loss account for that month and for the financial year to date (in each case measured against the budget for the relevant period) and 12 month forecast cash flows;
- (c) audited statutory accounts for the Company within 60 Business Days from the end of the financial year;
- (d) access to the Company's books, records, Senior Employees and auditors at such times as may reasonably be requested; and
- (e) such other information relating to the Company as any Shareholder may reasonably request from time to time,

and without prejudice to the foregoing, the Company shall keep the Shareholders fully and promptly informed of all material developments regarding the Company's financial and

business affairs and all significant events (including any litigation or arbitration) which will or may affect the Company.

## **7.2 Operation of the Company**

The Company shall, and the Shareholders shall procure that the Company, shall:

- (a) carry on and conduct its business on a commercial basis in a proper lawful and efficient manner for its own benefit;
- (b) transact all business on arm's length terms;
- (c) ensure that all its business other than routine business is undertaken or supervised by the Directors;
- (d) obtain and maintain all necessary licences and approvals required in order to carry on the business; and
- (e) observe and perform its obligations under each contract referred to in Clause 3.2(b).

## **8 Reserved matters**

The Company agrees, so far as it lawfully may, and the Shareholders agree to procure, so far as is within their powers as Shareholders, that the matters listed in:

- (a) Part A of Schedule 5 in relation to the Company shall require and shall only be implemented if the Company shall have received the prior written consent of Essex, Colchester and Tendring; and
- (b) Part B of Schedule 5 in relation to the Company shall require and shall only be implemented if the Company shall have received the prior written consent of NEGC.

## **9 Transfer of Shares**

No Shareholder shall assign, transfer, exchange, encumber or otherwise dispose of any of the Shares held by it or any interest in them without the prior written consent of the other Shareholders.

## **10 Protection of Name: Intellectual Property**

### **10.1 Shareholders' rights to their intellectual property**

The Shareholders hereby acknowledge and agree that all Intellectual Property Rights used in the Business but owned or provided by a Shareholder or any associate of a Shareholder (not being the Company) shall unless specifically otherwise agreed in writing remain the property of that Shareholder, shall be deemed licensed to the Company on such terms as agreed by the Shareholder and the Company, or if there is no agreement on a non-exclusive royalty-free basis for so long as the party remains a Shareholder.

### **10.2 Company's rights to its intellectual property**

Any Intellectual Property Rights which arise in the course of the Company's activities and are developed by the Company, its Directors, employees or agents shall belong to the Company

and shall be deemed licensed to each of the Shareholders on such terms as are agreed by the Company and the relevant Shareholder or if there is no agreement, on a non-exclusive royalty-free basis for so long as the relevant Shareholder remains a Shareholder.

## **11 Freedom of Information**

The parties acknowledge that the parties to this Agreement may be subject to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and may be required to disclose information in response to requests within the terms of that legislation. Where appropriate the relevant party shall rely on any applicable exemptions in that legislation to justify not disclosing such information. Each party agrees to consult with the other parties to this Agreement as soon as reasonably practicable after receiving any such request and before disclosing any information concerning the Company.

## **12 Announcements and Confidentiality**

### **12.1 No announcements without agreement**

Save as required by law or with the prior written consent of the other parties no statement or announcement of any nature relating to the subject matter of or the transaction referred to in this Agreement or the establishment or operations of the Company shall be made to the public, the press or otherwise unless in a form previously agreed between the Shareholders.

### **12.2 Shareholders' confidentiality obligations**

12.2.1 Subject to Clause 11 each Shareholder shall (and shall procure that their representatives shall) at all times keep confidential and shall not use (other than for the benefit of the Company) any confidential information which it or they may have or acquire in relation to the business, finances, assets or affairs of the Company or any other party, save for any information:

- (a) which is publicly available or becomes publicly available otherwise than as a result of a breach of this Clause12;
- (b) which is disclosed to that party by a third party which did not acquire the information under an obligation of confidentiality;
- (c) which is required to be disclosed by law or the rules of any recognised investment exchange (as that term is used in section 285 of the Financial Services and Markets Act 2000) to which that Shareholder.

12.2.2 No Shareholder shall use any confidential information acquired in relation to another Shareholder pursuant to the performance of this Agreement for any purpose without the prior consent in writing of that Shareholder.

### **12.3 Company's confidentiality obligations**

The Company shall observe a similar obligation of confidence to that set out in Clause 12.2.1 in favour of each Shareholder.

#### **12.4 Duration of confidentiality obligations**

The obligations in this Clause 12 shall continue to apply after termination of this Agreement and after any party has ceased to be party to this Agreement without limit in time.

### **13 Relationship between Shareholders and the Company**

#### **13.1 Shareholders' procurement obligation**

Each of the Shareholders agrees it shall exercise its rights hereunder and as a Shareholder in the Company in such manner as could reasonably be expected to prevent, and shall not exercise those rights in any manner which could reasonably be expected to result in, a breach by the Company of any of its obligations under this Agreement or any Funding Agreement or any restrictions imposed upon it under its Articles (whether or not enforceable against the Company itself).

#### **13.2 No partnership**

Nothing in this Agreement, and no action taken under this Agreement, shall create a partnership or establish a relationship of principal and agent between any of the parties or (save as otherwise stated herein) otherwise authorise any party to bind any other party for any purpose.

### **14 Entire Agreement and Severance**

#### **14.1 Entire agreement**

This Agreement together with the documents referred to in it sets out the entire agreement between the parties, and supersedes any previous agreement between them in relation to the subject matter of this Agreement and those documents.

#### **14.2 Acknowledgment by parties**

Each party acknowledges that:

- (a) in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any representation (whether negligent or otherwise) made to it by any person (whether a party to this Agreement or not) which is not expressly set out or referred to in this Agreement;
- (b) the only remedy available to it in respect of any representation or warranty expressly set out or referred to in this Agreement shall be for breach of contract in respect of that term of this Agreement; and
- (c) nothing in this Clause 14 shall operate to exclude or restrict any liability for fraudulent misrepresentation.

#### **14.3 Conflict with the Articles**

The parties intend that the provisions of this Agreement shall prevail over the Articles in the event of conflict and, accordingly, the Shareholders shall, if necessary, exercise all voting and other rights and powers available to them as Shareholders or under this Agreement to



procure any amendment to the Articles required to give effect to the provisions of this Agreement.

#### **14.4 Severance**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

#### **15 Amendments**

This Agreement may not be amended, changed, altered, waived or, save as provided in Clause 20, terminated without the written consent of the parties.

#### **16 No assignment**

No party may assign its rights under this Agreement without the prior written consent of all other parties.

#### **17 Remedies and Waivers**

##### **17.1 No waiver or discharge**

No default by any party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of all other parties.

##### **17.2 Saving for future waivers**

No waiver by any party of any default by another party in the performance of or compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

##### **17.3 Failure to exercise etc. not a waiver**

No failure to exercise, nor delay or omission by any party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law:

- (a) affect that right, power or remedy; or
- (b) operate as a waiver of it.

No single or partial exercise by any party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

##### **17.4 Rights and remedies cumulative**

The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

## **18 Third party rights**

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## **19 Costs**

Each party shall bear the costs and expenses incurred by it in connection with the preparation and implementation of this Agreement.

## **20 Termination**

20.1 The Company shall continue until such time as:

- a) the Purpose has been achieved; or
- b) the Company is wound-up pursuant to a statutory process.

20.2 If the Purpose is achieved a Board meeting shall be called to decide whether the Company should ask the Shareholders to liquidate the Company.

20.3 On termination of this Agreement, any assets of the Company may transfer to a successor (or other appropriate) body, including a New Town Development Corporation.

## **21 Duration**

The rights and obligations of each Shareholder shall continue and be enforceable by or against it only while it is a Shareholder of the Company save for rights and obligations in respect of antecedent breaches of this Agreement or the Articles.

## **22 Notices**

### **22.1 Service**

22.1.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand, sent by prepaid first class, recorded delivery or registered post, and shall be addressed to the party to be served in the case of:

- (a) a company at its registered office for the time being;
- (b) Essex's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**];
- (c) Colchester's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**]; and
- (d) Tendring's address for service under this Clause 22 is [**address**, England]. Items served at this address must be marked for the personal attention of [**name** and **name**].

22.1.2 Any claim form, application notice, judgment, order, or other notice of legal process relating to this agreement may be served on Essex, Colchester or Tendring by posting it first-class to the address for

service specified above, or to such other address for service within England as the relevant party may notify to the other parties from time to time.

## **22.2 Receipt**

Any notice or other communication under this Agreement shall only be effective when received.

## **23 Disputes**

23.1 In the event of a dispute in relation to the Company, or arising out of or relating to this Agreement (including any question regarding its existence, validity or termination) either at the Board or between the Shareholders, the dispute will be escalated to the NEGC board of directors to make a decision.

23.2 If the dispute is not settled within 21 days of the NEGC board of directors having met to resolve the dispute, Essex, Colchester or Tendring may refer the matter to mediation in accordance with the LCIA Mediation Rules, which are deemed to be incorporated by reference into this Clause 23.

23.3 If the dispute is not settled by mediation within 42 days of the NEGC board of directors' meeting referred to in Clause 23.1, or such further period as the parties to the dispute shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which are deemed to be incorporated by reference into this Clause 23.

23.4 In any arbitration commenced pursuant to this Clause 23,

- (a) the number of arbitrators shall be one;
- (b) the seat, or legal place, of arbitration shall be London, England; and
- (c) the language to be used in the arbitral proceedings shall be English.

## **24 Governing Law and Jurisdiction**

### **24.1 Governing law**

This Agreement is governed by and is to be construed in accordance with English law.

### **24.2 Jurisdiction**

Subject to Clause 23 the parties agree to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising out of or in connection with this Agreement.

## **25 Execution of different copies**

The parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one instrument.

**Signed** on the date appearing at the beginning of this Deed.

## Schedule 1 – The Purpose

The purpose of the Company is to secure the development of the Property to create a garden community, being a self-sustaining community which secures the future stewardship of public assets for community benefit, the design, development and delivery of which is underpinned by local public sector leadership, a strong vision, inclusive and long term planning and effective engagement.

A garden community should:

1. be implemented using new models of delivery with the public and private sectors sharing risk and reward and ensuring that the cost of achieving the following is borne by those promoting development of the communities: (i) a high quality of place-making; (ii) timely delivery of both on-site and off-site infrastructure needed to address the impact of the new community; (iii) a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets;
2. be planned and delivered in conjunction with a masterplan and other design guidance that have been developed through innovative community engagement;
3. be designed and executed to achieve the highest quality of place-making and design, structuring the new community to create an appropriate hierarchy of centres and walkable neighbourhoods that accommodate strong local cultural, recreational, leisure and retail facilities that underpin community life and relate to the wider urban context, as well as establishing environments that promote health, happiness and well-being;
4. have an appropriate mechanism and funding for community governance and empowerment as well as the long term stewardship of community assets;
5. provide beautifully and imaginatively designed homes with easy access to great green spaces, combining the very best of town and country living;
6. provide development that will contribute to building a balanced and inclusive community including a range of mixed-tenure homes and housing types that are affordable – including to rent – for local people including provision of self- and custom-build, co-ownership and affordable homes;
7. contribute to the creation of a resilient & self-sustaining local economy through offering access to a strong local jobs offer, including within the community itself, that provide a variety of employment opportunities within easy commuting distance of homes;
8. ensure provision of generous green space that builds on existing natural assets and is linked to the wider natural environment, with well-connected and biodiversity-rich public parks, a mix of public and private networks of well-managed, high quality gardens, allotments, tree-lined streets and open spaces;
9. provide in a timely fashion to meet the needs of the growing community, a range of great local schools & education facilities catering for all age groups, needs & skills development, health facilities and other services needed to underpin community life;
10. promote and deliver a step change in sustainable and integrated local transport with excellent walking, cycling and public transport systems fully integrated with land use at its heart, encouraging and incentivising more sustainable active travel patterns overall; and
11. secure delivery of a smart and sustainable approach to the design and management of services, infrastructure and utilities to secure the highest standards of technology to reduce the impact of climate change, water efficiency with the aim of being water-neutral, energy efficiency and local energy generation, net gains in biodiversity, efficient management of utilities, excellent access to information technology networks and sustainable waste and mineral management.

## Schedule 2 - Particulars of the Company<sup>4</sup>

<b>Name:</b>	Tendring Colchester Borders Limited	
<b>Registered Number:</b>	10320201	
<b>Registered office:</b>	**	
<b>Directors:</b>		
[Nominated Directors: ]	**	**
[Landowner Director: ]	**	
Independent Director:	**	
<b>Company Secretary:</b>	**	
<b>Share Capital:</b>	100 A Shares	[** ] B Shares
	<b>NEGC</b>	<b>Essex, Colchester, Tendring</b>
No. and type of Shares subscribed:	100 A Shares	[** ] B Shares
Total subscription price (including any premium)	£100	£**
<b>Auditors:</b>	**	
<b>Accounting Reference Date:</b>	**	
<b>Bankers:</b>	**	**

---

<sup>4</sup> All to be confirmed.

## Schedule 3 – Property Plan

*To be included in the final Shareholders' Agreement.*

## Schedule 4 – Reserved Matters

### Part A

- 1 Passing any resolution or presenting any petition for the Company's winding up (unless the Company is insolvent).
- 2 Issuing or allotting any share or other capital or reducing, converting, sub-dividing, cancelling or otherwise reorganising, or altering any rights attaching to, any Shares.
- 3 Registering any transfer or allotment of Shares.
- 4 Granting any share option or right to subscribe, acquire or convert into Shares or implementing or varying any incentive, bonus or commission arrangement.
- 5 Ceasing, or making any material change in the nature of, the Company's business, the Purpose or establishing any new business.
- 6 Altering the Company's Articles.

### Part B

1. Changing the Company's auditors.
2. Changing the Company's accounting reference date or accounting policies.
3. Adopting or approving the Company's annual accounts.
4. Approving the LDV Business Plan or Budget, or amending the LDV Business Plan or Budget.
5. Approving or amending the Financial Procedure Rules.
6. Transferring the whole or any material part of the undertaking of the Company.
7. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring or disposing of (whether by one or more transactions) any assets, entering into any commitment, or incurring any expenditure.
8. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, acquiring, disposing of, surrendering or assigning any freehold or leasehold property.
9. Save as set out in the LDV Business Plan or Budget, forming any subsidiary, acquiring or disposing of any interest in any business or company, participating in any partnership, joint venture or profit/revenue sharing arrangement or entering into any scheme of arrangement or merger.

10. Save as set out in the LDV Business Plan or Budget, and subject to the Financial Procedure Rules, incurring any Borrowings or creating any Encumbrance upon or in respect of the whole or part of the business or the Company's assets.
11. Entering into any agreement not on bona fide arms' length terms, or (save as set out in the LDV Business Plan or the Budget) any agreement with any director or with any Shareholder or with any associate of a Shareholder.
12. Other than as set out in the LDV Business Plan, entering into, or varying, any Agreement.
13. Save as set out in the LDV Business Plan or Budget, making any loan or providing any surety or security arrangement in respect of any loan or third party obligation whatsoever.
14. Save as set out in the LDV Business Plan or Budget, granting any service or consultancy agreement to any Senior Employee or varying or terminating any such agreement.
15. Paying any Directors' remuneration, fees or expenses other than pursuant to a Director's Letter.
16. Save as set out in the LDV Business Plan or Budget, initiating or settling any litigation or arbitration which will, or is likely to, have:
  - (i) a material impact on the reputation of the Local Authorities, NEGC or the Company, or
  - (ii) the ability of the Company to achieve the Purpose.
17. Opening any bank account or signing or varying any bank mandate, in each case other than in accordance with the Financial Procedure Rules.

**Signed by \*\*** authorised )  
 for **NORTH ESSEX** )  
**GARDEN COMMUNITIES LIMITED** )

**Signed by \*\*** authorised )  
 for **ESSEX COUNTY COUNCIL** )

**Signed by \*\*** authorised )  
 for **COLCHESTER** )  
**BOROUGH COUNCIL** )

**Signed by \*\*** authorised )  
 for **TENDRING DISTRICT COUNCIL** )

**Signed by \*\*** authorised )  
 for **EAST OF COLCHESTER** )  
**LIMITED** )

## Strategic Risk Assessment Profile

Risk Description	Score			RAG Rating / Consequence	Mitigation	Owner
	P	I	O			
<b>1. PLANNING</b>						
1.1 A scheme is not included in the Pre-Submission Draft Local Plan on the basis of appropriate planning policy determination.	1	4	4	<b>GREEN</b> It would not be possible for the LDV to pursue any development and accordingly it would be wound up.	Dentons engaged to provide planning policy advice. M&IWG will actively work to ensure the planning viability of all 3 Garden Communities.	M&IWG Dentons
1.2 Part 1 not considered robust enough and is not approved by PINS.	2	4	8	<b>AMBER</b> Part 1 doesn't provide a sufficiently robust policy justification for the Garden Communities.	Dentons engaged to provide planning policy advice. M&IWG will monitor and ensure appropriate evidence-based research is commissioned as part of fortnightly meetings.	M&IWG
1.3 Action groups / Parish Councils successfully lobby Members and/or MPs requesting for the programme to be halted.	3	4	12	<b>AMBER</b> This could cause a delay to the timescales for the Pre-Submission Draft Local Plan and Examination in Public. Confidence in programme could be reduced.	The Marketing & Comms Plan includes specific reference to proactively engaging with Action Groups and Parish Councils. Consideration is being given to "Community Enablers" to positively assist Parish Councils as part of this process.	M&IWG / PR & Marketing Manager
1.4 The "infrastructure first" principle of the NEGC ambition is not able to be sufficiently achieved in order to support the early sustainability of the communities.	3	4	12	<b>AMBER</b> This would impact on the sustainability and connectivity of the communities as well as undermine confidence in the programme.	All workstreams of the programme will actively work with relevant stakeholders to ensure the timely delivery of the infrastructure required by the communities.	M&IWG / TWG / FWG
<b>2. LANDOWNER AGREEMENT / ENGAGEMENT</b>						
2.1 Landowner agreements are not reached before the Pre-Submission Draft Local Plan is approved by Councils.	3	4	12	<b>AMBER</b> This would 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.	Dentons will support the LWG in the positive negotiation and implementation of the landowner agreements in order to meet the programme timescales.	LWG / Dentons
<b>3. DELIVERY VEHICLE EVOLUTION</b>						
3.1 NEGC Ltd / LDV Board breakdown and being unable to take decisions and/or reach agreement.	2	3	6	<b>AMBER</b> This could affect the successful delivery of the objectives as set out in the respective business plans for the Garden Communities.	Comprehensive governance processes will be set out in the Articles of Association and Shareholders Agreement.	LWG / Dentons
<b>Risk Description</b>	<b>Score</b>			<b>RAG Rating / Consequence</b>	<b>Mitigation</b>	<b>Owner</b>



	P	I	O			
<b>4. FINANCIAL</b>						
4.1 Commercial imperatives override wider vision.	2	4	8	<b>AMBER</b> May not deliver on broader ambition. May cede too much control / safeguards to satisfy landowner expectations.	Ensure vision and objectives underpin all workstreams.	SDB & SG
4.2 Sharing of rewards offer poor value for money to Councils.	3	3	9	<b>AMBER</b> Reward to Councils does not reflect extent of risk – balance too far in landowner favour.	Legal negotiations to be fully cognisant of financial positions and reflect risk exposure.	SDB, SG, LWG & FWG
4.3 Inaccurate financial modelling.	3	4	12	<b>AMBER</b> Scheme could be unviable leading to loss of investment, no/lower capital repayment or longer pay-back period.	Ongoing analysis of all assumptions and further evolution of modelling approach.	FWG
4.4 Projects unviable.	2	5	10	<b>AMBER</b> Loss of investment, no/lower capital repayment.	Ensure further design & planning work achieves viable schemes.	FWG & MIWG
4.5 Unable to raise sufficient finance.	2	3	6	<b>AMBER</b> Limits scope for funding options, may restrict to Council funding only.	Ensure approach is sufficiently attractive to the wide market through derisking and clear Council backing.	LWG & FWG
4.6 Impact on Council revenue budgets.	3	3	9	<b>AMBER</b> Impact on monies available for other Council services or need to raise further monies locally.	Ensure prudent approach. Consult auditors. Consider scope for capitalisation.	FWG
<b>5. PROGRAMME</b>						
5.1 The development of the NEGC Ltd Business Case leads to the conclusion that the programme is commercially unviable or involves a high level of uncontrollable risks.	2	5	10	<b>AMBER</b> The partner Councils will have the option to terminate the programme at this juncture.	Effective programme management and the active involvement of all key stakeholders will endeavour to ensure that the viability of this programme is maximised as much as possible.	SDB
5.2 The programme is not sufficiently resourced, both in terms of the necessary skills or capacity, and does not have a comprehensive contingency strategy in place in the event of the unexpected absence/ departure of key project officers and/or internal/external partners.	5	3	15	<b>AMBER</b> The lack of a sufficiently resourced team will significantly impact upon the function and timely support, co-ordination and delivery of the programme and LDVs.	The delivery team will undertake a comprehensive analysis of the resourcing and contingency required for achieving delivery of the programme's objectives. Sufficient budget will be made available to recruit to any vacant positions and the workforce needs of the programme will be regularly reviewed to respond to any changes in these requirements.	Delivery Team / Steering Group

Risk Description	Score	RAG Rating / Consequence	Mitigation	Owner
------------------	-------	--------------------------	------------	-------

	P	I	O			
<b>6. EXTERNAL FACTORS</b>						
6.1 Changes to Central Government policy (e.g. Housing Bill).	3	3	12	<b>AMBER</b> Could impact on Central Government support for the programme and/or ability to attract additional funding.	All workstreams will monitor the legislation applicable to their specialisms and will provide proactive support to the governance arrangements should changes to the programme approach be required to respond to the new environment.	LWG / FWG / M&IWG / TWG

## Explanatory Key

A risk is something that **could** happen in the future and have an impact on the completion or outcome of the Programme.

All programmes have an element of risk; all new risks will be recorded as soon as they are identified and all risks will be updated when a change (positive or negative) occurs. This is to ensure that the programme can demonstrate how it will deal with potential problems or varying severity in a controlled manner.

Risk is calculated according to the probability (P) of it happening and the impact (I) of this occurrence, based on a scale of 1 (very low) and 5 (very high) for each element of the calculation. A RAG rating is then assigned to the total score (i.e. the outcome, which is calculated by multiplying the probability score and the impact score:  $P \times I = O$ ).

## Definition of Scores

	1 (Very Low)	2 (Low)	3 (Medium)	4 (High)	5 (Very High)
<b>Probability</b>	Unlikely 0-10%	Low 11-30%	Possible 31-50%	Probable 51-80%	Definite 81-100%
<b>Impact</b>	Minimal (no interruption to programme delivery)	Minor (temporary interruption to programme delivery)	Significant (lasting interruption to programme delivery)	Severe (complete interruption to programme delivery)	Catastrophic (programme will fail unless risk urgently mitigated/resolved)

RAG Status	Score	Definition	Action
<b>Green (Low)</b>	1-4	The programme is meeting expectations.	No action required.
<b>Amber (Medium)</b>	5-15	The programme is not meeting expectations. There are mitigating circumstances in most cases and improvement is likely but risks need to be flagged to the programme team.	The programme team should be notified at the earliest opportunity; mitigation action will be explored at the appropriate governance level and implemented, as appropriate.
<b>Red (High)</b>	16-25	There are significant problems with the programme and it is not meeting expectations to date. Corrective action is required to meet business objectives. The problem cannot be handled solely by the programme team.	The matter should be escalated to the programme team immediately for consideration/resolution at the appropriate governance level.