

AUDIT COMMITTEE

25 FEBRUARY 2021

REPORT OF ASSISTANT DIRECTOR (GOVERNANCE) & MONITORING OFFICER

A.2 NEGC LTD JOINT SCRUTINY PANEL - SCRUTINY OF NEGC LTD AND GOVERNANCE OF FUTURE COUNCIL CONTROLLED COMPANIES

(Report prepared by Ian Ford and Lisa Hastings)

PURPOSE OF THE REPORT

To enable the Committee to consider its formal response to a recommendation made by the Resources and Services Overview & Scrutiny Committee following that Committee's consideration of the report submitted by the NEGC Ltd Joint Scrutiny Panel on completion of the Panel's scrutiny of NEGC Ltd and the governance of future Council controlled companies.

BACKGROUND

Following respective meetings held on 29 July and 5 August 2019, the Resources and Services Overview and Scrutiny Committee and the Community Leadership Overview and Scrutiny Committee, had 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 following Members were appointed to the Joint Scrutiny Panel:

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

The Joint Scrutiny Panel met three times as follows:

16 October 2019
12 February 2020
17 September 2020

During those meetings the Panel considered the Governance of Council Interests in Companies - Code of Practice (cabinet and scrutiny example) issued by Lawyers in Local Government (LLG) to examine possible areas for the Panel to develop recommendations in respect of future arrangements. At the time the Panel was undertaking its review the future of NEGC Ltd was the main consideration and the setting up of an internal structure within the Council in the form of a Shareholder Group. The Guidance includes model terms of reference for such a Group and can be adopted for any local authority company. The LLG Code of Practice is attached to this report as Appendix A.

The final report of the Joint Scrutiny Panel was submitted to the Resources and Services Overview and Scrutiny Committee on 16 November 2020. The Shareholder Group Terms

of Reference recommended by the Resources and Services Overview and Scrutiny Committee is attached as Appendix B to this report.

DETAILED INFORMATION

At its meeting held on 16 November 2020 the Resources and Services Overview and Scrutiny Committee was informed that the Joint Scrutiny Panel had:-

- examined the various responsibilities of the Council as community leader, shareholder of NEGC Ltd and having a Director of the Board of that Company, including the inherent conflicts and the management of those conflict points;
- been made aware of 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). NEGC Ltd had been commissioned by the partner Councils (Braintree, Colchester, Essex and Tendring) to undertake work for those partner Councils to secure approval of Part 1 of their Local Plans;
- scrutinised the Interim Business Plans for NEGC Ltd for 2018/19 and 2019/20;
- reflected upon the governance arrangements surrounding 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;
- looked briefly at possible future delivery vehicles for the Garden Communities together with best practice models for the future development of governance arrangements for Council controlled companies such as NEGC Ltd;
- noted at its last meeting 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 and that 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, in the case of this Council, the Leader of the Council, in consultation with the Section 151 Officer and the Monitoring Officer, being satisfied around the final accounting processes;
- been advised that NEGC Ltd had been solvent and that, after settling any outstanding liabilities, the remaining assets of the company would be apportioned to the shareholders entirely as it should have been; and
- had concluded its work based on the approved scope and terms of reference for the Panel on the basis that the NEGC Ltd was being wound up.

The Resources and Services Overview and Scrutiny Committee having considered the report of the Joint Scrutiny Panel had resolved:-

- (1) *notes that the winding up of NEGC Ltd means that the rationale for establishing the Joint Scrutiny Panel, and the approved scope of the Panel, has also ended and requests that Cabinet notes that this Committee and the Community Leadership Overview and Scrutiny Committee will formally note that the Panel is being dissolved.*
- (2) *that this Committee notes the following recommendations from the Joint Scrutiny Panel and formally submits (a), (b) and (d) below to the Cabinet for its 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.*

Consequently, the Audit Committee is now requested to give its particular consideration to the recommendation of the Resources and Services Overview and Scrutiny Committee highlighted in **bold** and especially where it pertains to the suggestion that the Chairman of the Audit Committee is appointed to the Shareholder Group as a non-voting member. The recommended Terms of Reference are attached as Appendix B to this report.

The Community Leadership and Partnerships Overview & Scrutiny Committee will also be considering the final report of the Joint Scrutiny Panel at its meeting due to be held on 1 March 2021.

The Cabinet will be considering in due course all of the above recommendations of the Resources and Services Overview and Scrutiny Committee and any comments or recommendations made by the Audit Committee at this meeting and by the Community Leadership and Partnerships Overview & Scrutiny Committee on 1 March 2021 will be submitted to the Cabinet, in order that Cabinet can take them into consideration in reaching its decision.

The Audit Committee may determine that the idea of a Shareholder Group could be extended to other outside bodies or partnerships such as Tendring Colchester Borders, or similar.

If Cabinet resolved to form a Shareholder Group, the Monitoring Officer recommends that this requirement is formally adopted within the Council's Constitution. Through the Gifted Unit Scheme the Council has been requested to become a shareholder for a number of management companies, although currently no decisions have been required as shareholders as the concept is fairly new.

RECOMMENDATION

That the Committee determines whether it has any comments or recommendations it wishes to put forward to the Cabinet.

APPENDICES

Appendix A – Lawyers in Local Government (LLG) - Governance of Council Interests in Companies - Code of Practice (cabinet and scrutiny example)

Appendix B - Shareholder Group Terms of Reference recommended by the Resources and Services Overview and Scrutiny Committee