

## CABINET

19 MARCH 2021

### REFERENCE REPORT FROM THE OVERVIEW & SCRUTINY COMMITTEES AND THE AUDIT COMMITTEE

#### A.2 SCRUTINY OF NEGC LTD AND GOVERNANCE OF FUTURE COUNCIL CONTROLLED COMPANIES

(Report prepared by Keith Durran and Ian Ford)

##### **BACKGROUND**

At the meeting of the Resources and Services Overview and Scrutiny Committee held on 16 November 2020 (Minute 99 refers) the Committee was provided with an overview of NEGC Ltd and Governance of Future Council Controlled Companies.

The Committee heard that the Joint Scrutiny Panel had 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 had been submitted to the Panel for consideration.

It was reported to the Committee that the work of the 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 were reflected on several times.

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

Members were informed that 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 that 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 have established or participated 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 Committee was informed that the Panel had 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.

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.

## **RESOURCES AND SERVICES OVERVIEW & SCRUTINY COMMITTEE'S RECOMMENDATIONS TO CABINET**

During the consideration of this report the Resources and Services Overview & Scrutiny Committee made the following:-

### **RECOMMENDATIONS TO CABINET:**

- (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 would formally note that the Panel was being dissolved.
- (2) That this Committee having received the following recommendations from the Joint Scrutiny Panel and 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.

#### **AUDIT COMMITTEE’S RECOMMENDATIONS TO CABINET**

The Audit Committee, at its meeting held on 25 February 2021, considered the above recommendations of the Resources and Services Overview & Scrutiny Committee insofar as they related to the Audit Committee (i.e. those paragraphs highlighted in bold above).

Having expressed its concern and determination that the independence of the Audit Committee should be maintained the Committee:-

**“RESOLVED** that the Audit Committee -

- (a) *notes the contents of the report and the suggestion from the Resources and Services Overview and Scrutiny Committee that, in principle, a Shareholder Group should be formed where the Council establishes a company;*
- (b) *whilst supporting the principle of the Shareholder Group, does not agree, that the terms of reference of that Group should be established at this stage; and therefore*
- (c) *recommends to Cabinet that further work be undertaken by a small group made up of representatives from Cabinet, the Chairmen of the two Overview and Scrutiny Committees and the Chairman of the Audit Committee, together with the Monitoring Officer and the Section 151 Officer to look into the concerns raised in a joined up approach prior to further recommendations being submitted to the Cabinet.”*

#### **COMMUNITY LEADERSHIP OVERVIEW & SCRUTINY COMMITTEE’S RECOMMENDATIONS TO CABINET**

The Community Leadership Overview & Scrutiny Committee, at its meeting held on 1 March 2021, also considered the final report of the Joint Scrutiny Panel and the above recommendations of the Resources and Services Overview & Scrutiny Committee and it was:-

**RESOLVED -**

1. Notes that the Joint Scrutiny Panel has been dissolved following the decision for NEGC Ltd to cease trading (and for it to be wound up) as the rationale for establishing the Panel (and the approved scope of the Panel), has ended and that Cabinet be requested to note the same.
2. Notes the following recommendations from the Joint Scrutiny Panel and formally submits (a), (b), (d) and (e) 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/joins 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 a recommendation be submitted to Council to include this in the Constitution for when the Council does establish/join such a company.**
- (e) That the broad approach to the terms of reference of any such Shareholder Group, as submitted to the Joint Scrutiny Panel based on the good practice identified by Lawyers in Local Government, be referred to a small group made up of representatives from Cabinet, the Chairmen of the two Overview and Scrutiny Committees and the Chairman of the Audit Committee, together with the Monitoring Officer and the Section 151 Officer prior to further a further recommendation being submitted to the Cabinet.

## **PORTFOLIO HOLDER'S COMMENTS AND RECOMMENDATIONS TO CABINET**

### **Portfolio Holder Comments**

*"I thank the Overview and Scrutiny Committees and Audit Committee for their review of governance arrangements for local authority companies. A small group being set up, with those representatives identified in the recommendations, is a sensible approach to undertake a joined up consideration of the detail and implications, before any potential Shareholder Group terms of reference are proposed. Any consequential changes to the Constitution can be included through the annual review led by the Portfolio Holder for Corporate Finance and Governance, together with the Monitoring Officer, with the necessary reports following."*

### **Recommendations to Cabinet**

That the recommendations of the Overview and Scrutiny Committees and the Audit Committee be noted and the comments of the Corporate Finance & Governance Portfolio Holder, in response thereto, be endorsed.