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To Whom It May Concern

**The Draft New Towns Act 1981 (Local Authority Oversight) Regulations  
Proposed ECC response to consultation paper**

**1. Introduction**

- 1.1 This letter is submitted by Essex County Council (ECC) in response to the Department of Communities and Local Government consultation regarding the Draft New Towns Act 1981 (Local Authority Oversight) Regulations 2018 (the Draft Regulations).
- 1.2 This is submitted in addition to those representations made by the North Essex Garden Communities Limited (NEGC) and ECC, Colchester Borough Council, Braintree District Council and Tendring (the North Essex Authorities).
- 1.3 ECC welcomes the Draft Regulations, as these will provide a workable foundation for authorities to deliver new communities through new housing and the necessary supporting infrastructure. The response set out below seeks to enhance the Regulations to ensure that the deliverability envisaged works in practice.

**2. Response**

- 2.1 The Draft Regulations suggest that no development corporation may have more than £100m outstanding borrowing at any time without the consent of the Treasury. This makes the use of a development corporation unviable for the north Essex project unless we know that Treasury consent will be given. That would delay the delivery of housing, and increase the costs. For your information our current financial modelling suggests that 'peak debt' for the North Essex project is around £400m (at today's values and excluding land costs).
- 2.2 ECC understands and appreciates the concern government may have about aggregate public debt, however there is a fundamental concern about the exercise of future Treasury control over borrowing during the development process. The risk that a future consent might be needed in order to meet, for example, infrastructure funding commitments and/or delivery timetables makes it less likely that the authorities will be willing or able make the necessary long term commitments associated with delivering garden communities. ECC is also concerned that future conditions might be attached to any consent, perhaps requiring the divestment of assets in a way that cuts across wider aspirations.

- 2.3 A borrowing cap is unlikely to be acceptable to third party private investors or funders. They will want to know that there is access to the funding necessary to secure the value in land required to repay their interests. The spectre of a need for Treasury Consent is likely to deter these investors.
- 2.4 If there are individual controls over the borrowing of each development corporation, an aggregate cap introduces an uncontrolled third party risk: that the future borrowings of a unrelated development corporation pushes the aggregate level of debt above the specified level, limiting the ability of any individual development corporation even to borrow within its own limit.
- 2.5 Accordingly ECC believes that the financial cap set out in the Draft Regulations should be removed, and that there are no central government restrictions on either an individual Development Corporation's borrowing or its overall portfolio. Clearly borrowing is subject to the consent of the oversight authority, which should provide sufficient safeguards.
- 2.6 As an alternative approach, and having regard to the DCLG's wish to retain oversight of borrowing across the Development Corporations, ECC would recommend that the borrowing limit for each Development Corporation is set out in the order creating each corporation.
- 2.7 A further alternative might be to apply the prudential borrowing test which applies to local authorities in the Local Government Act 2003.
- 2.8 Lastly, if CLG is determined to have a limit applying to each development corporation, ECC's view is that this limit should be significantly larger – taking account of the needs of the North Essex project.
- 2.9 In terms of the NECG and the North Essex Garden Communities, analysis to date is that the peak debt for the North Essex garden communities will be £400m, excluding land costs. A realistic project specific cap on borrowing agreed with DCLG at an early stage would allow for the effective management of the development and ensure unnecessary impediment.

### **Membership of the Board**

- 2.10 ECC welcomes the proposal that the oversight authority can appoint as many LA members as it wishes provided that there is minority of LA members but suggests that where there are a number of LAs the minimum number should be specified in the Order establishing the Development Corporation.

### **Flexibility for Individual Corporations**

- 2.11 There are a number of issues which arise in North Essex which may not arise in other cases. For example there are proposed to be up to three communities in North Essex. Each community will be developed at a different timescale and involves different local authorities. We believe that the oversight regulations should allow flexibility to adapt the general oversight regulations to suit particular cases.
- 2.12 An examples of an issue which may need to be addressed are three communities are likely to be completed at very different times. It would be sensible for the regulations creating the North Essex Corporation to:

- to permit assets/liabilities relating to a particular community to be distributed when that community is completed.
- to change the composition of the oversight authority to allow removal of LAs once all the communities in which they have an interest are completed.

### **Planning Powers of the Development Corporation**

- 2.13 ECC would suggest that the Regulations should include provision that allows the additional planning powers to be exercised by a development corporation if the relevant local authorities believe that to be necessary. When requesting a new town designation the local authority or authorities could then make the case. The designation order could then provide for the transfer of those functions. The ability to transfer or delegate these powers might not need to commence immediately, might need to be suspended and/or terminated and might, in the case of development control, only relate to certain categories of development. The provisions in the Regulations should allow for this flexibility.

Kind regards

  
Cllr Kevin Bentley  
Deputy Leader and Cabinet Member  
for Economic Growth, Skills, Infrastructure and the Digital Economy