Dear Sir or Madam

MHCLG Development Corporation Reform consultation

Thank you for the opportunity to respond to this consultation on the reform of development corporations. I respond as an individual. My answers in this response are based on my experience as a layperson involved with a campaign group called CAUSE, which follows the North Essex Garden Communities Limited delivery body closely. NEGC wishes to become a Locally Led New Town Development Corporation and I am therefore familiar with the ‘ins and outs’ of the legislation and guidance, and of how an LLNTDC might or might not work in practice.

2. Involving the private sector

2.1. Development corporations already have a strong tradition of leveraging in significant private investment and harnessing the expertise of the private sector through multi-disciplinary boards. We want to see a new generation of development corporations that bring together private and public sector partners to an even greater extent and that work with local communities to deliver the regeneration, critical infrastructure and transformational housing they need.

2.2. With new legislation in 2018 to enable the creation of locally-led new town development corporations we required that a majority of members of the board be independent, including both the chairman and deputy chairman. We expect the board members to collectively have a wide range of place making skills including expertise and experience from the private sector.

2.3. We are now interested in exploring what additional measures might help to attract more investment and the greater private sector involvement in the leadership of development corporations. Greater involvement could take a variety of forms, for example measures around governance structures, board composition or the introduction of more explicitly described powers to enter into contractual agreements with private sector partners.

2.4. It should be noted that development corporations exercise significant public duties, for example in relation to planning and compulsory purchase. Any measures to increase private sector involvement would need to ensure that the integrity of decision-making around these functions was fully maintained.

Question 1/9: Are there measures that you would like to see implemented to further facilitate private sector involvement and investment in development corporations? What changes would you like to see?

I am concerned that a very important question is missing: ‘Do you think it is the right approach to further facilitate private sector involvement?’ Given that the point of a development corporation is supposed to be that the state can better control development, it seems odd to water down this benefit by involving the private sector. I confess to being puzzled as to why change is needed, and the introductory text does not make this clear. Councils can already enter into joint venture partnerships with master-developers, without the need for a development corporation. Would devolution of funding and powers to the regions generally be a more sensible approach, rather than attempting to create what sounds like a hybrid public-private partnership? I fear that this consultation will not properly address the pros and cons of amending legislation. The result when it is put to the test in reality could be messy.

There is a risk that developers/investors will always protect their profits and that what they deliver is not what the state would have delivered in previous generations of new towns. There is also a risk of PFI-style contracts which create a massive upside for the private sector investor/partner and a downside risk for the state, which will be left holding a hungry baby.

However, if the direction of travel is that the private sector will be more closely involved, then the list below comprises things that are essential, but which are not happening in north Essex. (I have no confidence that this will change if at any point NEGC attains LLNTDC status):

1. **Transparent and Democratic decision-making.** A body one step removed from the democratic decision-making processes of local government creates real problems. We see this already in north Essex, despite the representation on the board by four councillors, one from each of Braintree, Colchester, Tendring & Essex. It is already virtually impossible for stakeholders or members of the public to influence NEGC, which is now a law unto itself demanding ever more money from local and national tax-payers. Already NEGC will have consumed £7.6m by end 2019, this before the Local Plan it wishes to deliver has been found sound. In the next two years, it will request a further £16-20m for start-up costs. We see ‘black box’ models and we see opacity, yet investors will require transparency.

2. **Continuity.** Investors will also require certainty. Political cycles create short tenures for some board members. This creates two problems which we are already seeing in N Essex. Firstly, the new members have to get up to speed quickly with complicated projects. Secondly, this leaves them open to reprogramming by the established members of the board and makes it hard for them to challenge objectively. There is a secondary risk that when the boards are eventually fully set up with a combination of private sector and elected representatives, the private sector representatives will have more of the unseen power due to their longer tenures. North Essex provides an excellent example: four authorities, all at risk of political change of mood, with one authority having annual elections.

Continuity will also be key in staff and executive board members. We know from the Ebbsfleet Development Corporation review 2018 that one of the key problems was finding staff with the right expertise. High staff turnover, as seen in local authorities, will create difficulties with delivery.

3. **Conflicts.** Here we have the very undesirable situation where the elected members who are directors of NEGC are allowed to vote in council on NEGC matters, even the transfer of council funds to the very board of which they are directors! Clearly this is not satisfactory, yet our councils allow it to happen. It does not pass the public perception test. 97% of people responding to a poll run by CAUSE found this unacceptable. Investors will be uncomfortable with conflicts like this.
4. Financial rigour. Please, please, please come and talk to North Essex stakeholders, including CAUSE. The standard of financial analysis coming out of NEGC is quite frankly alarming. It is so poor that it is very unlikely that anyone would wish to invest any money in a future development corporation. If they did wish to invest, it would not be without a hefty risk premium or guarantee, at any rate. There needs to be rigorous analysis of proposals and, despite the apparent wish of government to pass this down the line to development corporations, I believe that scrutiny needs to be carried out at a very high level indeed.

5. Heed warnings. Any feedback received needs to be acted on. Here in north Essex, for example, there was an excellent commercial review of the garden community proposals by PWC in 2016. However, this was heavily redacted, kept from councillors and the public, and seemingly hidden in a drawer rather than acted on. The PWC report\(^3\) should be read by all those analysing these consultation responses. It forms a great guide about pitfalls to those attempting to establish delivery vehicles with regards to attracting investment.

I believe that some form of Development Corporation oversight body will need to be established so that investors and the taxpayer have certainty that any problems can be addressed. It will need to scrutinise proposals, financials and public engagement. By this, I mean a kind of National Audit Office type body, if not the NAO itself.

3. Use of development corporations by local areas
3.1. Traditionally, development corporations have been established and led by central government. This approach started to change with the creation of the mayoral development corporation (established by legislation in 2011[1]). The decision to designate a mayoral development area is made locally by elected mayors in consultation with their combined authorities. Once the Secretary of State has been notified of the designation, he must lay a statutory instrument establishing the MDC.

3.2. In 2018, Government legislated further to enable the creation of locally-led new town development corporations under the oversight of local authorities, rather than the Secretary of State[2]. In the case of LNTDCs, it is expected that a proposal for a new town will be initiated locally and then made to the Secretary of State, who (subject to approval) will lay the statutory instruments needed to designate the new town and establish the new town development corporation.

3.3. The Secretary of State should retain their role in overseeing centrally-led development corporations and the formation of new development corporations more widely, to ensure that these tools are used appropriately. However, the right delivery tools should be available for local areas to further drive their own growth where appropriate. We would like to hear your views on whether the existing models available to local areas – Mayoral and Locally-led New Town Development Corporations – are sufficiently broad in scope to support modern mixed-use developments, such as delivery of new settlements, regeneration and/or a combination of the two. We would also like to hear your views on what barriers there might be for the uptake of existing models.

**Question 2 of 9:** Are the existing models of development corporations sufficiently broad in scope to allow for the types of development that local areas wish to pursue? Are there any barriers to the uptake of existing models? If so, what sort of change do you think is needed?

Viability is, and will continue to the main issue. I was co-author of a report called “Garden Cities: what cost? Time for a planning Plimsoll line”, which talked about the lack of analysis being done to see if new towns ‘float’ financially.

The report demonstrates that large new garden cities cannot solely be funded by land value capture in today’s economic and political environment. In the absence of very significant government subsidy, the costs of infrastructure, land control and interest repayments are too great.

The issue of the most efficient size and location for a new town has not been addressed, nor has the impact on infrastructure beyond a new town’s perimeter. Unsustainable garden cities are trying to set off from port overloaded with promises that cannot be delivered.

It is essential that this point is understood. Until then, LLNTDC’s risk spending tax-payers’ money on start-up costs and then finding themselves under water before they set sail.

4. **Comparable powers for development corporations**

4.1. Different types of development corporations have access to different powers in relation to planning. For example, an MDC may exercise the planning functions (both plan-making and development management) usually exercised by a local authority,


5 CAUSE estimates £1.8bn for 24,000-home West Tey alone
becoming the local planning authority for its development area. A UDC may exercise development management functions but not plan-making. Traditionally, new town development corporations operate differently, with the Secretary of State approving their plans and using a special development order to grant planning consent[1].

4.2. We are interested in your views about whether reform is needed to provide all development corporations with access to a suite of up-to-date planning powers.

Provided that the planning system is not circumvented by development corporation legislation then we believe that they can only do their job with planning powers. We do believe that any new town to be delivered by a development corporation must pass through the Local Plan Examination System. We also believe that until such time as a Local Plan is found sound, a development corporation is a huge waste of tax-payers’ money and that it is premature to establish one or its precursor (as with NEGC Ltd)

**Question 3: Do you agree that all development corporations should have the ability, where appropriate, to exercise the plan-making and development management functions of a local planning authority?**

As above, a DC should not be created until such a point as a new town has been found sound. Communities must be secure in the knowledge that a new town will not be parachuted onto them from above, outside the system of plan-making. The current competition which invites bids for development corporation status appears to indicate that for now government does not intend to announce new towns which are not driven by local authorities, but, whatever happens, there must always be a proper democratic process to allow local communities to be involved at all stages. This must be a *genuine* two-way process of decision-making, not a broadcasting of PR and propaganda at tax-payers’ expense.

To ensure that the DC is legally required to meet with the highest standards, the following should be considered in DC legislation:

**Aarhus Convention and Gunning Principles** The best investors will expect best practice on all fronts. There needs to be far greater public engagement and at a far higher standard. Can the Aarhus Convention and Gunning Principles be enshrined in development corporation legislation?
**SEA process.** How will the SEA process tie in? Should an SEA be carried out to determine whether any new development corporation is the right alternative? Ditto HRA? At what stage does that occur?

**Climate change measures locked in.** Now is a great time to enshrine environmental principles in any legislation so that investors know from the beginning what the obligations of the development corporation are. It is likely that environmental laws in the longer term (even if not immediately after Brexit) will have to become stricter as climate change worsens. Zero Carbon Goals, Clean Air Act; Transit Oriented Development; high density; protection of habitats, obligatory rewilding; renewable energy generation; grey water measures, desalination...All must be locked in to legislation now. Let's make sure that the bar is not only set high but kept high. There will need to be a strong focus on viability and how climate change measures can, and must, be delivered.

There is a very real risk that a proliferation of new development corporations remove powers from the hands of local people. Here in north Essex we see a two-tier system. Four councillors from four councils make decisions on behalf of the whole of north Essex. In theory there are checks in place but, in practice decisions are being made behind closed doors by this mini-elite. As described in a previous question, as directors on the board and council members, they are also able to make decisions to transfer tax-payer funds to their own delivery vehicle.

I believe that a DC will need development management functions and, in the long term, it may need plan-making functions for plan reviews and new plans going forward. However, there must a number of checks and balances to ensure that tax-payers see good and efficient use of their money and the way it is spent.

4. Comparable powers for development corporations (continued)

4.3. The mixture of approaches to planning functions in turn affects whether development corporations can use mechanisms such as a Community Infrastructure Levy, Strategic Infrastructure Tariff and Section 106 planning obligations to secure contributions from developers to help fund the infrastructure necessary to support development. This is because these mechanisms are generally linked to planning functions. We are interested in your views about whether reform is needed to provide
all development corporations with the ability to access developer contributions.

4.4. Development corporations can lead a wide variety of development projects from urban extensions to the regeneration of brownfield sites. These different schemes demand different planning tools and routes to secure planning consent. We are interested in your views on whether the current planning tool package is sufficient for the broad needs of development corporations or whether further bespoke tools would be useful.

**Question 4:** Do you agree that all development corporations should be able to secure contributions from developers using a range of mechanisms, such as Community Infrastructure Levy, Strategic Infrastructure Tariff and Section 106 planning obligations, where they have taken on the corresponding planning powers from the local planning authority?

Yes

**Question 5:** Are there any other measures relating to planning powers and/or increasing the efficiency and effectiveness of planning in development areas designated to be overseen by development corporations?

I refer to my answer to question 2, with particular emphasis on the need for financial rigour and external scrutiny of financial proposals at the level of the PWC Commercial Review of the North Essex Garden Communities.

I also repeat here my points from question 3. The highest standards must be locked into legislation, for example:

- **Aarhus Convention and Gunning Principles** There needs to be far greater public engagement and at a far higher standard. Can the Aarhus Convention and Gunning Principles be enshrined in development corporation legislation?
- **SEA process.** How will the SEA process tie in? Ditto HRA?
- **Climate change measures locked in.** Environment Bill, Zero Carbon goals, Clean Air Act; transit-oriented development; high density; protection of habitats, obligatory rewilding; renewable energy generation; grey water measures, desalination...All must be locked in to legislation now. Let’s make sure that the bar is not only set high but kept high.

**Question 6:** Are there any measures relating to developer contributions that should be put in place for development corporations?
Local authorities and development should all have as much flexibility to collect developer contributions. I do not believe there is a need to change the rules for development corporations. However, government could consider whether a national team of developer contribution negotiators is made available to assist development corporations, because the projects they are dealing with will invariably be large scale and complex.

**Question 7: Are there any other measures relating to development corporation powers that you would like to see implemented?**

I definitely do not believe that increased CPO powers should be devolved to DCs to enable them to ‘blanket’ compulsory purchase at existing use value... This will lead to a two tier system and possible human rights issues.

**Question 8: Is there anything else that you would like to see new legislation or policy address regarding the aims, objectives, remit, powers and restrictions of development corporations?**

Aims/Objectives/Remit - I refer to my answer in question 2 – what is the need for increased private sector involvement in DC’s? Bidwells⁶ and around 20 other developers called this month for a development corporation type body for the ‘Arc’, but I believe one should be suspicious of calls by developers for something which feathers their nest. The taxpayer needs to be at the forefront of any aims/objective/remit and care needs to be taken that the developer lobby does not exert undue influence on this consultation.

Powers/Restrictions - One thing which has not been thought through is how the powers of a DC sit alongside the adjacent local authorities. Does a LLNTDC take on all the normal responsibilities of a district authority? If you live in a hamlet or village to be subsumed (and there are many of these) by a LLNDTC, do you become a resident of the new town in the many years before the town surrounds you directly? There needs to be a brainstorming day/wargaming where a number of situations are mapped out and the different

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consequences discussed. Different types of DC's have different roles. I am only familiar with the LLNTDCs and I foresee numerous problems not thought through in the drafting of the legislation.

State Aid needs to be given proper consideration, too - there are possible problems already emerging in north Essex.

We would recommend that you spend time talking to campaign groups in north Essex who have seen many of the likely problems of a LLNTDC at first hand. Better to iron out problems sooner rather than later, and certainly before replicating the model.

**Question 9: Do you have any views on the Public Sector Equality Duty in relation to any of the questions above?**

There is certainly no diversity on the board of NEGC. This creates a risk of tunnel vision and lack of challenge, and is something which must be tackled.