

CABINET

19 NOVEMBER 2019

SOUTH EAST LOCAL ENTERPRISE PARTNERSHIP (SELEP) FUTURE BOARD STRUCTURE

Portfolio Holder:	Councillor Rodney Chambers OBE, Portfolio Holder for Inward Investment, Strategic Regeneration and Partnerships
Report from:	Richard Hicks, Director Regeneration, Culture, Environment and Transformation, and Deputy Chief Executive
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Summary

Medway 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 and membership by April 2020.

This paper provides background context to the reforms, and sets out actions necessary for SELEP to become compliant. Changes include new Articles of Association for the Strategic Board, a revised Joint Committee Agreement for the Accountability Board and a Framework Agreement, defining the new relationship between the two.

1. Budget and Policy Framework

- 1.1 The decisions in this report are within the council's policy and budget framework, and are for Cabinet determination. In particular, the Council's continued membership of SELEP will assist with the Council's priority of maximising regeneration and growth – growth for all, as set out in the Council Strategy.

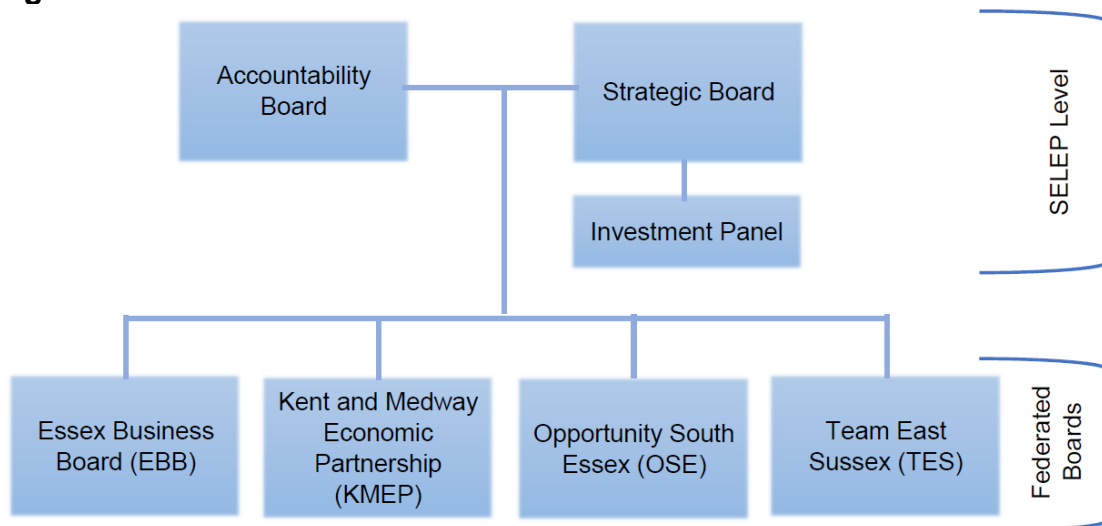
2. Background

2.1 History and Current Governance Arrangements:

- 2.1.1 In May 2010, the then government outlined plans to create Local Enterprise Partnerships (LEPs) as a replacement for Regional Development Agencies.

- 2.1.2 LEPs bring together leaders from local authorities, business, and higher and further education. Their role is to drive sustainable economic growth and create the conditions to increase private sector jobs in their communities.
- 2.1.3 LEPs were established as non-statutory bodies. Local areas were given discretion about the composition of LEPs, provided they were chaired by a business person and with at least half their membership from the private sector.
- 2.1.4 The South East Local Enterprise Partnership (SELEP) is one of 38 LEPs, and is the largest outside of London. It covers Essex, Thurrock, Southend-on-Sea, Kent, Medway and East Sussex.
- 2.1.5 SELEP is currently constituted as an informal partnership. It comprises three separate boards/panels, with four federated boards, as shown in Figure 1 below:

Figure 1:



- 2.1.6 The federated board model was chosen to facilitate informed discussion of local economic development priorities over such a large geographical area. It is considered a fundamental and essential part of SELEP.
- 2.1.7 SELEP Strategic Board sets the vision for the partnership, and is responsible for formulating and agreeing strategy. It has an advocacy role to call on government and other partners to invest in and prioritise the region. One of the Strategic Board's responsibilities is agreeing which investment priorities should form a pipeline of projects for future funding. It delegates this responsibility to the Investment Panel.
- 2.1.8 Currently Strategic Board has 28 members. Eight members represent Kent and Medway specifically, including the leaders (or appointed Cabinet members) of Medway Council, Kent County Council, and two district councils, as well as four business representatives (including Kent Invicta Chamber of Commerce, and the Chair of KMEP).
- 2.1.9 SELEP Accountability Board provides checks-and-balances. While the Investment Panel proposes which projects should receive funding, the money is only released once Accountability Board has reviewed each project's business case and voted in its favour. Accountability Board's voting members

are the six county and unitary council leaders, or their appointed Cabinet representatives.

2.1.10 The Accountability Board operates under a Joint Committee Agreement, which was signed on 13 November 2015 by each of the six county and unitary councils. This was approved by the Cabinet on 14 April 2015.

2.1.11 The Business Support Overview and Scrutiny Committee agreed at its meeting on 4 July 2019 to consider how scrutiny of SELEP might be incorporated into the Medway Overview and Scrutiny arrangements, noting that the Centre for Public Scrutiny will be publishing guidance on scrutiny of LEPs later in the year. It is intended to bring a report on this to the Regeneration, Culture, Environment and Transformation Overview and Scrutiny Committee in due course. Over the last year, in some other local authority areas scrutiny of emerging Local Industrial Strategies has been the starting point for LEP Scrutiny and this could be considered in Medway as part of the wider discussion on scrutiny of SELEP.

2.2 Government Investment:

2.2.1 Central government provides an annual grant to SELEP of £500K to part-fund the core costs of its Secretariat, which employs 15 members of staff. Medway Council provides an annual match funding contribution of £13,040.

2.2.2 Since SELEP's inception, Medway Council has secured over £40m of Local Growth (grant) Funding, and £8m of Growing Places (loan) Funding.

2.3 The LEP Review:

2.3.1 In July 2018, central government published '*Strengthened Local Enterprise Partnerships*¹', outlining a series of reforms to the leadership, governance, accountability, financial reporting and geographical boundaries of LEPs. These are intended to enable LEPs to make an increased contribution to the National Industrial Strategy, in particular through the development and delivery of Local Industrial Strategies.

2.3.2 Government has used the review to tighten the role of LEPs, focusing their activity on four key areas:

- **Strategy** – to develop an evidence-based Local Industrial Strategy by early 2020.
- **Allocation of funds** - to identify and develop local investment opportunities, including monitoring and evaluating impacts.
- **Co-ordination** – to bring together partners from the private, public and third sectors.
- **Advocacy** – to collaborate with a wide range of local partners to act as an informed and independent voice.

2.4 Reform Requirements:

2.4.1 Government has set out a series of general reform requirements for all LEPs as follows:

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

- From 2020/21, two-thirds of LEP board members should be from the private sector.
- The main board of each LEP must have no more than 20 members. There is the option to co-opt up to five additional board members with specialised knowledge for a maximum of one year. (Note this is a significant change to current arrangements).
- Women must make up at least 33% of LEP boards by 2020, rising to 50% by 2023.
- A Deputy Chair is to be appointed for each LEP.
- LEPs should consult widely and transparently with the business community before appointing a new Chair.
- LEPs must introduce defined term limits for Chairs and Deputy Chairs.
- The LEP secretariat must be independent of local government.
- LEPs are encouraged to have more diverse representation of sectors, and should consider having entrepreneurial and start-ups representatives, and voluntary and community sector members.

2.4.2 These requirements are accompanied by specific legal obligations related to accountability and transparency, as follows:

- LEPs must become companies with a separate legal personality. This will allow LEPs *'to enter into legal commitments to take on further responsibilities in the future'*, and, for SELEP, must be in place by April 2020.
- LEPs must identify a single Accountable Body. Section 151 Officers will be responsible for maintaining accountability and for the proper conduct of financial affairs in the LEP.
- LEPs must actively participate in relevant local authority scrutiny panel enquiries to ensure effective and appropriate democratic scrutiny of their investment decisions.
- LEPs must set out exactly who is accountable for spending decisions, appointments, and overall governance locally in its schemes of delegation and partnership agreements – giving clarity on the responsibilities of the Chair, Board, Director, and Accountable Body.

2.4.3 Government has introduced a new National Assurance Framework² that details its potential intervention in the event of non-compliance or underperformance by LEPs.

2.4.4 Should the Government have concerns that its reforms are not being enacted by a LEP, it can use a spectrum of intervention options, including, (but not limited to) withholding and/or withdrawing funding, including Local Growth Funding.

2.5 Next Steps:

2.5.1 SELEP has committed to implementing the required reforms by the April 2020 deadline. In June 2019, Strategic Board endorsed a new Local Assurance Framework³. This sets out how SELEP operates and makes SELEP

² The new National Assurance Framework is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/768356/National_Local_Growth_Assurance_Framework.pdf

³ The new Local Assurance Framework is available at <https://www.southeastlep.com/good-governance/assurance-framework/>

compliant with the majority of the government reforms. However, two key reforms remain to be adopted. Namely, SELEP must become a legal entity and its board composition must be reformed.

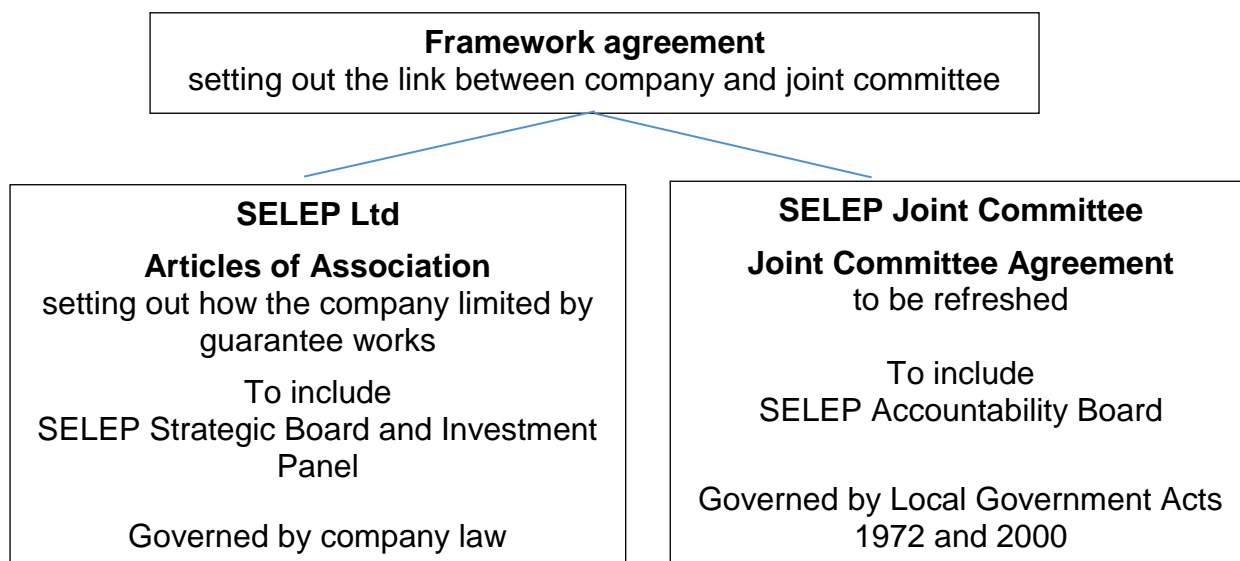
- 2.5.2 At the same meeting, the SELEP Strategic Board decided that SELEP should become a company limited by guarantee and should be a nil return company (to prevent VAT liabilities). It made the commitment to reduce its Strategic Board membership from 28 members to 20 members, plus five co-opted members by April 2020.
- 2.5.3 To determine how its current membership should be reduced from 28 members, the SELEP Strategic Board established a working sub-group to consider future Board composition.
- 2.5.4 This working sub-group was complemented by a second group considering SELEP's future legal personality.
- 2.5.5 Councillor Rodney Chambers OBE, and Jo James (Kent Invicta Chamber of Commerce) represented Kent and Medway on the future board composition sub-group.
- 2.5.6 Councillor Chambers and Douglas Horner (KMEP business member) represented Kent and Medway on the future legal personality sub-group.
- 2.5.7 At the 4 October SELEP Strategic Board meeting, it was agreed that:
- The 20 SELEP board members (excluding the Chair and Deputy Chair) will continue to be nominated by the federated boards.
 - The SELEP Strategic Board and SELEP Investment Panel will form the company limited by guarantee. Articles of association (in compliance with company law) will be written to establish this company.
 - The 20 director plus five co-opted director positions will be allocated as per Table 1 below.
 - The membership of the company will be the SELEP directors and the federated board members.
 - The SELEP Accountability Board is retained. As this board is governed by local government law, rather than company law, it must sit outside SELEP Ltd. The November 2015 Joint Committee Agreement will require minor changes.
 - The SELEP Assurance Framework contains a commitment to attendance at local authority Overview and Scrutiny committees on request. It has been recognised by SELEP that this and the facility for Accountability Board decisions to be called in by the relevant Overview and Scrutiny Committees of the six Upper Tier Authorities (as provided for in the Joint Committee agreement) should be more widely publicised. In addition challenge sessions will be part of each meeting of the company membership.
 - A Framework Agreement is to be written to govern the relationship between the company and joint committee.

Table 1:

No.	Indicative membership (2-yr terms, 2+2+2 max)	Comments	Public Sector	Private Sector
1	Chair – business			x
2	Deputy Chair – business	Replaces three Vice Chairs		x
3	East Sussex CC Leader or Cabinet Member	HMG allows Cabinet level representation	x	
4	Essex CC Leader or Cabinet Member		x	
5	Kent CC Leader or Cabinet Member		x	
6	Medway Council Leader or Cabinet Member		x	
7	Southend-on-Sea Borough Council Leader or Cabinet Member		x	
8	Thurrock Council Leader or Cabinet Member		x	
9	Essex Federated Board Business Chair			x
10	Essex Federated Board business representative			x
11	Opportunity South Essex Board Business Chair			x
12	Opportunity South Essex business representative			x
13	Kent & Medway Economic Partnership Business Chair			x
14	Kent & Medway Economic Partnership business representative			x
15	Team East Sussex Business Chair			x
16	Team East Sussex business representative			x
17	Business representative – KMEP			x
18	Business representative – KMEP			x
19	Business representative – KMEP			x
20	Business representative – Team East Sussex:			x
Sub Total – Main Board			6	14
Proportions			30%	70%
Co-opted positions (refreshed yearly)				
21	Local Planning Authority Leader or Cabinet Member	From Essex CC area	x	
22	Local Planning Authority Leader or Cabinet Member	From Kent CC area	x	
23	Further Education representative	College Principal elected by SELEP's SAG		x
24	Higher Education representative	Agreed with the SELEP U9 group of universities		x
25	Third Sector representative	Agreed by SELEP Social Enterprise Working Group		x
Sub Total – Co opts			2	3
Proportions			40%	60%
GRAND TOTAL			8	17

2.5.8 Figure 2 below highlights the documents which require agreement.

Figure 2:



2.5.9 The Accountable Body will produce these three documents (Framework Agreement, Articles of Association and Joint Committee Agreement). A first draft of these documents is expected to be shared with local partners in early November.

2.5.10 The meeting schedules for SELEP and KMEP are shown below, indicating when decisions regarding governance are due to be made:

KMEP Board meeting date (Pre-examine SELEP Board papers)	SELEP Strategic Board meeting date
26 November 2019	6 December 2019
28 January 2020	31 January 2020
17 March 2020	20 March 2020

2.5.11 SELEP intends the 20 March 2020 to be the first meeting of the new company directors.

3. Options

3.1 There are two principal options:

3.2 Medway 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, and
- the nomination of a Cabinet representative as Company Director, and commits to bring the related suite of governance documentation (following consultation with Legal Services) to Cabinet for consideration and approval.

3.3 Medway Council declines to participate in SELEP under the new arrangements, and consequently does not nominate a Cabinet representative, nor endorse the governance documentation.

3.4 Should Medway Council 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 Places 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.

4. Advice and analysis

4.1 At the time of writing this report the draft governance documentation from the Accountable Body is not available.

4.2 It is due to be considered by the legal personality working subgroup on 11 November and refined in advance of the SELEP Strategic Board meeting on 6 December. This includes a scheduled review by Chief Monitoring Officers on 18 November.

4.3 In order to allow Medway Council to signal support for the new arrangements, it is recommended that Cabinet support the direction of travel at this point in time, and approve the full suite of governance documentation at a later point, once available. It is anticipated that SELEP Future Board Structure will be reported to the Cabinet again in January 2020 for consideration and approval.

4.4 A Diversity Impact Assessment has not been carried out, since this report does not recommend policy or service changes.

4.5 The change in form for SELEP does not reflect a change in function, so there are no wider sustainability implications.

5. Risk management

5.1 The risks associated with the implementation of the LEP Review are detailed in the table below.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Fewer democratically elected representatives will be SELEP directors	<p>The membership ratio set by government will impact district council leader representation.</p> <p>The loss of district council leaders' local economic development, planning, housing, environmental and community knowledge could have a significant impact on the effectiveness of the LEP.</p>	<p>Continued use of federated boards, with full representation from district council leaders.</p> <p>The new SELEP Articles of Association should reflect the federated board structure, and delegate certain decision-making to the federated board level in an appropriate manner.</p>	D2

LEP review requirements are not implemented in line with government expectations	Multiple, complex changes are to be made, some of which have impacts on partner organisations. Fundamental change brings an inherent risk. If the LEP review requirements are not implemented, there is a high risk that government funding for 2020/21 (potentially including Local Growth Funding) could be withheld.	Additional staff have been recruited by SELEP to add resource, and action plans are in place to minimise this risk.	B1
Potential resignations from Board members unhappy with the revised membership model.	This could reduce the capacity of SELEP to fulfil its core functions.	The sub-working group has focused on limiting the liability of individual members. The federated boards have a wide field of potential new members to draw on.	D3

6. Financial implications

- 6.1 This report has limited financial implications, since the revenue costs of SELEP membership are modest and not proposed to change (£13,040 p.a.).
- 6.2 Should, however, members decide to withdraw from SELEP, this would remove Medway Council's access to Local Growth Fund grant funding and, and Growing Places Fund loan funding, which has been worth almost £50m to Medway since 2015. This would have implications for the LGF projects still to complete. This is considered a highly unlikely outcome.

7. Legal implications

- 7.1 Section 1 of the Localism Act 2011 gives the Council a "general power of competence" to do anything individuals may generally do. In this instance that would include setting up a company jointly with other local authorities. Advice can be given to any Councillors or Officers who become Directors, regarding their duties under company law and about conflicts of interest.

8. Recommendations

- 8.1 The Cabinet is asked to reaffirm its ongoing commitment to, and involvement in, the South East Local Enterprise Partnership (SELEP) and give its support in principle for the proposals for new governance arrangements, including:
- the establishment of a new legal personality;
 - the refresh of the Joint Committee agreement; and
 - the nomination of a Cabinet representative as Company Director.
- 8.2 The Cabinet is asked to agree that the related suite of governance documentation should be submitted to Cabinet for full consideration and approval in due course.

9. Suggested reasons for decisions

- 9.1 The alternative option (departing from SELEP) would jeopardise future funding for Medway, and significantly limit Medway Council's ability to prioritise its strategic aims within regional and national agendas.

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Appendices

None

Background papers

Local Assurance Framework: <https://www.southeastlep.com/good-governance/assurance-framework/>

National Assurance Framework:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/768356/National_Local_Growth_Assurance_Framework.pdf

SELEP Strategic Board Minutes: 28 June 2019:
<https://www.southeastlep.com/app/uploads/2019/07/28-06-19-Final-draft-minutes.pdf>

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