

Forward Plan reference number: FP/AB/713

Report title: Growing Places Fund – Sovereign Harbour proposed revised repayment schedule	
Report to: Accountability Board	
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Meeting date: 12 January 2024	For: Decision
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SELEP Partner Authority affected: East Sussex, Essex, Medway, Thurrock and Southend	

1. Purpose of Report

- 1.1. The purpose of this report is for the Accountability Board (the Board) to consider a request from East Sussex County Council for a revision to the Growing Places Fund (GPF) repayment schedule for the Sovereign Harbour project.
- 1.2. In October 2023, in light of the announcement that Government funding of LEPs will cease and that their functions will be integrated into Local Authorities, the Strategic Board considered how the unallocated GPF funding currently held by the Accountable Body should be deployed in April 2024 and a preferred option was endorsed. The report seeks to set out the impact of the proposed change to the repayment schedule for the Sovereign Harbour project on the outcome of the preferred option and looks to identify options to minimise the impact of the proposed change on all local partner authorities.
- 1.3. The options set out in this report were presented to the Strategic Board at their meeting on 8 December 2023. Following a lengthy discussion at the Strategic Board meeting, it was agreed that further time was required to allow East Sussex County Council to discuss the proposed options with the SELEP Secretariat and Essex County Council (as the Accountable Body for SELEP) and to enable this, the Strategic Board agreed to refer the decision to the Board.

2. Recommendations

- 2.1. The Board is asked to agree **one** of the following three options with regard to the Sovereign Harbour project, noting that under all options, the Board will be taking an unprecedented decision as set out in Section 3.17 of this report:

Option 1

- 2.1.1. **Agree** the proposed revised repayment schedule for the Sovereign Harbour project (as set out in Section 4.16 of this report) and accept that this will result in there being a greater level of disparity across the

SELEP area when the GPF funding is deployed in April 2024 **OR**

Option 2

- 2.1.2. **Agree** the proposed revised repayment schedule for the Sovereign Harbour project (as set out in Section 4.16 of this report) and agree that, in order to reduce the level of disparity across the SELEP area, East Sussex County Council will use repayments made against their existing GPF loans from 2024/25 onwards to fund the £1.75m GPF allocation which has been awarded to the Barnhorn Green Commercial and Health Development project (assuming the Board agree that the project should remain within the GPF programme at this meeting and subject to East Sussex County Council internal governance processes), noting that the residual £1.825m repayment balance will be retained by East Sussex County Council.
(RECOMMENDED) OR

Option 3

- 2.1.3. **Agree** to refuse the proposed revised repayment schedule for the Sovereign Harbour project (as set out in Section 4.16 of this report) and endorse that no further SELEP funding, including the £1.75m GPF funding allocation, if it remains awarded to the Barnhorn Green Commercial and Health Development project and any subsequent allocation of revenue funding, should be released to East Sussex County Council until the remaining repayment has been received.
- 2.2. **Note** that subject to the decisions of the Board at this meeting in respect of the GPF Programme, the decision on the final distribution of GPF to the Upper Tier Local Authorities will be brought to the February 2024 meeting.

3. Summary Position

- 3.1. Essex County Council (as the Accountable Body for SELEP) is currently holding £12.360m GPF. Of this funding, £2.75m is allocated to specific projects leaving an unallocated balance of £9.610m.
- 3.2. In August 2023, it was confirmed that from April 2024 Government funding of LEPs will cease and that LEP activities will be integrated into Local Authorities. Following this announcement, a significant amount of work was undertaken to consider the options available for deployment of the unallocated GPF funding post March 2024. This work was based on the following underlying assumptions:
- 3.2.1. That full repayment of existing GPF loans will be made with repayments due in 2023/24 being made to the Essex County Council (as the Accountable Body for SELEP) and future repayments made to either the incoming Accountable Body or the relevant Upper Tier Local Authority (depending upon the option selected by the Strategic Board) – this assumption was based on the reporting submitted to

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SELEP and the Board in September 2023 by the respective Local Authorities.

- 3.2.2. That no further approvals will be required from Government.
- 3.2.3. That there will be a desire to achieve the best level of parity possible when considering future use of the funding.
- 3.3. Two overarching options were presented to the Strategic Board in October 2023, and consideration was given to a number of factors including minimising ongoing obligations of the Accountable Body post March 2024 and facilitating complete transfer of LEP functions to Local Authorities by April 2024 (as expected by Government). The Strategic Board chose to endorse the following option:
 - 3.3.1. Disaggregate the fund to each Upper Tier Local Authority as a total of their existing GPF loan allocations and their proportion of the funding currently held by the Accountable Body and accept that total parity has not been achieved.
- 3.4. Whilst the Strategic Board identified a shared desire to achieve parity across the SELEP area with regard to the disaggregation of the funding, it was acknowledged that the endorsed approach did not achieve total parity but that the level of parity achieved was acceptable.
- 3.5. It was noted within the paper presented to Strategic Board in October 2023 that there is an outstanding decision on the Barnhorn Green Commercial and Health Development project. This decision will be taken at this meeting and will determine whether the project remains in the GPF programme. The uncertainty arising as a result of this outstanding decision was reflected in the indicative figures that were provided to the Board regarding the split of GPF funding between Upper Tier Local Authorities. For clarity, these figures are set out in Tables 1 and 2 below.

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Table 1: Split of GPF funding between Upper Tier Local Authorities (assuming all repayments due in 2023/24 are received by the Accountable Body) reflecting local retention of repayments against existing GPF loans (post 2023/24) and funding currently held by the Accountable Body

Local Authority	Population (as per 2021 census)	Per capita share of total GPF pot £m	Remaining balance owed on existing GPF loans at 31.03.2024 £m	Difference between per capita share and remaining balance owed £m	Funding to be transferred at 1 April 2024 (indicative figure) £m
East Sussex	545,847	5.002	5.982	-0.979	0.000
Essex	1,503,521	13.779	2.000	11.779	10.840
Kent	1,576,069	14.444	14.802	-0.358	0.000
Medway	279,773	2.564	0.350	2.214	2.039
Southend	180,686	1.656	1.000	0.656	0.543
Thurrock	176,000	1.613	0.000	1.613	1.503
Total	4,261,896	39.058	24.133	14.925	14.925

- 3.6. Table 1 demonstrates that, even if repayments due in 2023/24 are made in full, parity across the SELEP area cannot be achieved as existing East Sussex County Council GPF loans total £0.979m more than their per capita share of the total GPF pot and existing Kent County Council GPF loans total £0.358m more than their per capita share. This will result in Essex County Council, Medway Council, Southend-on-Sea City Council and Thurrock Council receiving a reduced share of the GPF pot.

Table 2: split of GPF funding between Upper Tier Local Authorities (assuming all repayments due in 2023/24 are received by the Accountable Body and the removal of the Barnhorn Green Commercial and Health Development project) reflecting local retention of repayments against existing GPF loans (post 2023/24) and funding currently held by the Accountable Body

Local Authority	Population (as per 2021 census)	Per capita share of total GPF pot £m	Remaining balance owed on existing GPF loans at 31.03.2024 £m	Difference between per capita share and remaining balance owed £m	Funding to be transferred at 1 April 2024 (indicative figure) £m
East Sussex	545,847	5.002	4.232	0.771	0.698
Essex	1,503,521	13.779	2.000	11.779	11.578
Kent	1,576,069	14.444	14.802	-0.358	0.000
Medway	279,773	2.564	0.350	2.214	2.177
Southend	180,686	1.656	1.000	0.656	0.632
Thurrock	176,000	1.613	0.000	1.613	1.589
Total	4,261,896	39.058	22.384	16.675	16.675

- 3.7. Table 2 demonstrates that if repayments due in 2023/24 are made in full and the Barnhorn Green Commercial and Health Development project is removed from the GPF programme, it is still not possible to achieve parity across the SELEP area as the remaining balance owed on existing Kent County Council loans continues to be greater than their per capita share of the GPF pot.
- 3.8. Subsequent to the October 2023 Strategic Board meeting, East Sussex County Council advised the SELEP Secretariat and the Accountable Body that it was highly unlikely that the £3.575m repayment due against the

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Sovereign Harbour project would be paid prior to 31 March 2024 as required under the current repayment schedule. The reasons for this are set out in Section 4 of this report. Consequently, a request for a revised repayment schedule has been submitted (as set out in Section 4.16 of this report).

- 3.9. Re-profiling of the repayment due against the Sovereign Harbour project will impact on the level of GPF funding held by the Accountable Body which can be deployed to each Upper Tier Local Authority at the end of 2023/24.
- 3.10. This report does not seek to revisit the approach to disaggregation which was endorsed by the Strategic Board in October 2023, instead it solely focuses on options for Board consideration in relation to the Sovereign Harbour project. These options have been designed with a view to achieving the greatest level of parity possible in line with the ambition of the Strategic Board. It should be noted that a formal decision on the distribution of the GPF funding will be presented to the Board in February 2024.
- 3.11. By agreeing the option set out at Section 3.3.1 of this report, the Strategic Board indicated an acceptance of the level of disparity set out in Tables 1 and 2. However, the request to revise the repayment schedule for the Sovereign Harbour project will increase the remaining balance owed on existing GPF loans held by East Sussex County Council and will therefore result in a greater level of disparity across the SELEP area. The impact that each of the options considered will have on the level of parity achieved will be clearly explained in this report so that the Board are able to make an informed decision at this meeting.
- 3.12. The options set out within this report were considered by the Strategic Board at their meeting in December 2023. During the Strategic Board meeting, East Sussex County Council expressed discomfort with the inclusion of Options 2 and 3 and indicated that, in their view, they had been given insufficient time to discuss the presented options and their implications with the SELEP Secretariat and Essex County Council (as Accountable Body for SELEP) prior to the meeting.
- 3.13. Following a lengthy discussion, East Sussex County Council proposed a further option for Strategic Board consideration. This option was as follows: 'We would ask the Board to support and endorse the approach that good decision making involves East Sussex County Council, SELEP and Essex County Council as the Accountable Body holding further discussions on each of the options and the impacts presented. We then ask that the SELEP Strategic Board endorses the approach that decision making is agreed to sit with the SELEP Accountability Board members to determine the decisions on both the repayment plan presented for Sovereign Harbour and separately on the Barnhorn Green project to determine whether it has met the requirements to receive GPF funding.'
- 3.14. Following a further discussion, the Strategic Board resolved to agree this option, effectively referring all decision making in relation to the proposed revised repayment schedule for the Sovereign Harbour project and

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consideration of the impact on the decision taken by the Strategic Board in October 2023 in relation to the disaggregation of the available GPF funding to the Board.

- 3.15. Following the Strategic Board meeting, a conversation regarding the presented options took place on 15 December 2023 between East Sussex County Council, the SELEP Secretariat and Essex County Council (as the Accountable Body for SELEP). During this conversation, East Sussex County Council reiterated their position as stated during the Strategic Board meeting and confirmed that they had no alternative options to propose at this time.
- 3.16. As set out above, there is an outstanding decision on the continued inclusion of the Barnhorn Green Commercial and Health Development project in the GPF programme. The status of this project has a bearing on the outcome achieved through each of the options outlined within this report. Whilst the report seeks to explain the implications of the continued inclusion or the removal of the Barnhorn Green project under each of the proposed options, the decision on the status of the Barnhorn Green project will be presented to the Board prior to consideration of this report. This will allow the Board to make a fully informed decision in respect of the requested revised repayment schedule for the Sovereign Harbour project.
- 3.17. Due to the intended closure of SELEP and the planned disaggregation of the GPF funds, prior decisions to revise repayment schedules are not comparable to this request made in the current circumstances. It is necessary to consider the impact of any requests for extensions to repayment schedules at this point in the context not only of the impact on the fund, but also the required decision to disaggregate the fund in consideration of the approach agreed by Strategic Board that sought to ensure an acceptable level of parity. In this context, the Board will be taking an unprecedented decision with respect to the reprofiling request for the Sovereign Harbour repayment schedule.

4. Sovereign Harbour – proposed revised repayment schedule

- 4.1. The Sovereign Harbour project was awarded £4.6m GPF in March 2014. The funding was awarded to support the delivery of high-quality office space (Pacific House) in Eastbourne, which was expected to facilitate up to 299 jobs.
- 4.2. Delivery of the project completed in June 2015 and, as at November 2023, Pacific House was reporting a 93% occupancy rate.
- 4.3. At the time of funding award, it was indicated that the loan would be repaid between 2016/17 and 2021/22. Subsequently, in September 2019, the Board were informed that as a result of ongoing difficult trading conditions, a number of companies occupying office space at Pacific House had gone into administration. This update was accompanied by a request for a slight revision to the repayment schedule, although full repayment was still expected by 31 March 2022.

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- 4.4. A further change to the repayment schedule was requested in November 2020. This change was required as a result of the impacts of the COVID-19 pandemic and the measures that were being taken to support tenants during that period. This change to the repayment schedule required full repayment of the GPF loan by 31 March 2023.
- 4.5. In April 2023, the Board were asked to consider a further change to the repayment schedule. At that time, it was noted that the mechanism through which the final repayment would be made required either refinancing of or the sale of Pacific House.
- 4.6. The Board were advised that Sea Change Sussex (as delivery partner) had informed East Sussex County Council that it had instructed its investment agents to pursue either a refinancing of the loan or an outright sale of the building to be legally completed before 31 March 2023 to enable repayment of the GPF loan. Sea Change Sussex were subsequently advised that it would not be financially viable for them to refinance the existing loan with a private sector funder due to the loan to value ratios and interest rates required by such funders, as lenders were being very cautious due to falling property values. Therefore, a sale of the building was pursued.
- 4.7. Whilst steps had been taken to market Pacific House with a view to completing a sale by 31 March 2023, Sea Change Sussex advised East Sussex County Council that due to current market conditions affecting the UK property investment market it was unlikely that they would be able to conclude an open market sale of Pacific House before 31 March 2023 at a price sufficient to pay off all outstanding debt. As a consequence, approval of a revised repayment schedule was sought to allow time for the sale of the building to be completed. The revised repayment schedule required full repayment of the remaining balance owing on the loan (£3.575m) by 31 March 2024. This repayment schedule change was agreed by the Board in April 2023. The Board also agreed that interest would not be charged on the loan at that time, subject to compliance with the revised repayment schedule.
- 4.8. As set out above, the options for deployment of the GPF funding following the dissolution of SELEP presented to the Strategic Board in October 2023 were based on the assumption that all GPF repayments due in 2023/24 would be made in full. This assumption was supported by the quarterly reporting submissions from local partner authorities which identified no high repayment risks against any projects with a repayment due in 2023/24, including Sovereign Harbour. However, subsequent to the October Strategic Board meeting, East Sussex County Council advised that it is highly unlikely that it will be possible for the Sovereign Harbour repayment to be made by 31 March 2024.
- 4.9. East Sussex County Council have been advised by Sea Change Sussex that their agent is continuing to market Pacific House with a view to completing a sale before 31 March 2024, which would allow repayment of the GPF loan in accordance with the agreed repayment schedule. However, Sea Change Sussex have also indicated that it is unlikely that they will be able to conclude

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an open market sale of the property before 31 March 2024 at a price which would be sufficient to pay off all outstanding debt. This is due to ongoing challenging market conditions which are affecting the UK property market.

- 4.10. Previous repayments made against the GPF loan have been funded through rental income generated through the operation of the building. Despite the high level of occupancy currently reported (93%), East Sussex County Council have confirmed that it is not possible to make any repayments on this basis in 2023/24.
- 4.11. It should be noted that the terms of the loan agreement (completed in 2014) between East Sussex County Council and Sea Change Sussex state that if full repayment is not made by the stated longstop date (31 March 2024) then Sea Change Sussex will, after receiving written notice from East Sussex County Council, transfer the property to East Sussex County Council at market value minus the outstanding debt in accordance with the condition of sale. In light of this clause, East Sussex County Council instructed a property valuation to be undertaken by specialist consultants to inform their decision making. East Sussex County Council officers have been considering the outcome of the valuation and the options presented since April 2023.
- 4.12. In addition, in September 2023, East Sussex County Council commissioned a commercial consultant to facilitate discussions with Sea Change Sussex. The consultant has explored options with Sea Change Sussex with regard to their plans to either refinance, seek a sale or be required to transfer Pacific House to East Sussex County Council in order to settle the GPF loan.
- 4.13. If Sea Change Sussex are unable to complete a sale of the building, they will be required to transfer possession of the building to East Sussex County Council by the end of March 2024, subject to written notice being provided by the Council. East Sussex County Council have confirmed that they have not yet provided written notice, but have requested that Sea Change Sussex prepare the 'Lease information package' (detailed information on all the current leases within the building) and the 'Deed of Variation' for East Sussex County Council to determine next steps with respect to the transfer of the building. East Sussex County Council have yet to receive the detailed tenancy schedule for Pacific House. Without the detailed tenancy schedule, any valuation of the building will need to be heavily caveated and will need to be based on a number of assumptions. A delay in providing this information will impact on the timeline for transfer of the building.
- 4.14. Upon receipt of this information, East Sussex County Council will undertake all required due diligence and will seek a joint property valuation with Sea Change Sussex to ensure that agreement can be reached on the Market Value of Pacific House. Assuming the building cannot be sold by 31 March 2024, East Sussex County Council have indicated that they will not be in a position to repay the £3.575m GPF loan until transfer of the building has been achieved and future options for Pacific House (including sale or retention/ ongoing management) have been considered.

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- 4.15. Subject to the above, officers at East Sussex County Council will need to seek formal approval on the transfer of the property. Until these factors have been formally considered, the County Council is not in a position to repay the £3.575m GPF loan as currently agreed without committing alternative resources from their wider capital programme or reserves.
- 4.16. As a result, a revised repayment schedule which delays repayment of the remaining balance owed on the loan to March 2026 has been brought forward for Board consideration. The proposed revised repayment schedule is set out in Table 3 below.

Table 3: Proposed revised repayment schedule for the Sovereign Harbour project

	Repaid to date (£m)	2023/24 (£m)	2024/25 (£m)	2025/26 (£m)	Total (£m)
Existing repayment schedule	1.025	3.575	0	0	4.600
Proposed revised repayment schedule	1.025	0	0	3.575	4.600

- 4.17. The update provided by East Sussex County Council in respect of this project provides some evidence of progress since the last repayment schedule change was considered by the Board, however, much of the update mirrors that provided in April 2023 when there was confidence that it would be possible for the final repayment to be made in March 2024. The latest update suggests that there are potentially a greater number of considerations which need to be addressed before the final GPF repayment can be made than were previously identified.
- 4.18. Furthermore, it has now been noted by East Sussex County Council, that Sea Change Sussex obtained a further loan of £1.4m from Eastbourne Borough Council to support project delivery. It is understood that this loan remains outstanding and therefore consideration needs to be given by East Sussex County Council and Sea Change Sussex as to how this loan will also be repaid. East Sussex County Council have started conversations with Eastbourne Borough Council in this regard but it should be noted that the existence of a second loan increases the risk that it won't be possible to secure full repayment of the GPF loan by 31 March 2024.
- 4.19. Under the terms of the loan agreement in place between Essex County Council (as Accountable Body for SELEP) and East Sussex County Council, extending the repayment schedule triggers the charging of interest on the remaining balance of the loan. In March 2023, it was agreed that interest would not be charged on the remaining balance of the loan at that time, subject to repayment being made in accordance with the new repayment schedule. As repayment is very unlikely to be made in accordance with the current schedule, interest will once again be chargeable on the loan.

- 4.20. If an extension to the loan is not approved and the loan is not repaid, then the default mechanisms within the contract will be triggered and interest will be applied to the loan in line with the terms within the loan agreement.

5. Options available to the Board

- 5.1. Since receipt of the request to revise the repayment schedule for the Sovereign Harbour project, work has been undertaken to develop options for Board consideration. This work was informed by three key considerations:
- 5.1.1. the shared desire of the Strategic Board to achieve the greatest level of parity possible when considering the disaggregation of the GPF funding at the end of 2023/24.
 - 5.1.2. the expectation of Government that LEP activities will transfer fully to Local Authorities by 31 March 2024.
 - 5.1.3. the need to minimise the ongoing obligations of the Accountable Body post March 2024.
- 5.2. Whilst a number of options were developed, the two options which most closely align with the considerations set out above have been brought forward for Board consideration (Options 2 and 3). Option 1 does not fully align with the considerations set out above and will result in a significant increase in the level of disparity across the SELEP area but it does represent the simplest option so has been brought forward for Board consideration.
- 5.3. As noted in Section 3.17 of this report, it will be necessary for an unprecedented decision to be taken by the Board, irrespective of the option chosen due to the planned closure of SELEP and consequently the need to take the decision in the context of the disaggregation of the fund rather than primarily considering the recyclable nature of the fund. Option 2 (the recommended option) is assessed as most closely aligning to both of these considerations.

Option 1 - Agree the proposed revised repayment schedule for the Sovereign Harbour project and accept that this will result in there being a greater level of disparity across the SELEP area when the GPF funding is deployed in April 2024

- 5.4. Option 1 represents the simplest scenario and allows the revised repayment schedule for the Sovereign Harbour project to be considered in isolation by the Board with no additional conditions being applied to either the project or East Sussex County Council's wider GPF programme.
- 5.5. This option provides the opportunity for the Board to agree the revised repayment schedule for the project. This approach would provide East Sussex County Council with greater certainty regarding future GPF repayments and would remove the risk of default against the current repayment schedule. In addition, endorsing this option would not introduce any new barriers to achieving the full transfer of LEP activities to Local Authorities by 31 March

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2024 as expected by Government and it would minimise the ongoing obligations of the Accountable Body post March 2024. However, this approach does not align with the shared desire of the Strategic Board to achieve the greatest level of parity possible when considering the disaggregation of the GPF funding at the end of 2023/24.

- 5.6. As set out in Table 1 above, assuming that the Barnhorn Green Commercial and Health Development project remains in the GPF programme and repayments due in 2023/24 are made in full, existing GPF loans held by East Sussex County Council exceed their per capita share by £0.979m. These figures assumed that the final repayment due against the Sovereign Harbour project (£3.575m) would be made in full on or before 31 March 2024. If the revised repayment schedule is agreed, the remaining balance owed against existing East Sussex County Council GPF loans will increase by £3.575m. This will bring the remaining balance owed on their existing GPF loans to £4.554m above their per capita share of the total GPF pot. In order to mitigate this increase, it will be necessary to proportionately reduce the level of funding issued to Essex County Council, Medway Council, Southend-on-Sea City Council and Thurrock Council at the end of 2023/24, to offset the £3.575m, as set out in Table 4 below. If this option is endorsed by the Board, there will be no further opportunities through existing SELEP governance processes by which these partner authorities can seek receipt of the remaining proportion of their per capita share of the total GPF pot without revisiting the approach endorsed by Strategic Board set out at Section 3.3.1 of this report.

Table 4: split of GPF funding between Upper Tier Local Authorities (assuming all remaining repayments due in 2023/24 are received by the Accountable Body) reflecting local retention of repayments against existing GPF loans (post 2023/24) and funding currently held by the Accountable Body

Local Authority	Population (as per 2021 census)	Per capita share of total GPF pot £m	Remaining balance owed on existing GPF loans at 31.03.2024 £m	Difference between per capita share and remaining balance owed £m	Funding to be transferred at 1 April 2024 (indicative figure) £m
East Sussex	545,847	5.002	9.557	-4.554	0.000
Essex	1,503,521	13.779	2.000	11.779	8.328
Kent	1,576,069	14.444	14.802	-0.358	0.000
Medway	279,773	2.564	0.350	2.214	1.572
Southend	180,686	1.656	1.000	0.656	0.241
Thurrock	176,000	1.613	0.000	1.613	1.209
Total	4,261,896	39.058	27.708	11.350	11.350

- 5.7. Table 4 demonstrates that, in this scenario, the level of funding available to be transferred to the four affected Upper Tier Local Authorities would be significantly impacted, with each authority forecast to receive approximately **25%** less than their per capita share of the funding as set out below:

- 5.7.1. Essex County Council forecast to receive **£3.451m** less than their per capita share

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- 5.7.2. Medway Council forecast to receive **£0.642m** less than their per capita share
- 5.7.3. Southend-on-Sea City Council forecast to receive **£0.415m** less than their per capita share
- 5.7.4. Thurrock Council forecast to receive **£0.404m** less than their per capita share
- 5.8. As referenced above, there is an outstanding Board decision in relation to the Barnhorn Green Commercial and Health Development project, which may result in the project being removed from the GPF programme. Table 2 (above) demonstrates that if the Barnhorn Green project is removed from the GPF programme and all repayments due in 2023/24 are made in full, existing GPF loans held by East Sussex County Council will total less than their per capita share of the total GPF pot. However, this position changes once the proposed revised repayment schedule for the Sovereign Harbour project is taken into account, as set out in Table 5 below.

Table 5: Split of GPF funding between Upper Tier Local Authorities (assuming all remaining repayments due in 2023/24 are received by the Accountable Body and the removal of the Barnhorn Green Commercial and Health Development project) reflecting local retention of repayments against existing GPF loans (post 2023/24) and funding currently held by the Accountable Body

Local Authority	Population (as per 2021 census)	Per capita share of total GPF pot £m	Remaining balance owed on existing GPF loans at 31.03.2024 £m	Difference between per capita share and remaining balance owed £m	Funding to be transferred at 1 April 2024 (indicative figure) £m
East Sussex	545,847	5.002	7.807	-2.804	0.000
Essex	1,503,521	13.779	2.000	11.779	9.557
Kent	1,576,069	14.444	14.802	-0.358	0.000
Medway	279,773	2.564	0.350	2.214	1.801
Southend	180,686	1.656	1.000	0.656	0.389
Thurrock	176,000	1.613	0.000	1.613	1.353
Total	4,261,896	39.058	25.959	13.100	13.100

- 5.9. Table 5 demonstrates that, if the Barnhorn Green project is removed from the GPF programme and the proposed revised repayment schedule for the Sovereign Harbour project is agreed, the remaining balance owed on existing East Sussex County Council GPF loans will exceed their per capita share by £2.804m. As set out above, this will need to be mitigated through a reduction in the level of funding to be transferred to Essex County Council, Medway Council, Southend-on-Sea City Council and Thurrock Council, equivalent to **16%** each. Under this scenario, Essex County Council, Medway Council, Southend-on-Sea City Council and Thurrock Council would receive **£2.222m**, **£0.413m**, **£0.267m** and **£0.26m** respectively less than their per capita share of the total GPF pot.
- 5.10. If the Board choose to agree Option 1, the revised repayment schedule will be implemented and formalised through a Deed of Variation between Essex

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County Council (as the Accountable Body for SELEP) and East Sussex County Council.

- 5.11. As demonstrated above, this option significantly increases the level of disparity across the SELEP area and is therefore not presented as the recommended option in this report. However, if the Board are prepared to accept the greater level of disparity which arises and are minded to endorse Option 1, this option can be taken forward.

Option 2 - **Agree** the proposed revised repayment schedule for the Sovereign Harbour project and agree that, in order to reduce the level of disparity across the SELEP area, East Sussex County Council will use repayments made against their existing GPF loans from 2024/25 onwards to fund the £1.75m GPF allocation which has been awarded to the Barnhorn Green Commercial and Health Development project (assuming the Board agree that the project should remain within the GPF programme at this meeting and subject to East Sussex County Council internal governance processes), noting that the residual £1.825m repayment balance will be retained by East Sussex County Council.

- 5.12. As with Option 1, this option provides the opportunity for the Board to agree the revised repayment schedule for the Sovereign Harbour project. This option builds upon Option 1 and seeks to mitigate the impact of the repayment schedule change on the level of GPF funding available for disaggregation thereby increasing the likelihood of achieving a greater level of parity across the SELEP area.
- 5.13. Under this option, East Sussex County Council would take on responsibility for issuing the £1.75m GPF funding allocation awarded to the Barnhorn Green Commercial and Health Development project. Future repayments made against existing East Sussex County Council GPF loans could be used to fund this payment. Based on current repayment schedules (see Appendix B attached to Agenda Item 7), East Sussex County Council should hold sufficient funding to support the project by the end of 2025/26.
- 5.14. It is acknowledged that this option would likely delay the release of funding to the Barnhorn Green project and will therefore likely impact on the delivery programme. However, this option provides the greatest level of certainty with regard to partial mitigation of the impact of delayed repayment against the Sovereign Harbour project. Through the transfer of responsibility for issue of the Barnhorn Green funding to East Sussex County Council, this reduces the overall impact on the level of GPF funding available for disaggregation at the end of 2023/24 from £3.575m to £1.825m thereby proportionately reducing the impact on each of the other Upper Tier Local Authorities; equivalent to reducing the loss in per capita share from 25% to 16% as a result of the delayed repayment request.
- 5.15. Whilst the impact of the delayed repayment against the Sovereign Harbour project is reduced, it should be noted that this option does not allow the same of level parity to be achieved as was presented to the Strategic Board in

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October 2023. Under this option, the split of funding would be as set out in Table 5 above.

- 5.16. The measures proposed under this option do not place any ongoing responsibilities on the Accountable Body post March 2024 and do not introduce any barriers to achieving the transfer of LEP activities to Local Authorities by 31 March 2024.
- 5.17. If the Board decide that the Barnhorn Green project should be removed from the GPF programme, it will no longer be possible to reduce the impact of the delayed Sovereign Harbour repayment through the approach set out above. However, the removal of the Barnhorn Green project will allow the Accountable Body to release the £1.75m currently ringfenced to support delivery of the project. Ultimately this will achieve the same outcome and will allow the split of funding as shown in Table 5.
- 5.18. This option most closely aligns with the three key considerations which formed the basis of the options development process. It achieves the greatest level of parity possible given the challenges outlined in this report, it allows the expectations of Government with regard to the transfer of LEP activities to Local Authorities by 31 March 2024 to be met and it minimises ongoing obligations of the Accountable Body post March 2024. For these reasons, this option is recommended to the Board.

Option 3 - **Agree** to refuse the proposed revised repayment schedule for the Sovereign Harbour project and endorse that no further SELEP funding, including the £1.75m GPF funding allocation, if it remains awarded to the Barnhorn Green Commercial and Health Development project and any subsequent allocation of revenue funding, should be released to East Sussex County Council until the remaining repayment has been received.

- 5.19. Under this option, the proposed revised repayment schedule for the Sovereign Harbour project would not be agreed by the Board. Consequently, the current repayment schedule would continue to apply meaning that there would be an ongoing expectation of receipt of the final repayment owing on the Sovereign Harbour project by 31 March 2024.
- 5.20. In light of the request to revise the repayment schedule, there is a significant risk that the final repayment will not be made in accordance with the current repayment schedule. In this scenario, the loan would go into default and interest would be chargeable on the outstanding balance until full repayment is received.
- 5.21. Failure to make the required repayment by 31 March 2024 would significantly impact on the level of funding available for disaggregation in April 2024 (as set out in Table 4 above). In order to mitigate this impact, this option proposes the retention of the GPF funding awarded to the Barnhorn Green Commercial and Health Development project by the Accountable Body until the repayment owing on the Sovereign Harbour project has been received.

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- 5.22. Under this option, should the final GPF repayment be made against the Sovereign Harbour project by 31 March 2024, the £1.75m GPF allocated to the Barnhorn Green project will be released to East Sussex County Council (assuming the Board agree that the project should remain within the GPF programme). This would enable the transfer of all LEP activities to Local Authorities by the end of 2023/24 in line with Government expectations. This would allow split of the available GPF funding to local partner authorities as set out in Table 1. If the Board agree that the Barnhorn Green project should be removed from the GPF programme, the split of the available GPF funding to local partner authorities would be as set out in Table 2.
- 5.23. Should East Sussex County Council default on the final repayment against the Sovereign Harbour project and not make the required repayment by 31 March 2024, consideration needs to be given to the longstop date which will be applied to the retention of the funding allocated to the Barnhorn Green project and the implications if the longstop date is not met.
- 5.24. A key consideration when developing the options set out in this report was the expectation of Government that LEP activities will transfer fully to Local Authorities by 31 March 2024. If a long stop date beyond 31 March 2024 is applied to the retention of the Barnhorn Green GPF funding allocation, this will impact on the ability of the LEP to transfer all activities in line with the timeline set by Government as Essex County Council (as the Accountable Body for SELEP) will be subject to ongoing obligations in relation to both the Sovereign Harbour project and the Barnhorn Green project. However, it is noted that there is a significant risk that East Sussex County Council will be unable to make the required repayment by 31 March 2024 which would result in the longstop date being triggered.
- 5.25. It is proposed that if the longstop date is not met, that East Sussex County Council take on responsibility for issuing the £1.75m GPF allocation to the Barnhorn Green project using future GPF repayments received against existing East Sussex County Council loans. It is acknowledged that this will likely lead to a delay in the funding being released to support the Barnhorn Green project, however, it will allow the £1.75m currently ringfenced by the Accountable Body to be released and included within the funding to be transferred to Local Authorities in April 2024. This approach will reduce the impact of the default on repayment on the other Upper Tier Local Authorities and will allow a split of funding as shown in Table 5.
- 5.26. If the Board decide that the Barnhorn Green project should be removed from the GPF programme, it will no longer be possible to offset the outstanding Sovereign Harbour repayment as set out above. However, the removal of the Barnhorn Green project will allow the Accountable Body to release the £1.75m currently ringfenced to support delivery of the project. Ultimately this will achieve the same outcome and will allow the split of funding as shown in Table 5.
- 5.27. Whilst this option is feasible, it does place East Sussex County Council in a position where they are at a higher risk of default on the required repayment

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schedule triggering the charging of interest on the remaining balance of the loan. This option also requires additional considerations in relation to the longstop date to be applied and the implications of failure to comply with the longstop date. Ultimately, this option is likely to achieve the same outcome as Option 2, but is more complex and carries greater risk of non-resolution by the end of March 2024. For these reasons, this option is not recommended.

Summary

- 5.28. A comparison of each option, both assuming inclusion and removal of the Barnhorn Green project is set out in Tables 6 and 7 respectively. Option 3 (assuming repayment is made against the Sovereign Harbour project by 31 March 2024) reflects the same outcome as the position that supported the decision made by the Strategic Board in October 2023 when agreeing the approach for disaggregating the fund.
- 5.29. Only Kent County Council is unimpacted by the options presented in this report. East Sussex County Council retains an increased share under both Options 1 and 2 depending on the decision with respect to the Barnhorn Green project; this increased share is offset by a corresponding proportional reduction across the remaining four Upper Tier Local Authorities.

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Table 6: Comparison of the impact of Options 1 to 3 on the indicative allocations of GPF to each Upper Tier Local Authority reflecting local retention of repayments against existing GPF loans (post 2023/24) and distribution of funding currently held by the Accountable Body

Local Authority	Per Capita Share of total GPF pot £m	Option 1		Option 2		Option 3	
		Final Share of GPF Fund £m	Difference from per capita share £m	Final Share of GPF Fund £m	Difference from per capita share £m	Final Share of GPF Fund £m	Difference from per capita share £m
East Sussex	5.002	9.557	-4.554	7.807	-2.804	5.982	-0.979
Essex	13.779	10.328	3.451	11.557	2.222	12.840	0.939
Kent	14.444	14.802	-0.358	14.802	-0.358	14.802	-0.358
Medway	2.564	1.922	0.642	2.151	0.413	2.389	0.175
Southend	1.656	1.241	0.415	1.389	0.267	1.543	0.113
Thurrock	1.613	1.209	0.404	1.353	0.260	1.503	0.110
Total	39.058	39.058	-	39.058	-	39.058	-

Table 7: Comparison of the impact of Options 1 to 3 on the indicative allocations of GPF to each Upper Tier Local Authority (assuming the removal of the Barnhorn Green Commercial and Health Development project), reflecting local retention of repayments against existing GPF loans (post 2023/24) and distribution of funding currently held by the Accountable Body

Local Authority	Per Capita Share of total GPF pot £m	Option 1		Option 2		Option 3	
		Final Share of GPF Fund £m	Difference from per capita share £m	Final Share of GPF Fund £m	Difference from per capita share £m	Final Share of GPF Fund £m	Difference from per capita share £m
East Sussex	5.002	7.807	-2.804	7.807	-2.804	4.930	0.073
Essex	13.779	11.557	2.222	11.557	2.222	13.578	0.201
Kent	14.444	14.802	-0.358	14.802	-0.358	14.802	-0.358
Medway	2.564	2.151	0.413	2.151	0.413	2.527	0.037
Southend	1.656	1.389	0.267	1.389	0.267	1.632	0.024
Thurrock	1.613	1.353	0.260	1.353	0.260	1.589	0.023
Total	39.058	39.058	-	39.058	-	39.058	-

Interest

- 5.30. Under Options 1 and 2, assuming that the Board agree the approach to transfer responsibility for management of loan repayments to the responsible Upper Tier Local Authority from April 2024, this will require a local decision with respect to the application of interest against the loan. It will be incumbent on East Sussex County Council to determine whether interest should be applied to the loan with Sea Change Sussex for the additional two-year extended repayment term of the agreement. This will need to take into account all legal considerations, including the requirements of the Subsidy Control Act. East Sussex County Council officers have provided written confirmation that a legal review of the Subsidies Control Act 2022 and other applicable law and regulations has been conducted by East Sussex County Council's Legal Services. It confirmed that the proposals for the delay in repayment of the Sovereign Harbour loan would be compliant with the relevant subsidies legislation, with the intention that a subsequent review will be conducted as they move through the processes outlined to secure the repayment to ensure that this remains the case.
- 5.31. Under Option 3, interest would only be applicable on the loan should East Sussex County Council default on their repayment that would be due by 31 March 2024, in line with the terms of the Credit Agreement between East Sussex County Council and Essex County Council (as the Accountable Body

for SELEP). Under this option, should the loan default, Essex County Council as Accountable Body would also need to consider its own obligations with respect to ensuring that all activities conform with all relevant laws including the requirements of subsidy control and state aid.

6. Next Steps

- 6.1. If the Board agree that the revised GPF repayment schedule can be implemented, this will be formalised through the completion of a Deed of Variation between Essex County Council (as Accountable Body for SELEP) and East Sussex County Council.
- 6.2. In February 2024, the Board will be asked to agree the split of the GPF funding between the Upper Tier Local Authorities. The split presented to the Board will be based on the approach endorsed by the Strategic Board in October 2023, will be informed by the decision taken by the Board at this meeting and will take into account the status of the Barnhorn Green Commercial and Health Development project.

7. Financial Implications (Accountable Body comments)

- 7.1. Essex County Council, as the Accountable Body for SELEP, is responsible for ensuring that the funding awarded by Government is utilised in accordance with the conditions set for use of the Grant. GPF is a capital grant awarded by Government and is subject to the following condition:

The grant may be used only for the purposes that a capital receipt may be used for, in accordance with regulations made under section 11 of the Local Government Act 2003.

- 7.2. In accordance with expectations of Government when the funding was awarded, GPF is operated as a recyclable capital loan scheme.
- 7.3. A total of £12.360m GPF was held by the Accountable Body at the end of March 2023. Of this balance, £9.61m is uncommitted increasing to £14.925m uncommitted balance for 2023/24, should all loan repayments be received in line with current Board decisions and credit agreements in place.
- 7.4. The GPF loan for the Sovereign Harbour Project is managed under the terms of a credit agreement in place with Essex County Council as the Accountable Body for SELEP and East Sussex County Council. Under the terms of the agreement, East Sussex County Council are required to repay the loan in accordance with the agreed repayment schedule. An extension to the repayment schedule can be applied through a variation to the Credit Agreement, where this is agreed by the Board. In the event that a repayment is not made in line with the agreed terms, the payment goes into default and interest is then chargeable on the loan.
- 7.5. Should the Board agree Option 3 to not endorse the proposed revised repayment schedule for the Sovereign Harbour project, in the absence of the

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reciprocal loan repayment from Sea Change Sussex or income from the sale of the building, East Sussex County Council will need to consider alternative mechanisms to meet the required £3.575m repayment to prevent the loan from going into default, which could include funding from uncommitted reserves or borrowing. The mechanism for repayment would be subject to East Sussex County Council's own decision-making processes.

- 7.6. Should the Board agree either option 1 or 2, the consideration of whether interest will be applicable on the loan moving forward, from the perspective of the agreement between East Sussex County Council and Essex County Council (as Accountable Body) will be subject to whether the Board agree to transfer the responsibility for the loans to the respective upper tier local authority, in line with the proposal endorsed by the Strategic Board in October 2023. This decision is planned for February 2024. Should the Board choose not to transfer the responsibility for the loans to the respective upper tier local authority, interest will be applicable in accordance with the requirements of the Fund and assuring compliance with the relevant subsidies legislation.
- 7.7. Any decisions made by the SELEP Boards are required to be compliant with the existing governance processes of SELEP until SELEP as a company is formally dissolved and any residual legacy issues are concluded or transitioned to the satisfaction of Essex County Council as the Accountable Body and Government.
- 7.8. Essex County Council is Accountable to the Department for Levelling Up, Housing and Communities (DLUHC) for ensuring that SELEP continues to operate in accordance with the agreed Assurance Framework. In August 2023, the Government issued LEP integration guidance which clarified that:
 - 7.8.1. The management of the ongoing delivery or closure of the programme, alongside existing assets, financial reserves, and loan books should be agreed locally, in line with any pre-existing arrangements between the LEP and its Accountable Body. Use of financial reserves established through the fund should be determined in line with the decision of the relevant Section 151 officer.
 - 7.8.2. The Section 151 officer of the Accountable Body will be required to provide an end of year assurance statement and s151 return providing assurance of compliance with the requirements of the National Local Growth Assurance Framework (NLGAF); and
 - 7.8.3. The NLGAF will remain in force and continue to apply up to a reasonable point before integration. In principle, the LEP should adhere to the requirements for as long as they are applicable.
- 7.9. The proposals for disaggregating the GPF fund are in response to the planned closure of SELEP following the end of Government support for LEPs from 2024/25; this requires reliance to be placed on the guidance set out at Section 7.8.3 of this report and an exceptional decision to be made to allow an

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exemption from the SELEP Assurance Framework, to proceed with the proposed disaggregation and transfer of Accountability and management of existing loans to the respective Upper Tier Local Authority. For this reason, all decisions made now in respect of the GPF will not conform with historic decisions in respect of the fund; Option 2 most closely aligns to the original purpose of the fund as a revolving loan fund whilst seeking to achieve the intent of Strategic Board to achieve an acceptable level of parity through the disaggregation of the fund.

- 7.10. It is a condition of the loan that it is managed in a manner that conforms with all relevant laws, including the requirements of subsidy control and state aid; the requirement to demonstrate value for money will remain, irrespective of other exemptions that may be applied by the Board or the Accountability Board.
- 7.11. In implementing any option in respect of the GPF programme, the s151 Officer of the Accountable Body will need to be satisfied that no residual risk remains with Essex County Council as the Accountable Body, following the transfer of the fund and closure of the LEP and the Accountability Board.
- 7.12. All costs of the Accountable Body in effecting any of the agreed changes will be expected to be met from the SELEP operational budget and/or reserves, in accordance with the decisions of the Board.

8. Legal Implications (Accountable Body comments)

- 8.1. If an extension to the loan is not approved and the loan is not repaid, then the default mechanisms within the contract will be triggered and interest will be applied to the loan in line with the terms within the loan agreement.
- 8.2. When considering the options and reaching its decision the Board must take into account all relevant considerations and factor in any justification for negative impacts or consequences that may arise, or any substantive unfairness arising from the decision, including any increase in disparity of allocation of funding across the relevant areas. Failure to do so could give rise to a successful judicial review.

9. Equality and Diversity implication

- 9.1. Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when a public sector body makes decisions it must have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- 9.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.
- 9.3. In the course of the development of the project business case, the delivery of the Project and the ongoing commitment to equality and diversity, the promoting local authority will ensure that any equality implications are considered as part of their decision-making process and where possible identify mitigating factors where an impact against any of the protected characteristics has been identified.

10. Background Documents

- 10.1. [Strategic Board agenda pack – October 2023](#)
- 10.2. [Strategic Board minutes – October 2023](#)
- 10.3. [Strategic Board agenda pack – December 2023](#)
- 10.4. [Strategic Board Summary of Decisions – December 2023](#)

(Any request for any background papers listed here should be made to the person named at the front of the report who will be able to help with any enquiries)

Role	Date
Accountable Body sign off	
Michael Neumann	04/01/2024
(On behalf of Nicole Wood, S151 Officer, Essex County Council)	