

BUSINESS CASE

1. Project Information

Project Title: NGA for Business Parks

Project Sponsor: Nigel Myers

Project Manager: Jim Leask

2. Decision being sought:

- To approve the proposals including proposed costings, CBC SELEP award and match-funding s106 investment and delivery programme for the Project to deliver Next Generation Access to seven business parks/clusters in Colchester Borough to support enterprise competitiveness and growth.
- To note that the release of £141,764 of s106 funds for economic development purposes by CBC will be allocated to provide the match-funding indicated as spend on the Project.
- To note draft Heads of Terms for the Project with County Broadband Limited.
- To give delegated authority to the Executive Director for Place in consultation with the Portfolio Holder for Business and Resources to conclude the Heads of Terms and subsequent legal documentation substantially in accordance with the approved draft.
- To note the financial assumptions and associated risks as set out in the report.

Supporting information

- To note that NGA Broadband for Business Parks forms part of the Borough-wide Digital Strategy and that income generated will be prioritised to extend community connectivity.

3. Purpose of the Project: Addressing “market failure” in the delivery of business class broadband services

Summary

CBC has been allocated £200,000 from the Local Growth Fund (managed by the Government Department, BIS and subject to due diligence process) to deliver a project addressing “market failures” in the delivery of superfast broadband (24 Mbps and above) at a competitive price to business park occupiers. CBC aims to commence the Project in Q2, 2015.

The approach for Colchester Borough is to co-invest (through the use of s106 monies) to support the delivery of fixed wireless broadband to a number of business parks to correct for the above market failures, supporting business and job growth and creating a more competitive marketplace for broadband services. The Project will deliver Next Generation Access (NGA) fixed wireless broadband (24 Mbps and above, scaling to 1 Gigabyte) to seven key business parks/clusters within Colchester accommodating 482 businesses and 8,196 employees (ONS IDBR, 2013). The service will be symmetrical – offering equivalent upload and download speeds – and will also provide “bundled” VoIP services which will allow businesses to retain existing numbers while moving to a lower cost service.

The Project addresses business needs for reliable, high speed and symmetric broadband connectivity which is not available currently from BT’s FTTC programme (branded as “Superfast Essex” in Greater Essex) and which will be more competitive than other operators in the market, so reducing business overhead costs for uncontended higher bandwidth services required by current and emerging enterprise needs and for telephony services. In short, the Project will deliver a “business class” broadband offering - resilient broadband speeds, enhanced coverage - and introduce a competitive technology into an otherwise fixed line-dominated and over-priced marketplace.

As such, the Project is a supply-side intervention to address the reported market failures in both the availability of Next Generation Broadband for business and its lack of price-competitiveness.

Background

- **Project rationale**

The Project addresses what is a “live” issue and which is very much entering the wider agenda of Government and policymakers. The Digital Policy Alliance notes for a forthcoming conference on 10 March at Westminster:

‘The Parliamentary Space Committee and the Digital Policy Alliance will be inviting you to attend our joint event to discuss why we are not getting broadband for all.

Access to broadband is a hot political issue across the UK. The disparities in service are not easily explained by simple economics. Residents and businesses in the City of London are less well-served than those living in West Dorset.

So what is going wrong? How should we address Britain’s new digital divide? What are the lessons from other countries? How should it be funded and what mix of technologies can be used: mobile, satellite and Wi-Fi as well as cable?’

The Ofcom Infrastructure Report 2014 (Section 4) considers the issue of SME connectivity although it is noted that there is current work to assess the ‘current levels of availability, choice and quality of communications services for SMEs’ and that, ‘Responses will inform a report in Spring 2015 on how the market for fixed and mobile connectivity is serving SMEs’. (Similarly, the Broadband Stakeholder Group is also currently undertaking market surveys of SME experience and requirement of broadband provision and will report in the next few months).

This Project considers from other public sources (including Public Accounts Committee reports on Superfast Broadband, submissions to that Committee by Inca and other parties and local and national reportage) that “superfast broadband” (the BDUK projects) are considered to be mainly a residential offer (see more later, not being offered to business park users and not suited for SME needs, being also asymmetric and contended. Even so the Ofcom Report notes the following which support the stated needs for this Project:

- ‘Superfast broadband coverage has not reached all SMEs and our analysis suggests that SME coverage lags average coverage in urban areas in particular (67% vs, 83%)’.
- Re quality of service from current provision:
‘Recent research conducted by Jigsaw for Ofcom...found that satisfaction with internet services [by SMEs] was lower than for landline and mobile voice services. Speed and reliability were the most frequently given reasons for dissatisfaction. In particular, satisfaction with ADSL broadband – which is used by two-thirds of SMEs – was significantly lower than with other services. SMEs said that their growth had been hampered by lack of suitable communications services (15%) reported higher than average dissatisfaction with ADSL. A minority of SMEs (11%) believed their business would benefit from communication services not currently available. Faster/fibre broadband was the service most likely to be mentioned’
- In terms of latent demand around quality and pricing competitiveness from the current proposed Project, the Ofcom Report confirms that:
‘Some SMEs, such as those that offer Internet-based services, are likely to have higher resilience and/or bandwidth requirements. They would therefore be likely to require a service tailored to business needs, which provides better performance and has higher service levels than services which are typically taken by residential consumers. The majority of SMEs buy business broadband services rather than using residential products (77% for landlines, 74% for internet services and 50% of mobile phone services)’.

Further evidence of latent and explicit demand for the Project can be found in The Federation of Small Business report of July 2014 looking into broadband provision and access for business in the UK. This report noted that:

- 14% of small businesses consider lack of reliable and fast broadband connectivity to be their main barrier to growth; and,
- Only 15% of small firms say they are very satisfied with their broadband provision, while 25% say they are fairly or very dissatisfied.

Early results from the Essex Business Survey 2014 highlight the importance of being ‘In a good broadband/fibre optic area’ to business location decisions: 83.4% of businesses reported this as an important requirement, rivalling good mobile phone coverage, transport links and parking as the highest scoring replies.

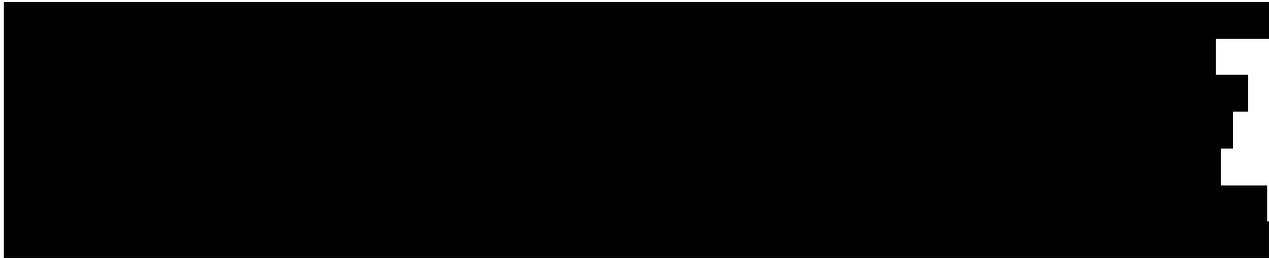
In terms of Next Generation Access Broadband coverage and services for Business Parks, the website SamKnows has been used to assess the current position in terms of service provision through exchange mapping of the relevant postcodes. Together with sampled business opinion on key business parks, it is evident from BT’s commercial roll-out of NGA broadband that cabinets are not being enabled for the Fibre to the Cabinet (FTTC) solution on business parks, not only in Colchester Borough but across the UK. This has been recognised by INCA, the network of independent communications providers:

‘In 2013 BDUK sent INCA a list of hundreds of postcodes of enterprise zones and business parks that are not being served by BT’s superfast broadband roll out. In partnership with the Federation of Communications Services (FCS), representing some

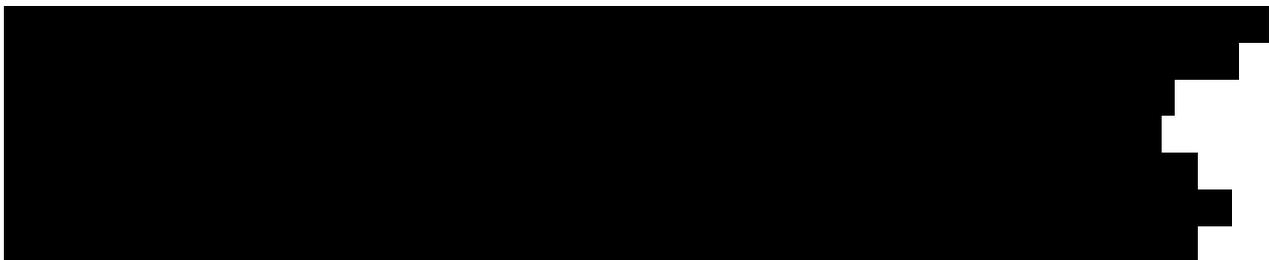
300 B2B comms providers, we have created a joint project addressing these enterprise 'notspots'.

The FCS has contacted its members asking if they have customers in the various business park post codes. We want to alert INCA members to the opportunity to develop next generation broadband projects in those areas'.

(<http://www.inca.coop/projects/enterprise-zones-business-parks>)



- **Relationship to the BDUK “superfast” programme**



- **Future broadband trends and their impact on the Project**

In the next five years it is unlikely that the major operators will alter the high relative costs of leased lines which deliver “business class” broadband. However, it is the case that better broadband will become available for businesses everywhere over time in terms of some upgrading of base speed and price but the distinction between increasingly faster and dedicated business solutions bundling increased access to other Information and Communication Technologies (such as VoIP, Cloud computing, etc.) will be used to maintain the valuable leased line market for BT and Virgin Media and other operators. In this respect, the gap between the residential offer and the “business class” offer appears likely to remain and even widen as enterprise requirements for ICT applications continue to accelerate.

More probably, the emergence of 5G and increased capacity mobile communications (macro cells and WiFi) may provide in time a partial alternative solution. However, the launch and take-up of the new technology will depend on further build-out of telecoms cell infrastructure. In this respect, the current Project will be positioned to also support further coverage from these technologies using the proposed mast infrastructure for mobile communications transmission equipment operating in other frequency bands.

- **Colchester Borough Council Digital Strategy and actions**

CBC has been seeking to deliver against its Digital Strategy for the Borough which was developed in 2010. The Strategy addresses economic, community and social needs from an enhanced digital infrastructure for the urban third and rural two-thirds of the Council's area.

To date, the following has been achieved:

- The Strategy and discussions with BT led to the enablement of four exchanges in addition to the one announced, enhancing coverage from the residential FTTC commercial service.
- Town Centre WiFi in partnership with Arqiva went live in December 2014 through the Council's concession of sites, providing 4G services to residents, visitors and business users with 24/7 access to three websites, including Jobcentre Plus' Universal Jobmatch for jobseekers.
- County Broadband Ltd has been supported to win grant funding for coverage of five rural parishes and has been promoted to Parish Councils (rural) as the Council's solution partner, leading to coverage in a further six parishes.
- A lease by the Council has been conceded to County Broadband Ltd to cover underserved urban businesses and premises in the Town Centre and to form part of a wider coverage network of which the current Project forms part.
- Market investigation with two fibre providers has identified potential projects in the urban area but which cannot meet the business case of the providers.
- Liaison with Essex County Council in relation to the Superfast Essex project (BDUK) has established the clear need for the current Project and the above interventions.

- **Conclusion**

In conclusion, the Project is an important initiative in a range of local, alternative approaches across the UK which are seeking to redress the "market failures" of the current broadband delivery marketplace.

Why the Project is required at this time

The Project is needed now because the Borough is at an important moment in its housing-driven growth which is generating an increasing mis-match between increase in the working-age population and the number and quality of available jobs. Development of two new major business parks – Colchester Northern Gateway and the Knowledge Gateway (University of Essex) is underway to assist enterprise growth and inward investment for which the Project will provide NGA communications infrastructure. Similarly, build out of another business park and upgrading of other locations provide further drivers to improve the communications infrastructure to support existing employers, improve the attractiveness of the Borough to relocating major firms and deliver higher quality employment, especially in growth sectors such as creative and media and business services.

Colchester's role as a key creative/digital industry Hub is recognised by the Economic Plan for Essex and by SELEP. A major driver of this growing sector which has considerable digitalisation potential for other industry sectors is access to significant broadband capacity.

Background information including plans, specification, cost plans etc.

County Broadband Limited is a well-established Communications Provider – network builder and Internet Service Provider (ISP) delivering fixed wireless broadband services across Essex and, increasingly, in neighbouring areas of Suffolk. The company relocated to Colchester Borough in 2014 and employs 10 staff and a number of local contractors. As an expanding business, CBL is delivering jobs, apprenticeships and business benefits already and is developing further its coverage of the rural areas of the Borough, supporting communities and employers.

The Project is required to reduce the investment gap confronted by County Broadband in order to deliver broadband services (higher and uncontended – if required – bandwidth at lower prices than otherwise/ currently available) to key urban and suburban employment locations within the Borough. The narrow investment gap is caused by high upfront capital build-out costs by the ISP while the market delivers revenues much more slowly. This narrow gap amounts to £600 per business premise in each area and is effectively the mid-point of £550 identified in BDUK research (2012) for closing this gap plus 10% contingency.

Component activities and milestones will comprise: surveys of each site; obtaining wayleaves/consents; market engagement; ordering of capital equipment; commissioning of civil engineering construction costs; leaseback arrangements; high speed link ordering; customer management; installation of Customer Premises Equipment (CPE); deployment; service management; project initial and subsequent evaluation.

(Please see Table 1, Financial Section, below).

The costs of implementing the Project have been based on County Broadband's experience of the market and their achievement of value for money through benchmarking costs. County Broadband has previously enabled several rural business clusters within its coverage footprint and this experience has proven the company's expertise for the current Project. These costs will be held to wider market scrutiny by the Council since State Aid advice requires that no subsidy – even indirect - is conferred upon the commercial partner.

Critical success factors are effective engagement with business park owners/managers and occupiers to secure sites at competitive value and achieve high take-up of NGA services. Delivery of scalable fixed wireless broadband services and their continuous upgrading will ensure that the initial market advantages conferred on business subscribers by the Project will be maintained over time.

Project design and specification

Following a competitive exercise managed by Regional Network Solutions Ltd – independent experts in broadband technologies – working as consultants to the Council, County Broadband Ltd was selected as the commercial partner for the Borough in delivering fixed wireless broadband services to support businesses and communities.

Selection of County Broadband Limited

In terms of the selection of County Broadband as a commercial partner, this resulted from an external consultant-led two-stage process of evaluation of potential providers for the Borough in March and April 2011. Forty providers were presented to on the

Borough's Digital Strategy approach, sixteen subsequently expressed interest in delivering services in either urban and/or rural areas by cable, fibre or wireless networks, resulting in three companies being selected of which County Broadband was one. (Regional Network Solutions, consultants, *Colchester Borough Council Digital Strategy progress report*, 27 May 2011). This independent evaluation approach has been considered sufficient engagement with market suppliers to demonstrate impartiality in the Borough's approach. (Personal communication, October 2014, Matt Howe, Senior Procurement Consultant, Essex Procurement Hub).

In January 2014, the Council submitted a bid to the Growth Fund via SELEP for grant to deliver the Project with County Broadband as the service delivery organisation. The funding bid was successful and CBC was awarded in principle £200,000 grant in August 2014 to implement the Project. (This grant is still subject to completion of due diligence due to be finalised in March 2015).

Further meetings are progressing to specify in more detail the coverage requirements and assets needed to deliver services to the seven target business parks. Currently, project planning is moving into an implementation phase, developing detailed coverage plans and costings for each target site which will produce robust financial data and commence roll-out in Q2, 2015.

Coverage

There will be one site and one tower per business park: a total of seven sites and towers. Each tower must provide coverage to the targeted business park, the exact location of which will be determined during the survey phase of the Project. The survey phase will also identify alternative sites for each business park which will be followed up with negotiation to obtain the preferred site as well as a number of back up sites.

The seven new sites will be connected into County Broadband which will be providing the core network, including additional backhaul capacity to support the business parks. County Broadband will also provide assets at the customer premises to connect them to the network. (For each customer premises these consist of antennae, cabling brackets and labour costs for installation).

Site investigations and planning.

Any requirement for planning consent will depend upon site survey and any existing assets which might be engaged in the construction and deployment of a local network.

Planning consent may be required for installation of one or more masts over 15m but those below that height can be deployed by an Ofcom Communications Code Provider under Permitted Development Rights outside a conservation area, assuming no local objections.

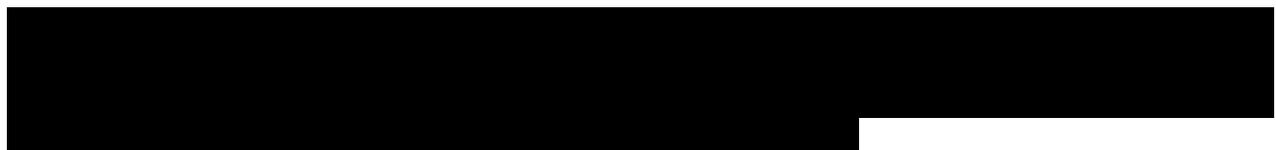
In place of - or in addition to - masts, the attachment of small transmission equipment to existing higher buildings is most likely; these installations would be de minimis in planning terms and would require the negotiation of a lease/licence with the owner/tenant.

There are likely to be requirements for ducting to deliver the fixed wireless broadband solution from the local Internet Point of Presence over fibre to the premises. This would be approached using a combination of trenching, narrow trenching and micro-trenching and may require negotiation of a wayleave with the landowner/developer.

The estimated time to require consents from a willing estate owner or property owner/tenant is likely to be three months. The Council plan to engage a chartered surveying firm with relevant local experience in the telecoms asset acquisition field from within available funding to ensure that necessary negotiations proceed at pace and reduce the risk to both parties from any delays in infrastructure delivery. The Council will directly enter into the proposed leases/licences with the site owners.

Market Demand, Stakeholder Engagement and Scheme Viability

Discussions have been held with business park developers and agents, business hubs and key enterprises in different sectors which confirm the latent demand for the Project. Targeted pre-marketing by County Broadband will be facilitated by the Council through identification of business occupiers on the business parks.



Key business organisations including the Chamber of Commerce, Federation of Small Businesses and the Institute of Directors have been briefed on the business broadband proposal and are fully supportive of the project. Feedback from their members has indicated a frustration with the current provision in terms of cost and upload/download speeds. A recent presentation by the Council to major businesses (10/2/15) on new investment in the Borough cited the SELEP funding of business broadband as being a positive and welcome intervention. Support for the project has also been given by the University of Essex in particularly in relation to their investment in the Knowledge Gateway and Office Village ('Parkside').

The Project is viable and the Council will receive a return of 6% per annum on its investment. An indicative financial forecast has been produced by County Broadband which details the contributions to the Project by both parties contained in the Bid. This assessment confirms profitability for County Broadband and the viability of the Council investing in revenue-generating assets in the Project.

4. Strategic and Organisational Fit

Colchester BC Strategic Alignment		
Borough Core goals		Brief evidence and/or explanation
Business –Become commercially focused and even more business-like in order to be free of government grant by 2017	✓	Provides a small new income stream for the Council
Culture –Inspired staff who do the right things and are proud to work for the council	✓	Provides example of staff being commercially minded
Leading our communities		Brief evidence and/or explanation
Regenerating our Borough through buildings, employment, leisure and infrastructure	✓	Provides competitive and high grade (“business class”) broadband in employment areas of the Borough to encourage business and job growth.
Improving opportunities for local business to thrive including retail	✓	Retains and expands existing businesses in the Borough
Promoting sustainability and reducing congestion	✓	Will reduce the need for business travel by facilitating increased use of online communication/applications.
Bringing investment to the Borough	✓	Will attract further Investment on Strategic and Secondary employment land allocations
Essex Strategic Alignment		
<p>The emerging Economic Plan for Essex has a number of key interventions which are set out below</p> <ul style="list-style-type: none"> ■ Developing Sites and infrastructure ■ Developing a Skilled Workforce ■ Expanding key sectors ■ Open and recognised: promoting Essex and developing links with other areas (internally and externally) 		This project meets most of the key interventions by the provision of new infrastructure to support the development of a skilled workforce and expanding sectors such as the Creative/Digital.
SELEP Strategic Alignment		
<p>Boosting the productivity of our businesses Improved connectivity Supporting key sectors such as creative, environmental technology</p>		The project supports some of the key objectives in the SELEP SEP by creating the right conditions for business growth and productivity and providing strong connectivity within the Borough.

5. Goals and Objectives

Business Goal/Objective	Description
Meeting Commercial income targets	Will deliver additional income of £20,400 pa.

Deliver enhanced broadband services to local businesses and business parks at reduced cost	Will deliver 24 Mbps and above synchronous broadband plus VoIP to seven key business parks/clusters in Colchester Borough, accommodating 482 businesses and 8,196 employees (ONS, IDBR, 2013).
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6. Other Economic Outputs

Economic impact of Broadband for Business Parks

The job estimates arising from GVA uplift have been entirely revised.

The following table applies metrics used by Adroit Economics to the business case and is based upon examples of the model developed by this organisation for e-skills UK (the IT sector skills council).

Adroit's model takes account of the latest evidence on the impact of faster broadband on productivity, innovation and enterprise. On average, Adroit impute a 4-6% contribution to GVA from optimisation of the latest available ICTs over a 5 – 7 year period. The model used here applies an uplift of 5%, being the mid-point, and envisages a quadrupling of broadband speeds for assisted businesses, which is also cautious. Two scenarios are provided below: take-up of 40% and of 20%. It is likely that 40% take-up represents the longer term and maximum level of adoption. The 20% take-up is considered short-term – over a two year period – since existing contracts may require to be completed before businesses can switch to the new supplier.

Total employment	8,196
Total GVA estimate (2014) £m	£155.7
ICT GVA uplift (£m) (100% take-up)	£7.79
ICT GVA uplift	5%
Equivalent jobs (100% take-up)	399
Jobs (40% take-up)	160
GVA (40% take-up)	£3.17m
Jobs (20% take-up)	80
GVA (20% take-up)	£1.59m

Note: Total employment from ONS IDBR. GVA estimate from the East of England Forecasting Model (Colchester tables), applying the per capita GVA for 2014 (2010 prices) to the total employees of the business parks.

Taking the 20% level of adoption, the Project will deliver three times its cost in GVA; moving to the longer term, Year 7, the leverage ratio will double to six to one. This is clear evidence of Value for Money for the Project and, for the Growth Fund financial contribution; the impact ranges from 6.4 times to 12.8 times the value. Pessimistically, if the Project failed to move beyond a final rate of 20% of adoption, the GVA uplift is still significant at three times the total Project cost

Attaining the 40% level of adoption, the Project can be expected to deliver the following additional direct and indirect job benefits over the seven year period: 2015-2022

	Intervention option	Reference case	Additionally
Gross direct jobs	160	80	80
Multiplier	1.3	1.3	
Total additional jobs	213	104	109

Notes: Leakage has not been assumed since it is highly probable that all job beneficiaries will be resident within the Colchester Travel to Work Area which is self-contained within Essex or from wider Essex; both geographies are within the SELEP boundary. Similarly, Displacement is unlikely, at least, to create observable impacts on other businesses which are unassisted within the time-scale of seven years. Consequently, overall additionality is seen as exceptionally high as the nature of the intervention is addressing clear market failures.

It is difficult to envisage a reference case for the Project given its innovative nature. However, if we do allow for the Fibre to the Cabinet solution to extend fully to Business Parks under BT's commercial roll-out within the period, we can impute a doubling of speeds to all businesses which would generate, at best, half the level of GVA contribution – 2.5% - compared to the Project's impact. (Adroit Economics).

Summary of outputs

Output	Description
Businesses connected	<ul style="list-style-type: none"> 40% of businesses taking service – 192 businesses connected All other existing and future occupiers able to be connected at minimal unit cost into the network Reduced cost of roll-out of services into adjacent developing employment sites
Jobs secured	40% of existing jobs supported by improved connectivity – 3,278 employees.
Job growth	160 direct additional jobs and 53 multiplier jobs.
Other outcomes	<ul style="list-style-type: none"> Reduction in cost of business class broadband and telephony of at least 30% per cent or much enhanced services for the same cost. Cost savings make existing businesses more viable and enable additional investment in stock /people/ equipment. Support for Cloud based enterprise applications and other managed services, reducing service cost to the desktop New business opportunities and application use e.g. video conferencing through greater connectivity speeds Business continuity services Increasing the competitiveness and attractiveness to inward investors of employment clusters in Colchester, supporting its location on the A120/A12 growth corridor. Potential to extend at lower cost to cover rural business sites
Impact	<ul style="list-style-type: none"> Overall, reduced enterprise costs for NGA broadband. New applications and access to wider markets generating uplift in GVA per subscribing enterprise of 5% over 2015-22, equivalent to £3.17m Reduced void rate in business premises on connected parks.

7. Key Milestones

Milestone	Target Date
Obtain State Aid advice which clears proposed activity	5 Dec 2014
CBC to obtain business case approval	12 Dec 2014
Progress financial review with County Broadband to maximise Council investment and return	Dec 2014
Agree HOT with County Broadband	Jan 2015
Undertake due diligence for the LEP and grant of funding	Jan-Mar 2015
Detailed coverage plans and costings obtained	Mar 2015
Industry benchmarked costings for asset acquisition and lease charges obtained	Mar 2015
Agreement for lease made with County Broadband	Apr 2015
Funding released by LEP Secretariat	Apr 2015
Assets commissioned and purchased	Spring 2015
Project commencement	Spring 2015
Phased roll-out across seven business parks/clusters	May 2015 – Feb 2016
Project ends	April 2016

8. Risks and mitigation

See management and governance section for risk management

Risk type and risk description	Likelihood (1 low/5 high)	Impact (1 low/5 high)	Likelihood x Impact	Mitigation	Risk owner
Organisational					
Stakeholders unaware of Project and benefits	1	5	5	Key stakeholders are aware of the Project and its complementarity with the BDUK Superfast Essex project. Stakeholders include Board members of SELEP, ECC staff and relevant elected members, CBC staff and relevant Portfolio Holders and Ward Councillors and key businesses and business support organisations in the Borough.,	CBC
Financial					
Council funding not in place/committed	1	5	5	The Council's funding is from a planning gain account (s106) for 'economic development purposes in the Borough'. This account will be drawn upon through an internal process of release following the formal allocation of part of the total account by a Council committee in March this year at which the full Business Case for the Project will be presented. (A letter setting out the anticipated confirmation is attached to this document from the Council's s151 Officer).	CBC
Indicative costings are not accurate	2	2	4	The costs provided by County Broadband represent those available to an established commercial provider of fixed wireless broadband with significant market experience and appropriate purchasing power. However, the Council will be establishing its own market benchmark prices to ensure that the costs indicated by CBL are realistic and that no subsidy is conferred which might create a State Aid for	CBC/CBL

				<p>the operator.</p> <p>Further, there is a built-in contingency of almost £10,000 in the cost of installation per customer premises – 10% of the investment gap for connectivity.</p> <p>Should there be any cost over-runs in implementing the Project these will be met from additional allocation of s106 funds.</p>	
Impact of inflation	1	1	1	<p>It should be noted that, given the historically low levels of inflation at the time of the bid submission and their subsequent decline to below 0.5% currently, no allowance was made for the impact of secular price increases, especially as the Project envisaged delivery within one year.</p>	CBC
Non-compliance with State Aid Regulations	1	5	5	<p>Legal opinion has been commissioned from Eversheds to confirm their initial indication that there will be no State Aid issues created from CBC's proposed co-investment approach using the Market Economy Operator Principle. (Please see Appendix)</p>	CBC
LGF monies are not secured	2	5	10	<p>A scaled-back version of the Project may be achievable through obtaining further part-funding from Council investment fund but this will require a revised bid and CBL commitment to the Project would be correspondingly reduced.)</p>	CBC
Lack of financial robustness of County Broadband Ltd	1	4	4	<p>County Broadband has a great deal of experience of managing growth from both an operational and financial perspective.</p> <p>In the past year alone CBL has;</p> <ul style="list-style-type: none"> - rolled out its network to an additional 25 parishes - added over 500 customers - implemented a major upgrade to its 	CBC

				<p>network</p> <ul style="list-style-type: none"> - Grown turnover by 44% <p>This is the third consecutive year that CBL has grown its turnover (increase of over 40% in both 2012/13 and 2013/14).</p> <p>The Colchester project combined with planned expenditure as part of organic growth provides a combined increase of only 18% on that made by the company in 2014. CBL is demonstrating capability in managing this level of capital investment.</p> <p>It is worth noting that CBL does not have any outstanding debts beyond the terms of normal trade creditors. The company's credit rating is 'very low risk' (Experian company report, EGi).</p> <p>It should also be noted that the impact of the Colchester project increases turnover by only an additional 7% over planned growth. The company is therefore not dependent on the project to be successful next year, as 93% of the turnover will come from its normal activities.</p> <p>County Broadband has just completed a 3 year financial plan, using a number of project scenarios, underpinned by a continuation of its self-funded growth strategy.</p> <p>Over the period of the three year plan the company will generate free cashflow of approx. £450k, excluding the Colchester Business Park project. Inclusion of the Colchester project will increase this figure to approx. £680k.</p> <p>This suggests CBL is financially capable of delivering this project.</p>	
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				<p>Further, the company has released the following statement, approved by its equity investors, which includes the Chelmsford Diocesan Board of Finance:</p> <p><i>“In response to the request for reassurances as to the credibility of County Broadband’s growth plans we can confirm that we are committed to supporting County Broadband in its planned Organic Growth roll-out schedule over the next three years.”</i></p>	
What would the Council do with its Wireless assets should CBL fold?	1	5	5	Assets created would be of interest to other operator/s for lease. In terms of Broadband delivery, these operators would include MLL Telecom, Buzcom, Tendring Broadband and others. The assets generated may also be attractive to mobile operators and support CBC’s CCTV objectives.	CBC
Delivery					
Delays in obtaining mast sites	2	3	6	Mast sites will be negotiated by a competitively selected, experienced third-party telecoms site specialist firm, mitigating any delay to obtaining consents and ensuring access within three months of opening discussion with multiple landowners/tenants.	CBC
Mast sites not secured	2	5	10	Given the need to secure seven mast sites it is possible that for one or two locations may prove difficult to gain consent. These would be mitigated through revising the wider network plan to develop other suitable backhaul links and/or through accessing fibre backhaul points in the short-term and/or reprofiling the planned sites through addressing alternative locations where coverage can be readily provided.	CBC/CBL
Roll-out of coverage is not within	1	2	2	CBL has modelled coverage and considers that the Project is deliverable within one year. The Council and its partner are well positioned to	CBL

the Project requirement of one year.				move quickly onto implementation once project funding is confirmed	
Lack of price-competitiveness of service offer	1	5	5	The ethos on which the company operates ensures that its services proposition will remain both innovative and competitive. CBL are a commercial operation and as such the company regularly benchmarks its services against those offered by its competitors. Further, the services offered include symmetrical speeds, which are not offered through any FTTC alternative.	CBL
Technological					
County Broadband unable to deliver a robust and Next Generation Access network which will be technologically comparable to current and planned BT Openreach coverage?	1	5	5	<p>The recent UK National Broadband Scheme guidelines published October 2014, state: "... <i>advanced Fixed Wireless Access (FWA) technologies can qualify as an NGA Broadband Network.</i>"</p> <p>The model of delivering extended fibre to towers, will ensure that the CBL solution will have sufficient resilience, capacity and scale (dimensioning capability) to provide broadband solutions which are of 24 Mbps and above ("Next Generation Access-compliant").</p> <p>Further, the current FTTC deployment favoured by BT displays rapid degradation in speeds achieved as the distance from the cabinet increases. This degradation accelerates substantially beyond 1000 metres from the cabinet.</p> <p>In addition, and as stated above, the solution being offered by County Broadband is better suited to commercial applications, in that, unlike the planned BT Openreach FTTC coverage, it</p>	CBC/CBL

				offers symmetrical speeds that are capable of being maintained over significantly further distances (CBL limit this distance to 6km in network deployment planning, but have many examples of much longer links providing NGA speeds)..	
The initial network backhaul capacity fail to scale quickly enough to ensure that customers are satisfied with the continuing service	1	5	5	<p>The network is dimensioned based on demand which is how other network service providers, such as BT, manage the demand in their networks and this is also how the Kent Fixed Wireless Access (FWA) pilot trial network is structured. The model of delivering extended fibre to towers will ensure that the CBL solution will have sufficient dimensioning capability to provide and maintain superfast, NGA-compliant solutions.</p> <p>The company has already secured significant backhaul capacity independently of the Colchester project and is committed to extending this capacity further as part of its organic growth plan. It has transit agreements to provide direct peering in its network with all major network providers. The network design includes advanced BGP protocols to ensure the seamless re-routing of traffic in the event of any outage or damage to part of its fibre network.</p> <p>The company is well positioned to continue the growth of its network and scale of its operation.</p>	CBL
Competitive					
County Broadband fails to capture sufficient	1	4	4	Take-up in some of the villages in which CBL provides services is as high as 40%. CBL are confident that their modelling of take-up on business parks is realistic and viable. The company has been cautious in its take-up	CBL/CBC

customers to make its commitment to the Project viable				<p>expectations and dependency in this regard, as reflected in the relatively low expected impact on turnover in 2015 as previously advised above.</p> <p>Marketing is recognised by CBL as key to its future financial success. To this end it has significantly improved its web capability and is planning to overhaul its tactical marketing to secure critical market share. (This will include enhancing its current sales and marketing team with the engagement of marketing students from Colchester Institute and the University of Essex to drive early demand higher from the target business parks)..</p>	
The networks fails to be maintained after Year 1/installation	1	5	5	<p>The commercial partner, County Broadband Ltd, will meet the on-going maintenance and upgrading of the network from its own revenues. Improvement of the network is intrinsic to meeting and exceeding customer expectations and ensuring retention of the customer base. Consequently, there will be further investments by CBL once the network is in operation which will cover annual operating costs and capital expenditure for new equipment and replacement investment.</p>	CBL

9. Financial case for investment

- Rationale for a revenue return for the Council

Given the financial constraints under which the Council is now operating, the engagement of Council funding in any project which may generate revenue for a third party or have the potential to generate revenue for the Council must seek to derive some return. Consequently, the engagement of Council funds in these instance must now, irrespective of the wider socio-economic benefits for the Borough and other Council projects, demonstrate where possible some income generation for the Authority. It has also always been the case that where s106 funding has been engaged by the Council in relation to a commercially-managed service or partner, that a level of return has been sought by Planning colleagues responsible for administering these funds.

Secondly, with State Aid advice, the Council is required to ensure that any monies benefitting a commercial partner must not confer any subsidy on that business if it is to be compliant. In that light, draft Heads of Terms have been developed with County Broadband Ltd to ensure that use of Council monies and LEP funding do not confer any advantage on the company. These draft Heads of Terms provide for a lease of assets to CBL which have been developed by the Council to fulfil Project outputs and outcomes, addressing the “market failures” for which public funding is necessary. (Please see below, Appendix , for a copy of the advice received from Eversheds for this Project).

Finally, the revenue return for the Council is designed to support further expansion of business broadband coverage through an aspirational, Phase 2, coverage project including rural business clusters, often in farm diversification initiatives.

- Commercial partner financial strength

The Colchester project combined with planned expenditure as part of organic growth provides a combined increase of only 18% on that made by the County Broadband Ltd in 2014. CBL is demonstrating capability in managing this level of capital investment.

It is worth noting that CBL does not have any outstanding debts beyond the terms of normal trade creditors and, apart from other highly satisfactory due diligence on the Company, financial checks indicate the tenant covenant is good: CBL has a credit rating of ‘very low risk’ (Experian).

- Allocation of funding between Project partners

The following financial modelling has been developed in the light of specific State Aid advice. The costs include a small amount of revenue directly associated with the delivery of capital investment on the Council’s side (Council time and costs in securing planning permissions, commissioning a specialist third party to negotiate a site, any wayleaves as well as capital costs - surveys, civil engineering, tower mast site acquisition, towers and equipment).. These costs fully reflect total capital investment by the Council (including associated revenue - of which an element is a permitted contribution by the *de minimis* rules) to deliver the Project and also be EU State Aid-compliant.

Funding contribution	Amount
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CBC (capital release)	£141,764
CBC (associated revenue costs) (LEP grant)	£118,235
LEP funding (de minimis, associated revenue costs) (LEP grant)	£81,765
<i>Sub-total</i>	<i>£341,764</i>
County Broadband (revenue –match to funding)	£187,018
Total	£528,782

Council capital and revenue costs are detailed in Tables 2 and 3 below.

- Financial modelling

Initial financial modelling by CBL in Table 1 (below) shows that for the total investment of £341,764, composed of LEP funding plus £141,764 from s106 for economic development capital purposes, a revenue stream of an estimated [REDACTED] will be received by the Authority in return for these costs being rolled into a lease at a market rate of return (not conferring any advantage on the Operator - CBL) of 6% per annum.

The LEP grant, combined with the Council's contribution, creates the financial conditions to give CBL the confidence to increase its revenue expenditure in Year 1 to £187,018 to deliver the Project, generating the leverage expected. .

The Council's allocation of s106 monies is confirmed (see attached letter from s151 Officer) and the spend is consonant with the purposes for which the funding was obtained from the developer: 'business enterprise purposes in the Borough of Colchester'.

CBL are funding their contribution to the Project from their own reserves and from normal trade credit lines. However, the Project is backed by the Board of CBL the business case within the Company has been agreed. The Project is seen as a key development for the Company in terms of systematically addressing the urban business market in partnership with a local Authority, piloting a model which it is hoped to replicate elsewhere in Essex.

It should be noted that (Appendix 1, below) the income by CBL ramps up in Year 2, through a doubling of subscriptions to that of Year 1. Successive increases in take-up have not been modelled at this time as potential subscribers are able to quit existing contracts for broadband service but it is anticipated that significant resource will be brought to initial and subsequent marketing through planned engagement of Colchester Institute and University of Essex Business and Marketing interns to support CBL's in-house marketing staff.

Detailed quarterly spend profiles cannot be provided at this time as site investigations have to be fully undertaken to establish the roll-out for installation and deployment. However, it is clear that expenditure will be greatest in the first two quarters of the year as economies of scale in purchasing equipment ahead of deployment will fall in the first six months. An indicative spend profile against total Project cost is likely to follow the below pattern:

Q1 – 20%; Q2 – 50%; Q3 – 20%; Q4 – 10%.

Table 1: Project cost allocation between CBC and CBL

Share of Expenditure in Year 1	Coverage			Voip			Total costs		
	CBC/LEP	CBL	Total	CBC/LEP	CBL	Total	CBC/LEP	CBL	Total
Capital	██████		██████	██████		██████	██████	█	██████
Backhaul		██████	██████			█	█	██████	██████
Tower Rental	██████		██████			█	██████	█	██████
Network maintenance		██████	██████			█	█	██████	██████
Project Management	██████		██████			█	██████	█	██████
Sales Manager		██████	██████			█	█	██████	██████
Financial Project Management	██████		██████			█	██████	█	██████
Marketing		██████	██████		██████	██████	█	██████	██████
Lease Payment		██████	██████			█	█	██████	██████
Directly attributable overheads		██████	██████		██████	██████	█	██████	██████
Apportioned overheads		██████	██████			█	█	██████	██████
Connection Costs		██████	██████		██████	██████	█	██████	██████
Total net of VAT	██████	██████	██████	██████	██████	██████	██████	██████	██████
VAT	██████	██████	██████			█	██████	██████	██████
Total inclusive of VAT	██████	██████	██████	██████	██████	██████	██████	██████	██████

Table 2: Breakdown of Council's capital expenditure (Yr. 1)

Cost element	Value
• VoIP platform integration and licencing (net of VAT)	£12,284
Costs for 7 business parks	
• Towers (7)	£38,500
• Surveys and civils/land acquisition and legals (7 sites)	£38,460
• Point to Point Equipment (7)	£70,000
• Labour charges (7 masts)	£35,000
• Tier 2 and 3 equipment	£43,400
Total (ex-VAT)	£237,644
Total (inc. VAT)	£282,716

(Tier 2 and 3 equipment in more detail includes: 36 Sectors; 38 Rockets; 10 Nanobridges; 2 Rocket Switches; 2 Routerboards; 10 Toughswitches; 12 Batteries; 12 Battery chargers; 12 Battery Boxes; 240 mtrs Cable; labour to install 2 Digital Village pumps and 10 Community Access Points).

Table 3: Breakdown of Council's revenue contribution (Yr. 1)

Cost element (inclusive of VAT)	Value
Project Management	£20,340
Financial Project Management	£30,510
Towers rental (Yr. 1)	£8,200
Total	£59,050

10. Financial Implications

The Council will receive a revenue stream per annum ██████████ against a respective capital (and associated revenue costs) investment of £341,764.

The scheme is projected to break even in cash terms for the Operator, CBL, in year 2.

There are no implications for existing Council accounts other than drawing on the s106 fund for economic development as part of the investment total.

Notes on costs and leased assets.

- Allowance for site investigations and planning the network topology by CBL is not included in Table 1 above but has been confirmed as their cost; it does not therefore explicitly appear in Table 1 (above). From the Council's site, negotiation to obtain locations is covered in Table 2 (above).
- In terms of rental costs for towers, the first year's towers' rental is allocated to the set up cost which is borne by CBC. However, from year 2 the operational cash flow from the Project received by CBL will cover tower rentals.

- In terms of the useful life of the radio equipment purchased, manufacturer’s specifications for “Mean time between failure” varies between equipment but for the key high-value radio kit it is considerably in excess of 20 years which indicates a high asset value. However, given the advances in technology, the commercial partner, CBL, would be likely to have upgraded/replaced the radio equipment during the life of the lease agreement. Any such upgrade or equipment replacement is expected to be at the expense of County Broadband as part of its policy to keep pace with technology and to remain competitive in the market place.

The towers and sites will have a longer useful life than the equipment and a higher asset value (given potential alternative operator interests and growing use of WiFi as a complementary form of digital connectivity).

11. Alternative options

Rejecting the “do nothing” option, the closest alternative options to the Project which address the issues are:

1. Lobby the incumbents (BT and Virgin Media) to improve their coverage; or,
2. Develop a partnership with a provider of fibre technology; or,
3. Provide grant funding to the current, fixed wireless broadband commercial partner,

The first option has been pursued in recent years but it is clear that Virgin Media will not extend their current cable footprint and BT have proven unresponsive to requests for cabinet enablement on business parks.

In terms of the second option, discussions have been held with two independent fibre optic providers over the past two years. One provider altered the terms of an initial outline agreement with the Council and was rejected. The second provider’s business case for investment required the Council to aggregate its own and other public service leased lines to create an investible first-step; this proved unfeasible.

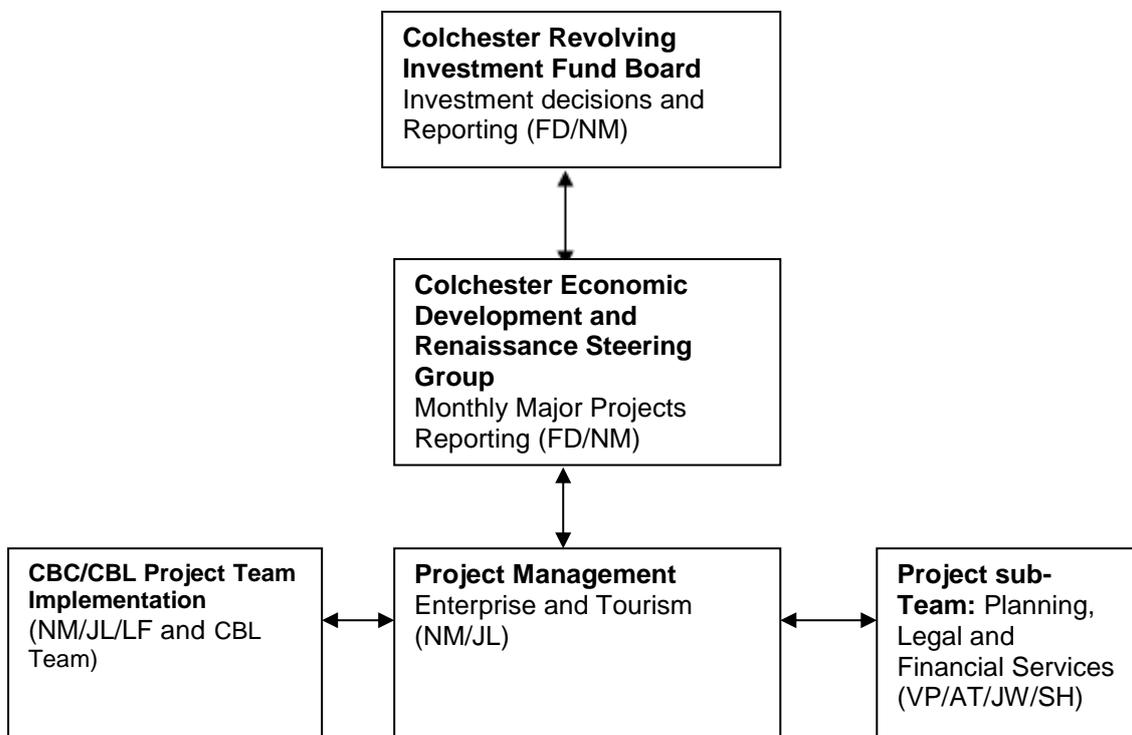
The alternative to the current Project which proposes a commercial relationship with the planned provider would be to provide grant funding to encourage their coverage of key business locations. This option would lead to an elongated delivery schedule and would require the application of significant grant which, as such, would inevitably create a State Aid. For these reasons, this option has also been rejected.

Alternative option	Reason for not selecting alternative
“Do nothing”	Fails to deliver the planned business and job benefits and restricts support for key business sectors and locations, retarding inward investment and sufficient business and employment growth to absorb the Borough’s rapidly growing working-age population.
Lobby the incumbents (BT and Virgin Media) to improve their coverage	No interest by the two major operators in altering their current business models which are generating market failure in affordable Next Generation Access broadband on business parks and sites without Government intervention which appears unlikely given Ofcom’s regulatory remit.
Develop a partnership with a	Commercial models proved undeliverable in terms of

provider of fibre technology to achieve coverage	potential partner expectations of the Council and vice versa.
Council to grant fund County Broadband entirely	Would require a re-procurement exercise which may not select CBL, would delay delivery, create a State Aid and remove the opportunity for the Council to obtain a small revenue income stream for re-investment in a Phase 2 coverage for rural business locations.
Council to join ECC to cover rural southern half of Colchester Borough using the LEP funding to leverage further DCMS grant for County	Would require the Council to abandon the purpose for which grant funding has been received – business park coverage (urban) – and could lead to an overbuild of County Broadband’s emerging network in the area by another ECC-selected operator, wasting previous and current public funding.

12. Management and Governance

The project will be managed in accordance with current Council project management processes which include the formation of a project delivery team, together with project planning and active risk management and monthly reporting procedures.



As part of the governance process, the project milestones and high scoring “red” risks will be reported monthly to the Economic Development and Renaissance Steering Group which comprises the Leader and Deputy Leader of the Council. Risk mitigation measures for high scoring risks will be agreed.

Updates on the project will also be reported to the Executive Board, Senior Management Team, Commercial and Creativity meetings as required. Outside the Authority, updates will also be reported to the SELEP Growth Fund grant and monitoring team, based in Essex County Council.

In terms of wider governance by the accountable body (ECC) or for SELEP internal governance, these processes have not yet been conveyed to Colchester Borough Council and we await further details as they emerge. The Borough Council has worked on a number of national funded projects with ECC in the past and have submitted quarterly claims together with evidence of spend against agreed milestones. We have assumed for the purposes of this business case that any governance/project management for this project will be broadly in accordance with previous projects.

13. Approvals

Approver Name	Title	Signature	Date

Appendix 1. County Broadband income and expenditure forecast

	Initial investment	Year 1	Year 2	Year 3	Year 4	Year 5
Income						
LEP grant + s106 funding as investment in the form of leased assets	█	█	█	█	█	█
Subscriptions	█	█	█	█	█	█
Connections	█	█	█	█	█	█
Total Income	█	█	█	█	█	█
	█	█	█	█	█	█
Variable Costs	█	█	█	█	█	█
Sales Commission	█	█	█	█	█	█
Connections costs - Materials	█	█	█	█	█	█
Connection Costs - Labour	█	█	█	█	█	█
Total Variable Costs	█	█	█	█	█	█
	█	█	█	█	█	█
Contribution to Fixed Costs	█	█	█	█	█	█
	█	█	█	█	█	█
Fixed Costs	█	█	█	█	█	█
Network - Capital	█	█	█	█	█	█
Network - Operations	█	█	█	█	█	█
Staff Costs	█	█	█	█	█	█
Marketing	█	█	█	█	█	█
Lease Payment	█	█	█	█	█	█
Overheads	█	█	█	█	█	█
	█	█	█	█	█	█
Total Fixed Costs	█	█	█	█	█	█
	█	█	█	█	█	█
Cashflow from Operations	█	█	█	█	█	█
	█	█	█	█	█	█
Balance Brought Forward	█	█	█	█	█	█
	█	█	█	█	█	█
Balance Carried Forward	█	█	█	█	█	█

Appendix 2: Project State Aid advice commissioned from Eversheds

Colchester Borough Council

State aid assessment regarding Market Economy Operator Principle economic analysis relating to the Colchester NGA Broadband for Business Parks project

1. **Introductions**

- 1.1 The purpose of this document is to provide details as to what is required in order to demonstrate that the proposals in respect of the "investment" by Colchester Borough Council ("the Council") in to the Colchester NGA Broadband for Business Parks project ("the Project") does not raise State aid issues.
- 1.2 The contents of this report as based on information contained within the following documents supplied to it by the Council: -
- 1.2.1 Economic plan for Essex - Project summary document;
 - 1.2.2 Colchester NGA Broadband for Business Parks Project and state aid; and
 - 1.2.3 Email dated the 11th November from Jim Leask of the Council
- 1.3 The contents of this report are for the benefit of Eversheds' client, the Council, only and Eversheds duty of care shall apply only to the Council. Should the Council share this report or any part of it with any third party, the legally privileged nature of this document may be lost and Eversheds' duty of care shall not extend to any such third party.

2. **Executive summary**

- 2.1 Whilst in theory the on leasing of the relevant assets to Country broadband at no less than their open market value (ideally independently established) can be argued to not allow for the grant of any element of State aid, it is considered that if such assets are solely bought by the Council for the purpose of on leasing them to Country Broadband then there is a risk of aid being found unless the transaction as a whole can be evidenced as being economically viable for the Council.
- 2.2 If the purchase and leasing of the assets (taking into account associated costs) would not make any return or a return acceptable to a prudent private sector operator then it is considered the actions of the Council could be viewed as amounting to an aid as it would suggest that no entity on the market would acquire and on lease such assets in such circumstance.
- 2.3 It is therefore recommended that an assessment of the full costs of the proposal as against the returns based on the leasing price and leasing period be undertaken. The level of return should then be considered as against what would be acceptable to a

market operator in such circumstances discounting any non economic/socio economic benefits. From this it can be ascertained if there is any possible aid and if so if it can be justified as de minimis aid.

3. **Understanding of the Project**

3.1 It is understood from the documentation reviewed that the project will involve the "investment" by the Council of sums between 150,000 and £200,00. By way of the acquisition and on leasing of certain assets. The intention is to lease these assets to an entity called County Broadband which will be delivering fixed wireless broadband to a number of business parks in the Colchester area.

4. It is this "investment"/ purchase and resale which the Council wishes to assess from the perspective of compliance with the State aid rules.

5. **Relevant law**

5.1 EU State aid law is based around a prohibition on all the EU Member States granting State aid unless it has been pre-approved. In practice, the only person who can give such a clearance is the European Commission ("the EC").

5.2 Article 107(1) of the Treaty on the Functioning of the European Union ("the TFEU") sets out four distinct and different elements which must each and all be met in order for the prohibition on State aid to apply. A measure(s), in order to amount to State aid, must (1) be granted by the State or through State resources; (2) distort or threaten to distort competition; (3) favour certain undertakings or the production of certain goods; and (4) affect trade between EU Member States. If none of these is present then the measure(s) will not amount to State aid.

5.3 It is considered that the key element in terms of being able to demonstrate that the application of/commitment to apply State resources (in certain circumstances) by the Council in respect of the Project (as proposed) can be made without the risk of State aid arising is the need for a "selective benefit" to accrue to an undertaking (through the use of such State resources) in order for State aid be present. If it can be established that the basis of the proposed acquisition and on-leasing of the relevant assets by the Council to County Broadband is consistent with that which would be acceptable to a rational profit motivated prudent private sector operator, of a size comparable to the Council (where presented with the same or similar circumstances), then it can be validly argued that there would be no benefit to County Broadband resulting from the proposal regarding such assets. This is known as the Market Economy Operator Principle ("MEOP").

5.4 It is understood that the Council will be leasing the relevant assets to County Broadband at no less than the market rate for the same. This will need to be adequately evidenced and therefore it is recommended (if not already done) then independent experts are engaged to ascertain what a fair and reasonable market price would be for the leasing of the assets in the context of a project of one such as is envisaged here or at the very least a bench marking exercise in terms of

applicable leasing rates on the markets be undertaken. This would be in line with the guidance issued by the EC in the from the Commission Communication on State aid elements in sales of land and building by public authorities ("the SOLG")¹ Whilst this only applies in theory to land assets its clearly demonstrates the principle that the disposal of assets by public bodies at an amount at least equal to the independently established open market value of such assets does not raises substantive state aid issues.

- 5.5 The SOLG also, however, provides for the potential for aid issues to still arise where a sale is at or above open market value but is for a sum which is below the purchase price paid for such assets by the State. This in turn links into the basis on which MEOP operates (i.e. would a prudent private sector investor sell/lease such an asset it has just acquired at a loss, particularly if it bought that asset for the express purpose of on-selling/leasing that assets, rather than using it itself at any point.
- 5.6 On this basis it is considered that the transaction, in order to be considered to be State aid compliant, in particular compliant with MEOP, will need to be looked at in the round. In effect would the acquisition price paid by the Council (and associated costs regarding the same and the leasing incurred by the Council) and the income from the leasing of such assets to County Broadband (together with any residual value of the returned assets, if any) allow for a sufficient return on the original capital investment (by way of the acquisition of the assets in question. If the answer is yes, based on what a (rather than all) comparable investor would find acceptable in the context of a similar proposal, then it can be robustly argued that there is no selective benefit present in the transaction and thus no element of aid. Conversely, if the basis on the transaction (with the level of returns pretty much set in stone here, as the leasing prices will be known as will the acquisition and associated costs) would result in a loss or a return that would not be acceptable to any private sector operator then aid will be likely to be deemed to be present, with the aid being the difference between what would be acceptable to such an entity and what the return will be for the Council. It should be noted that the fact that the Council could (should it so wish) obtain a better return elsewhere (i.e. by simply putting the money on deposit) is not relevant in considering whether the investment stacks up under MEOP.
- 5.7 It should be noted that it is considered that if there is a shortfall in the returns as against the total capital investment (as against that which would be acceptable to a prudent private sector investor) it may still be possible undertake the transaction if that shortfall over the life of the investment can be shown to be in line with the requirements of the De Minimis aid Block Exemption. This allows any one entity to receive up to €200,000 from all sources in each Member State subject to such funding being expressly identified as de minimis aid and applied in compliance with the De Minimis aid Block Exemption. In reality if the shortfall, when cumulated with any other de minimis aid (which has been or is already committed to be) received by

¹ *OJ C 209, 10.7.1997, p. 3-5*

County Broadband is less than the €200,000 cap it will still be possible to fund even if the economics of the transaction do not stack up.

- 5.8 De minimis aid may only be granted if the amount received by the enterprise in question, does not lead to the amount of de minimis aid received by that entity during a period of 3 fiscal years (including the fiscal year in which it is proposed to grant the new de minimis aid) exceeding the De minimis Aid ceiling. On this basis details must be obtained from the intended recipient of any de minimis aid it has received/committed to be provided during the current fiscal year and the period of 2 fiscal years prior to the current fiscal year in which it is intended to grant the de minimis aid.
- 5.9 In addition, de minimis should not be used to enable an entity to exceed maximum aid intensity levels regarding costs for which it has received/will received public funding under another State aid measure. On this basis, it is also necessary to obtain details of any public funding received by the entity in question (County Broadband) during the applicable (i.e. present) fiscal year and the previous 2 fiscal years in respect of the costs to which it is intending to apply the de minimis aid.
- 5.10 It is also important when granting de minimis aid to identify it as such and refer to it being granted under the exact name of the Regulation (Commission Regulation (EC) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid). This is so as to ensure that the required cumulation exercise can be undertaken in respect of any future de minimis aid funding proposed to be provided to the intended recipient.

2nd December 2014

EVERSHEDS LLP