

**Report to:** Leader and Lead Member for Strategic Management and Economic Development

**Date of meeting:** 11 February 2020

**By:** Director of Communities, Economy and Transport

**Title:** SELEP Legal Personality

**Purpose:** To approve changes being proposed to the legal personality of the South East Local Enterprise Partnership (SELEP) so that SELEP can become a 'Company Limited by Guarantee', and agree that the Leader of the County Council becomes a Company Director of SELEP Ltd.

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**Recommendations:** The Leader and Lead Member is recommended to:

- (1) Agree to East Sussex County Council (ESCC) continuing its role as a partner in and a member of the South East Local Enterprise Partnership (SELEP) after it becomes a Private Company Limited by Guarantee (SELEP Ltd), the terms of which are set out in the new SELEP Articles of Association (Appendix 1);
  - (2) Agree that ESCC enters into a new partnership agreement – termed the SELEP Framework Agreement (Appendix 2) – between SELEP Ltd and the six upper-tier authorities that comprise SELEP, noting that the existing Joint Committee Agreement (governing the SELEP Accountability Board) has been updated and is included within the new SELEP Framework Agreement;
  - (3) Confirm that the Leader of the County Council will continue to be the ESCC representative on SELEP and will take up the appointment of Company Director of SELEP Ltd, as per the new membership arrangements described in the SELEP Articles of Association;
  - (4) Confirm that the Leader of the County Council will continue to be the formal voting representative of ESCC at SELEP Strategic Board meetings and at SELEP Accountability Board meetings;
  - (5) Delegate authority to the ESCC Monitoring Officer to sign the SELEP Framework Agreement on behalf of ESCC; and
  - (6) Delegate further authority to the ESCC Monitoring Officer, in consultation with the Leader of the County Council and the Director of Communities, Economy and Transport, to enter into any additional legal agreements or contracts as required to implement the above decisions.
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## **1. Background information**

1.1. In July 2018 the government published its 'Strengthened Local Enterprise Partnerships' document, referred to as the LEP Review. It included a series of recommendations and requirements on such things as openness, transparency, accountability and scrutiny in order to ensure a consistent approach to governance across all 38 LEPs. Through its Assurance Framework, SELEP already had a robust set of governance arrangements well-established, so the majority of the recommendations have been applied.

1.2. Two of the requirements involved a much greater level of consideration: Board Composition (reducing the number of board members, adjusting the public / private-sector ratio, increasing diversity) and Legal Personality (making SELEP a limited company). Whilst SELEP members and partners were happy with SELEP's operating framework, these changes were required of all LEPs, to be implemented by the end of March 2020.

1.3. SELEP established two working groups to consider each of the above and come up with proposals for a way forward. The final recommendations on Board Composition were approved by the SELEP Strategic Board on 4 October 2019. The proposals of the Legal Personality subgroup were approved by the SELEP Strategic Board on 6 December 2019 – subject to the additional approvals of SELEP’s constituent upper-tier local authorities.

1.4. In making the transition to ‘SELEP Ltd’, two key documents have been created: the SELEP Articles of Association and the SELEP Framework Agreement, both attached to this report as appendices 1 and 2 respectively. The functions of these documents are described in paragraph 2.3 below, along with a summary of the main changes brought about by the change of legal status.

1.5. As one of the six upper-tier authorities of SELEP, East Sussex County Council (ESCC) is now asked to approve the change of legal status of SELEP, including the above two documents, through our internal governance procedures (Lead Member).

## **2. Supporting information**

2.1. One of the key requirements of the LEP Review was that all LEPs should have a legal personality, and whilst no particular model was specified, the government did make it clear that any future funding will continue to be awarded via a local authority ‘Accountable Body’.

2.2. The Accountable Body for SELEP is Essex County Council (Essex CC). Previously, to allow the organisation to direct funds whilst remaining within the law and its own governance structures, SELEP devolved authority for those funds to a ‘Joint Committee’ (a mechanism under public law that allows local authorities to come together to make decisions such that responsibility for allocating funding is not restricted to the single organisation acting as Accountable Body). The Joint Committee, of which the County Council is a member, was formed in 2015 and continues to function under the name of the SELEP Accountability Board. The powers of the SELEP Accountability Board are delegated from the six upper-tier authorities who are partners in the Joint Committee Agreement.

2.3. Throughout the process of considering the new legal personality it has been SELEP’s intention to keep things as close to the current operating model as possible whilst at the same time ‘ticking the box’ for the limited company setup. SELEP has therefore agreed to the following:

- The legal personality to be adopted will be a Company Limited by Guarantee (CLG).
- The financial transactions, assets and liabilities of the partnership will remain within the Accountable Body (Essex CC). SELEP Ltd will be a shell company with no assets – it will not hold any funding or employ any staff (with the Secretariat continuing to be employed by Essex CC). This minimises risk and cost, but has the consequence that it is still the local authorities that will make the final decisions on funding allocations via the SELEP Accountability Board. This is a longstanding arrangement which the business members of the current SELEP Strategic Board support, as in practice the federated boards work hard to develop a consensus on funding, endorsed by the SELEP Strategic Board, long before final funding decisions are taken by the SELEP Accountability Board.
- It is not possible to make the SELEP Accountability Board part of the new Limited Company structure (as it is a function of Local Government and therefore Public Law rather than Corporate Law), so the functions of the SELEP partnership will actually be wider than ‘SELEP Ltd’ and can be considered to be made up of three components – SELEP Ltd, SELEP Accountability Board and the Accountable Body.
- Whilst it may not be possible to capture all of these functions within a single organisation, the relationship between them can be formally described within a partnership agreement, setting out the respective responsibilities of the different components of SELEP described above. This partnership agreement will be referred to as the ‘SELEP Framework Agreement’. Note that the existing Joint Committee Agreement between the six upper-tier authorities (setting out the responsibilities of the SELEP Accountability Board) will be included as a subsection of the new SELEP Framework Agreement.

- SELEP operates a ‘federated’ model, with local boards by geographical area allowing for decision making at a local level. There is close interaction between the federated boards and SELEP, with the federated boards providing an advisory function on local issues, plus project endorsement and prioritisation for their local areas. The federated boards also put forward members to sit on the SELEP Strategic Board. There are four federated boards – Team East Sussex, Kent & Medway Economic Partnership, Success Essex and Opportunity South Essex. This federated operating model will remain unchanged, allowing the federated boards to continue to have a strong voice in the running of the company.
- The new SELEP Strategic Board, as approved by the current Strategic Board on 6 October 2019, will consist of twenty members plus an additional five ‘co-opted’ members. The twenty main members will be made up of the private-sector Chair and Deputy Chair, twelve further private-sector members appointed from the federated boards (including three from Team East Sussex) and six public-sector members representing each of the upper-tier local authorities (including ESCC). The five co-opted members will initially be made up of two Borough / District Council representatives and three private-sector members representing Further Education, Higher Education and the Third Sector. The twenty main members will be able to serve for two years at a time, renewable up to a maximum tenure of six years, while the five co-opted members will serve for one year only.
- The Company Limited by Guarantee model includes a board of directors and an overall membership. The Company Directors of SELEP Ltd will be the 25 members of the new SELEP Strategic Board, as listed above. The membership of SELEP Ltd will be made up of all the members of the four federated boards. For clarity, ESCC is not a corporate member of the federated board and therefore will not be a member of the new SELEP Ltd Company, but will have power under Article 23.5 of the company’s articles of association that states “each council is entitled to nominate one member”.

2.4. New **Articles of Association** have been constructed to define the constitution of SELEP Ltd, setting out such things as the terms of membership, responsibilities of Company Directors and limitations of liability. The **SELEP Framework Agreement** has also been produced and all six upper-tier authorities of SELEP, along with SELEP Ltd itself, will need to sign-up to it.

2.5. As indicated above, the new SELEP Strategic Board members, including the Leader of the County Council will become Company Directors of SELEP Ltd. Note that there are certain requirements of Company Directors of limited companies, as laid out in Corporate Law. Essex CC, as Accountable Body, has obtained counsel’s advice on the liabilities of the company and its Directors. Counsel has advised that since the company has no assets the risks are low and most liabilities will be covered by directors’ and officers’ insurance, which the company intends to procure. Details of indemnity and insurance are given in paragraph 39 of the SELEP Articles of Association, and a copy of counsel’s opinion on Directors’ liabilities is attached to a report later on the agenda.

2.6. The liability of each member of SELEP Ltd is limited to £1.00 (the amount that each member undertakes to contribute to the company in the event of its being wound up while he or she is a member, or within one year after he or she ceases to be a member). Otherwise this report has no direct financial implications since SELEP will continue to operate in the current manner and the County Council will continue to contribute and passport funding to recipients in the same way as it currently does.

### 3. Conclusion and reason for recommendations

3.1. SELEP is required by Government to adopt a new legal personality from April 2020. This was one of the principle requirements of the 2018 LEP Review so is absolutely necessary in order for SELEP to continue receiving its core funding from Government, as well as other annual programme funds (including Local Growth Fund monies).

3.2. The approach taken by SELEP has been developed in consultation with the government’s Ministry of Housing, Communities and Local Government (MHCLG) and the Department for Business, Energy and Industrial Strategy (BEIS) who are happy with the proposals. The

recommendations in this report have been developed in consultation with all six upper-tier authorities of SELEP. The County Council has been fully engaged in this process from the outset, with the Leader of the County Council sitting on the legal personality subgroup.

3.3. The two key documents – SELEP Articles of Association and SELEP Framework Agreement – have been reviewed by County Council officers in the Economic Development and Legal Services teams, providing recommendations to the County Council's Monitoring Officer who in turn provided detailed feedback to SELEP on the draft versions of the documents, and subsequently gave their endorsement to the final versions.

3.4. The Lead Member is therefore recommended to:

3.4.1. **Agree** to East Sussex County Council (ESCC) continuing its role as a partner in and a member of the South East Local Enterprise Partnership (SELEP) after it becomes a Private Company Limited by Guarantee (SELEP Ltd), the terms of which are set out in the new SELEP Articles of Association (Appendix 1).

3.4.2. **Agree** that ESCC enters into a new partnership agreement – termed the SELEP Framework Agreement (Appendix 2) – between SELEP Ltd and the six upper-tier authorities that comprise SELEP, noting that the existing Joint Committee Agreement (governing the SELEP Accountability Board) has been updated and is included within the new SELEP Framework Agreement.

3.4.3. **Confirm** that the Leader of the County Council will continue to be the ESCC representative on SELEP and will take up the appointment of Company Director of SELEP Ltd, as per the new SELEP Board membership arrangements described in the SELEP Articles of Association.

3.4.4. **Confirm** that the Leader of the County Council will continue to be the formal voting representative of ESCC at SELEP Strategic Board meetings and at SELEP Accountability Board meetings.

3.4.5. **Delegate authority** to the ESCC Monitoring Officer to sign the SELEP Framework Agreement on behalf of ESCC.

3.4.6. **Delegate further authority** to the ESCC Monitoring Officer, in consultation with the Leader of the County Council and the Director of Communities, Economy and Transport, to enter into any additional legal agreements or contracts as required to implement the above decisions.

3.5. Upon approval of this report, alongside the approvals of the other five upper-tier authorities, SELEP will register SELEP Ltd at Companies House, after which all parties can sign the Framework Agreement, ensuring the change of SELEP legal personality is fully implemented by the end of March 2020 deadline.

RUPERT CLUBB  
Director of Communities, Economy and Transport

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## LOCAL MEMBERS

All