

From: Roger Gough, Leader of the Council

Mike Whiting, Cabinet Member for Economic Development

Barbara Cooper, Corporate Director for Growth, Environment and Transport

To: Growth, Economic Development & Communities Cabinet Committee – 28 November 2019

Decision no: 19/00093

Subject: Reform of the South East Local Enterprise Partnership's (SELEP) governance

Classification: Unrestricted

Summary:

Kent County Council is a member of the South East Local Enterprise Partnership (SELEP). The Government has set out reforms that necessitate changes to SELEP's governance.

The report outlines these reforms, the activities that SELEP is undertaking to become compliant, and the consequence for SELEP of non-compliance. It also highlights the related decisions which Kent County Council must make if it wishes to remain a partner in SELEP.

Recommendation:

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Leader of the Council on the proposed decision for Kent County Council (as shown at Appendix A) to:

- Agree to Kent County Council remaining a partner in and member of the South East Local Enterprise Partnership (SELEP) after it becomes a company limited by guarantee in 2020.
- Confirm that the Leader of the Council will be the KCC nomination for appointment as a Director of SELEP Ltd, as per the proposed SELEP Board Membership arrangements.
- Confirm that the Leader of Kent County Council will be the formal voting representative of KCC at SELEP Strategic Board meetings of SELEP Ltd and at the SELEP Accountability Board, the latter to be governed by the updated Joint Committee Agreement; and
- Delegate authority to Kent County Council's Monitoring Officer, in consultation with the Leader and the Corporate Director for Growth, Environment and Transport, to enter into relevant contracts, legal agreements and put appropriate arrangements in place required to implement this decision, including but not limited to, signing an updated Joint Committee Agreement governing the SELEP Accountability Board.

1. Introduction

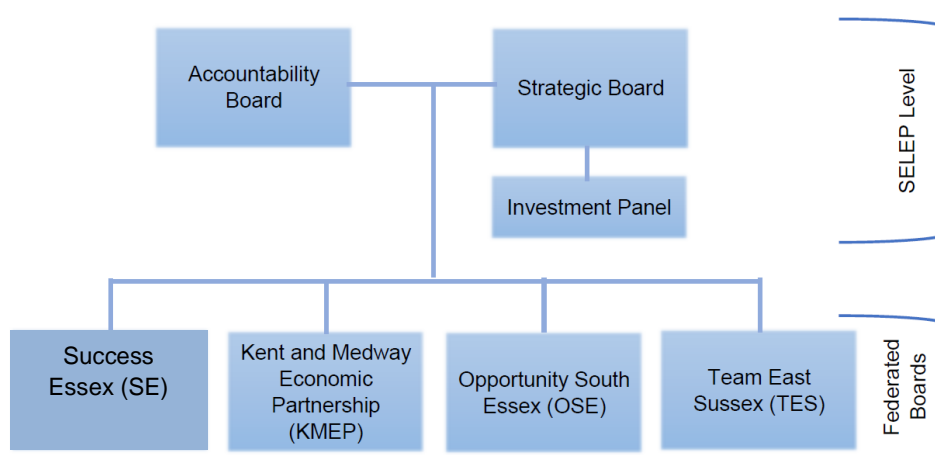
- 1.1 Local Enterprise Partnerships bring together local partners (namely local businesses, local authorities, universities, and further education colleges) in the pursuit of economic growth. Kent County Council has been a partner in the South East Local Enterprise Partnership (SELEP) since its inception in 2011.
- 1.2 In July 2018, the Government published ‘*Strengthened Local Enterprise Partnerships*’¹. This set out reforms to Local Enterprise Partnerships, which must be implemented by 31 March 2020.
- 1.3 The reforms include, inter alia, changes to the role, leadership, composition, governance, accountability, and performance management of LEPs. Reports were taken to GEDCC on 5th September 2018², and to the County Council meeting on 12th September 2019³, both of which provided detail on each reform.

2. The implementation of reforms by SELEP

- 2.1 SELEP has worked throughout 2019 to implement the reforms stipulated by the Government. Appendix B of this report details the changes that SELEP has already made to its governance in order to comply with the reforms.
- 2.2 However, two reforms must still be implemented. The Government has stipulated that every LEP must become a company with a separate legal personality. In addition, at least 33% of the LEP’s Company Directors must be female.

3. SELEP & its legal personality

- 3.1 SELEP is currently constituted as an informal partnership. It comprises three separate SELEP boards/panels, with four federated boards underneath, as depicted in this diagram below. Appendix B provides more information about the functions of the SELEP’s Boards and Federated Boards.



¹ Strengthened LEPs is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728058/Strengthened_Local_Enterprise_Partnerships.pdf

² <https://democracy.kent.gov.uk/documents/s85960/Item%2011%20-%20Strengthened%20Local%20Enterprise%20Partnerships%20LEPs.pdf>

³ <https://democracy.kent.gov.uk/documents/s92048/Item%208%20-%20SELEP.pdf>

- 3.2 A series of decisions have been made by the SELEP Strategic Board over 2019 as it works to transform SELEP into a legal personality.
- 3.3 The SELEP Strategic Board agreed on 22nd March 2019 that the future selected incorporated model will be a **'nil return' company**. The financial transactions of the LEP will remain within the Accountable Body and the new legal entity will have no financial transactions/activity. The reasons for this decision were twofold. Firstly, if the future company processed financial transactions, it would become liable for VAT, and the operational cost base of the Secretariat would increase by 20% overnight. Furthermore, the liabilities of Members and Directors of the new legal entity are limited by this 'nil-return' approach as the company would have neither assets nor liabilities.
- 3.4 On 28 June 2019, the SELEP Strategic Board agreed that the most suitable incorporation model is a **Company Limited by Guarantee**. This incorporation model requires a board of Company Directors and a membership.
- 3.5 On 4 October 2019, the SELEP Strategic Board agreed its approach to recruiting its **20 Company Directors, 5 Co-opted Directors**, and **Company Membership** for SELEP Ltd.
- 3.6 The new SELEP Strategic Board composition from March 2020 will comprise the following twenty Company Directors:
1. SELEP Chairman.
 2. SELEP Deputy Cabinet Member
 3. Leader of Kent County Council or Cabinet Member
 4. Leader of Medway Council or Cabinet Member
 5. Leader of East Sussex County Council or Cabinet Member
 6. Leader of Essex County Council or Cabinet Member
 7. Leader of Thurrock Council or Cabinet Member
 8. Leader of Southend-on-Sea Council or Cabinet Member
 9. Kent and Medway Economic Partnership (KMEP) Chair
 10. KMEP Business Representative
 11. KMEP Business Representative
 12. KMEP Business Representative
 13. KMEP Business Representative
 14. Team East Sussex (TES) Chair
 15. TES Business Representative
 16. TES Business Representative
 17. Success Essex (SE) Chair
 18. SE Business Representative
 19. Opportunity South Essex (OSE) Chair
 20. OSE Business Representative
- 3.7 In addition, there will be five co-opted Company Directors:
- District Council Leader or Cabinet Member
 - District Council Leader or Cabinet Member
 - Higher Education Representative
 - Further Education Representative
 - Third Sector Representative

3.8 The table below explains how each Company Director will be appointed to the Board of SELEP Ltd:

Cohort	Proposal
Chair and Deputy Chair	Open and transparent recruitment led by SELEP.
Local Authority Member from 6 County and Unitary Authorities	SELEP to receive formal notification of the named representative from the relevant local authorities. The representative must be either the Leader or a Cabinet Member according to HMG reforms.
Federated board Chairs and business representatives	Formal notification of nominated representative from the relevant Federated Board (e.g. KMEP).
Two local authority co-opted positions	Districts and Boroughs in a shire area will select their representative. In 20/21, the two representatives will come from the Counties of Kent and Essex.
FE representative	Appointment of the Chair of SELEP's Skills Advisory Group.
HE representative	Appointment of the nominated representative Vice Chancellor from SELEP's U9 group of universities.
Third Sector representative	Appointment of the nominated representative from the SELEP Social Enterprise working group.

3.9 SELEP has agreed the membership of SELEP Ltd should be the Company Directors listed in paragraphs 3.6 and 3.7, and the members of the four federated boards (see paragraph 3.1 above). These members will be invited to annual general meetings and they would be able to ask questions of the Board and therefore take a challenge and oversight role of the Board.

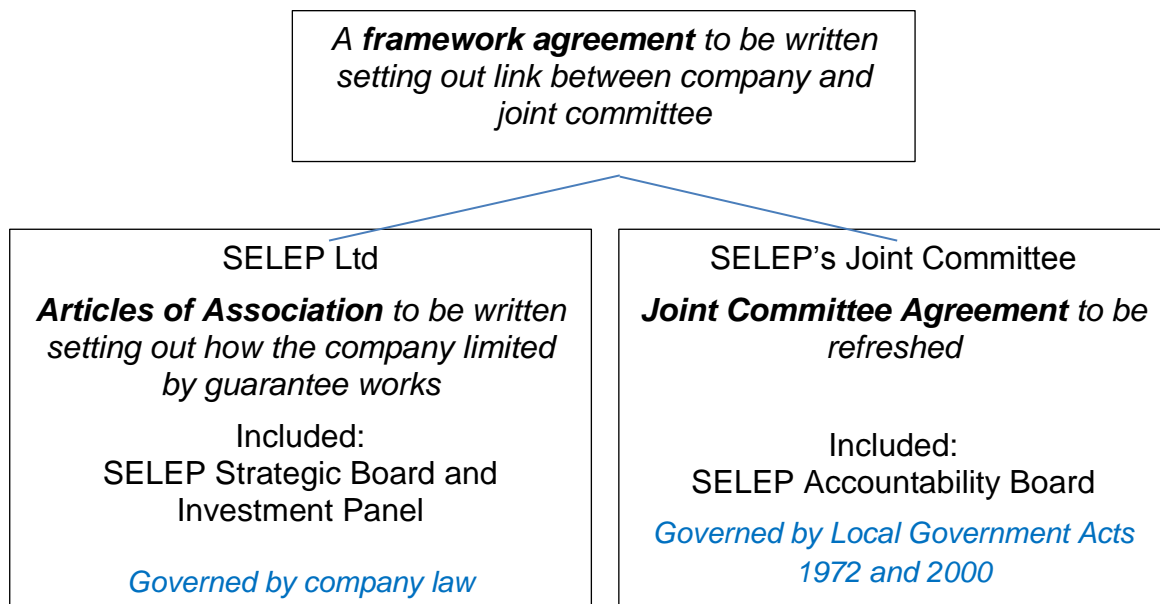
4. Forthcoming decisions for the SELEP Strategic Board

4.1 Essex County Council's Legal Services have been commissioned to draft **articles of association for SELEP Ltd**. The component parts that will make up SELEP Ltd will be the SELEP Strategic Board and the SELEP Investment Panel.

4.2 The draft articles of association will be circulated to the six county and unitary authority monitoring officers for comment, prior to the SELEP Strategic Board considering them for adoption on 6 December 2019.

4.3 In light of the SELEP decision in March 2019 that any company incorporated would be a 'nil return' company, all future funding will continue to be overseen by the Accountable Body (i.e. Essex County Council). As a result, this funding is subject to all the accounting, management and decision-making requirements of local authorities.

- 4.4 Where multiple local authorities wish to take decisions collectively, the only statutory mechanism by which this can be achieved is by way of a Joint Committee. Accordingly, in order to enable decisions to be taken with regards to the allocation of SELEP funding to identified projects, the county and unitary authorities in SELEP must do so through a joint committee arrangement. This was the basis for the establishment of the SELEP Accountability Board in 2015, and in light of the Board's decision for a nil return company, remains the only viable mechanism through which these decisions can continue to be made.
- 4.5 Given the establishment of SELEP Ltd, the **Joint Committee Agreement**, signed on November 2015, will require minor changes to ensure it is fit-for-purpose. In addition, a **Framework Agreement** must be written to govern the relationship between the SELEP Ltd and the Joint Committee. Essex County Council's Legal Services anticipate drafts of these two documents will be brought to the SELEP Strategic Board for them to consider and potentially adopt on 6th December 2019.
- 4.6 The diagram below highlights the three documents which must be agreed:



- 4.7 The SELEP Strategic Board papers for 6th December 2019 are expected to include further legal advice on the liabilities for the new Directors of the Board.
- 4.8 Furthermore, discussions around improving Board diversity in line with Government reform will take place at the SELEP Strategic Board meeting on 6th December 2019.
- 4.9 SELEP intends the 20th March 2020 to be the first Board meeting of the new company directors.
- 5. Benefits and implications for Kent County Council**
- 5.1 Kent County Council has been a member of SELEP since its inception in 2011 and has benefited from its participation in the partnership.

- 5.2 One benefit has been to enable Kent County Council to prioritise its strategic aims within regional and national agendas, and influence strategy formation (such as the 2014 SELEP Strategic Economic Plan, and the forthcoming SELEP Local Industrial Strategy).
- 5.3 In addition, Central Government invites LEPs to bid for certain competitive funding pots, such as Local Growth Funding, to which local authorities do not have direct access. Kent County Council expects to receive over £150m in capital funding from 2015 to 2021 for projects across the county. In addition, being a member of the LEP has enabled Kent County Council to participate in the discussions regarding the use of European Structural Investment Funding (ESIF).
- 5.4 As SELEP is changing its legal personality and redrafting its Joint Committee agreement of which Kent County Council is a co-signatory, a key decision must be taken by Kent County Council (see Appendix A). There are two principal options:

OPTION 1

- 5.5 Kent County Council reaffirms its ongoing and in-principle commitment to SELEP and gives it support for the proposals for new governance arrangements, including:
- the establishment of a new legal personality,
 - the refresh of the Joint Committee agreement,
 - the nomination of the Leader of the Council to act as a SELEP Ltd Company Director.

OPTION 2

- 5.6 Kent County Council declines to participate in SELEP under the new arrangements, and consequently does not nominate a KCC representative to act as a Company Director, nor endorse the governance documentation.
- 5.7 Should Kent County Council choose option 2 and decline to participate in SELEP under the new arrangements, the Council would no longer be able to apply for or receive Local Growth Fund (LGF) or Growing Plans Fund (GPF) funding (or successor funds administered by LEPs), and would have a significantly weakened voice in setting regional priorities. This would be an unprecedented move, since all UK local authority areas are currently members of a LEP.

6. Conclusion

The benefits to Kent County Council of continuing to participate in SELEP justify supporting the necessary governance and legal status required by government. Therefore, it is proposed that Option 1 be progressed.

7. Recommendation

The Cabinet Committee is asked to consider and endorse, or make recommendations to the Leader of the Council on the proposed decision for Kent County Council (as shown at Appendix A) to:

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8. Background documents

Appendix A – Proposed Record of Decision

Appendix B – The reforms, specified in Strengthened LEPs, which SELEP has instituted

Appendix C – SELEP's Boards and Federated Board Structure

9. Contact Details

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