

COMMUNITY LEADERSHIP OVERVIEW AND SCRUTINY COMMITTEE

1 MARCH 2021

REFERENCE REPORT FROM NEGC LTD JOINT SCRUTINY PANEL

A.1 SCRUTINY OF NEGC LTD AND GOVERNANCE OF FUTURE COUNCIL CONTROLLED COMPANIES

(Report prepared by Keith Simmons)

PURPOSE OF THE REPORT

The report advises the Overview and Scrutiny Committee (OSC) of the work of the NEGC Joint Scrutiny Panel, to formally invite this OSC and the Community Leadership OSC to note that the Joint Scrutiny Panel was being dissolved and to consider the recommendations of the Joint Scrutiny Panel in respect of governance of future Council controlled companies.

BACKGROUND

This OSC and the Community Leadership OSC, at their respective meetings held on 29 July 2019 (Minute 15 refers) and 5 August 2019 both approved that a joint scrutiny panel be established in order to scrutinise the work of the North Essex Garden Communities Limited (NEGC) and, in particular, its interim business plan and future business plans.

The membership of the Joint Scrutiny Panel established, was delegated to the Chairmen of the two OSCs to determine, subject to ratification by those two OSCs. The following were appointed to the Joint Scrutiny Panel:

Councillor M Stephenson (Chairman)
Councillor Bush
Councillor Griffiths
Councillor Steady
Councillor Turner

This OSC endorsed the above membership at its meeting on 14 October 2019 (Minute 28 refers). The Community Leadership OSC also endorsed that Membership on 7 October 2019.

The Joint Scrutiny Panel met three times as follows:

16 October 2019
12 February 2020
17 September 2020

The Joint Scrutiny Panel looked at the various responsibilities of the Council as community leader, shareholder of NEGC Ltd and having a Director of the Board of that Company. The inherent conflicts and the management of those conflict points were also mentioned.

The absolute importance of Part 1 of the Local Plan in the critical path for Garden Communities and NEGC Ltd (and any future delivery vehicle for the Communities) was referenced at the meetings. NEGC Ltd had been commissioned by the partner Councils (Braintree, Colchester, Essex and Tendring) to undertake work for those partner Councils as part of the work of those Councils to secure approval of Part 1 of their Local Plans.

While the process of adoption of the Local Plan was underway, the NEGC Ltd had developed interim business plans only. The Interim Business Plans for NEGC Ltd from 2018/19 and 2019/20 were submitted to the Panel for consideration.

The work of this Council's Monitoring Officer and section 151 Officer with their colleagues in the other partner Councils in respect of protecting the interests of this Council in relation to NEGC Ltd and the governance arrangements was reflected on several times.

The Panel also looked briefly at possible future delivery vehicles for the Garden Communities.

Across all meetings of the Joint Scrutiny Panel there was reference to best practice models for governance arrangements for Council controlled companies such as NEGC Ltd. In part this discussion was about what might be appropriate for the future development of governance around NEGC Ltd, but, also around future companies that the Council may establish or participate in where the Company was a Council controlled company.

At the Joint Scrutiny panel's last meeting, it noted the decision of the North Essex Garden Communities Ltd Board on 6th July 2020 to take all the necessary steps to wind up its three Local Delivery Vehicles. The three Councils concerned had also all approved that NEGC Ltd itself cease trading on 31 August 2020 and that the necessary winding up procedures for it be undertaken, subject to the Leader of the Council, in consultation with the Section 151 Officer and the Monitoring Officer, being satisfied around the final accounting processes.

The Panel was advised that NEGC Ltd had been solvent and, after settling any outstanding liabilities, the remaining assets of the company would be apportioned to the shareholders entirely as it should be.

On the basis that the NEGC Ltd was being wound up the Joint Scrutiny Panel had concluded its work based on the approved scope and terms of reference for the Panel.

RECOMMENDATION

- (1) To note that the winding up of NEGC Ltd meant that the rationale for establishing the Joint Scrutiny Panel, and the approved scope of the Panel, had also ended and that this Committee and the Community Leadership Overview and Scrutiny Committee be RECOMMENDED to formally note that the Panel was being dissolved.**

(2) That this Committee receives the following recommendations from the Joint Scrutiny Panel and determines whether to submit (a), (b) and (d) below to the Cabinet for consideration:

- (a) To record and applaud the hard work of officers in respect of the development of the Tendring-Colchester Borders Garden Community that resulted in the proposals for the Garden Community being accepted by the Local Plan Inspector in his enquiry into the draft Local Plan.**
- (b) To note that there is important work being undertaken on various work streams to secure an exemplar development through the Tendring-Colchester Borders Garden Community.**
- (c) To establish a further Joint Scrutiny Panel at an appropriate time in the future to monitor, examine and review arrangements for delivery of the Tendring-Colchester Borders Garden Community (and particularly the commitments and financial expose of the Council to any external body established by the Council to lead on the development of that Garden Community).**
- (d) To endorse the principle that where the Council establishes a company limited by shares (on its own or with other bodies) that it also establishes a Shareholder Group (either solely or with the other public bodies where the company established jointly) and that, the terms of reference similar to those set out at Appendix A to this report should form the terms of reference for that Shareholder Group, adjusted as necessary to the particular circumstances, business of the Company and consideration of such matters as:
 - (i) How any co-opted members are used and how they are defined in the terms of reference;**
 - (ii) The Chairman of the relevant overview and scrutiny committee and the Chairman of the Audit Committee being appointed to the Shareholder Group as non-voting members; and**
 - (iii) Ensuring that any “invitations to attend” issued to councillors or officers etc. must be provided to such persons at least five working days in advance of the meeting.****

APPENDICES

A – Indicative Terms of Reference (and notes) for Shareholder Groups for Council controlled companies.

BACKGROUND PAPERS

None.

Resources and Services Overview and Scrutiny Committee
16 November 2020

Reference from the NEGC Ltd Joint Scrutiny Panel

Shareholder Group or Board

Extract from LLG Guidance Note

- 6.1 The structure described creates a governance process whereby, so far as appropriate under this Code's Principles, the company is left to get on with its business. Following the UK Corporate Governance Code, the companies will utilise a unified board, with appropriate non-executive directors providing outside expert help and with board committees (such as an audit committee) to provide oversight and ensure delivery.
- 6.2 The Leader, in turn, will seek to inform the executive decisions and to hold the company to account by utilising a reflection of the company board structure in the form of a Shareholder Group, including external expertise and sub-groups. The role of this group is to provide the necessary oversight from a shareholder's perspective that the parameters, policies and boundaries that the executive as the shareholder has established for the company are being adhered to. In it, the Leader (or his or her appointee) remains the decision maker but the Group act as advisors in the making of those executive decisions.
- 6.3 Such a Shareholder Group is considered to be an effective means of governance of the companies. This is because it allows for decision making and discussion in an informed atmosphere, which also provides the executive with:
- a mechanism to communicate the shareholders' views to the company; and
 - a means to evaluate the effectiveness of the company board and the delivery of the company performance against strategic objectives.
- 6.4 It is intended that the Mayor/Leader (or his/her appointee) will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Group (in a similar manner to the Mayor/Leader's executive decisions made at various partnership boards and the health and well-being board). It is envisaged that key decisions concerning the companies will, however, still normally be made at meetings of the Cabinet.
- 6.5 The Terms of Reference for the Shareholder Group are set out at Annex 1.

SHAREHOLDER GROUP - TERMS OF REFERENCE

Overview

The purpose of the Shareholder Group is to advise the Leader in the exercise of their responsibility for the Council's functions as corporate shareholder of a company, in their role to represent the interests of the Council as Shareholder Representative at meetings of a company.

Decision making

The Leader or other Cabinet member appointed by the Leader for this purpose (referred to "as the appointed Cabinet Member") may make decisions concerning companies in which the Council is or is proposed to become a shareholder (**consider major/minor shareholders**), either:

- (a) in Cabinet; or
- (b) in the presence of the Shareholder Group.

TDC Note: Make reference to recording decision

Membership and Arrangements

The Shareholder Group shall consist of the Leader (or the appointed Cabinet member) in the presence of:

- (a) Any additional Members of the Cabinet as are appointed by the Mayor/Leader (which shall be at least two);
- (b) Two co-opted members, who will be independent persons providing relevant expertise and appointed on merit (but which process may be carried out in association with the Audit Committee's arrangements for co-opted appointments); and

TDC Note: Consider use of co-opted members and phrase independent persons (maybe a different definition)

- (c) Relevant senior officers of the Council as are appointed by the Chief Executive; together with
- (d) The Chair of Overview and Scrutiny, as a Member of the Council from outside of the Cabinet, to act in the capacity of Observer.

TDC: consider Audit Committee Observer?

The Section 151 Officer and Monitoring Officer, will be advisors to the Group to provide open and strong advice.

Other members of the Cabinet (who are not directors of any of the companies concerned) may attend and vote as substitutes in the event that an appointed

member of the Shareholder Group is unable to attend

Restrictions on Membership

As the Shareholder Group is to advise and discharge executive functions in relation to company matters and the role of the Shareholder Representative, only Cabinet members can be members of the Shareholder Group with voting rights, although other Cabinet members and non-Cabinet members can be invited to attend, without voting rights.

Meetings

The Shareholder Group shall meet on a basis agreed by itself and normally in private.

The quorum shall be the Leader or other appointed Cabinet member in the presence of a minimum of:

- (a) one other Cabinet Member;
- (b) one independent co-optee; and
- (c) one senior officer appointed to the Group (or their appointed deputy).

An invitation to attend must have been provided to the Chair of Overview and Scrutiny Committee (or their nominated deputy) at least three clear days in advance of the meeting taking place. This notice period may be waived if the Chair of Overview and Scrutiny Committee (or their nominated deputy) so agrees.

An invitation to attend must also have been provided to the section 151 officer and the monitoring officer (or their nominated deputies), which will normally be at least three clear days in advance of the meeting taking place.

The Leader (or appointee) will chair the Shareholder Group and a Vice Chair will be selected from the elected members of the Shareholder Group.

Sub Groups

To assist it in its functions the Shareholder Group:

1. may establish and consult standing sub-groups, such as might be required in respect of:
 - (a) Audit and Risk;
 - (b) Ethical practices; or
 - (c) Nominations and Remuneration
2. may establish and consult ad-hoc or task and finish sub-groups in respect of any matter; and
3. may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies

A sub-group or stakeholder group may contain such co-opted members, advisors or

observers as the Shareholder Group sees fit.

Functions

1. Monitor the performance of a company in relation to its Business Plan and, in particular, the company's performance:
 - (a) in financial matters
 - (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plan; and
 - (c) against the values of the Council.
2. Evaluate and monitor:
 - (a) the financial and social returns on investment (be that shareholding, loans or direct investment); and
 - (b) risks and opportunities including those arising from joint ventures or new opportunities.
3. Consider matters reserved to the Council for shareholder approval, such as:
 - (a) Varying Articles of Association
 - (b) Varying ownership and structure
 - (c) Variations to shares (number of, rights, etc.
 - (d) Entering contracts that:
 - (i) have a material effect on Council business (including other companies within the group)
 - (ii) are outside of the business plan or do not relate to the business
 - (iii) significant in relation to the size of the business, the business plan, etc.
 - (e) Material legal proceedings outside of ordinary business
 - (f) Adopting and amending business plans each year and strategic plans (3 years)
 - (g) Appointment, removal and the remuneration of directors (members of the company board)
 - (h) Selection of the chair of the board
 - (i) Appointment of auditors
 - (j) Issue of dividendsas more particularly set out in a company's Articles of Association or Shareholder Agreement.

Relationship

The Shareholder Group as it considers appropriate in accordance with its functions described above, may:

1. report and make formal recommendations to the Leader, directly or to the wider Cabinet;
2. make reports to and consult Overview and Scrutiny (including full Council) or
3. make reports to and consult the Audit Committee, in relation to that Committee's particular functions.