

Forward Plan reference number: FP/609/01/20

Report title: Incorporation of South East Local Enterprise Partnership	
Report to: Cabinet	
Report author: Paul Turner, Director, Legal and Assurance	
Date: 21 January 2020	For: Decision
Enquiries to: Paul Turner, Director, Legal and Assurance and Monitoring Officer email paul.turner@essex.gov.uk	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 The South East Local Enterprise Partnership exists to promote employment opportunities and distribute Government funding. All Local Enterprise Partnerships are now required by central Government to set up a company and this report explains how this is proposed to happen and asks Cabinet to take the necessary decisions to allow this to happen.

2. Recommendations

- 2.1. Agree that the Council will become a member of South East LEP Limited with articles of association as at appendix 1.
- 2.2 Agree to sign the framework agreement in the form at appendix 2.
- 2.3 Agree that the Leader will be the Council's initial member of the Board with the Deputy Leader as alternate director.
- 2.4 Agree that the Leader will be the Council's initial member of the Accountability Board with the Deputy Leader as principal substitute.
- 2.5 Agree that Essex County Council will continue as the Accountable Body for SELEP on incorporation of the company SELEP Ltd.

3. Summary of issue

- 3.1 Local Enterprise Partnerships were created locally to replace Regional Development Agencies. In order to allow flexibility, the Government did not have any prescriptive requirements as to legal structure and there has been diversity as to how they operate. However, over time Government thinking has changed and the Government now requires all LEPs to create a company if they are to continue to be eligible to receive Government funding.
- 3.2 Essex is part of the South East Local Enterprise Partnership (SELEP). This covers the combined administrative areas of:

- East Sussex
- Essex
- Kent
- Medway
- Southend on Sea
- Thurrock

3.3 SELEP currently operates with Essex County Council (ECC) acting as the 'Accountable Body'. As Accountable Body it is legally accountable to Government for how the money is spent across the SELEP area. SELEP has a Strategic Board and four Federated Boards which are all informal bodies with no legal constitution. These organisations consider applications for funding and the Strategic Board makes recommendations to a local authority joint committee comprising one member for each of the six local authorities and an independent non-voting chairman, who is also vice-chairman of the strategic board. Funding passes from ECC to the relevant local authority who then enter into an agreement with the recipient, ensuring there is local accountability for funding. SELEP is supported by a small team of officers (Secretariat) who are employed by ECC but who report directly to the Section 151 Officer rather than to the economic growth team. The current structure therefore gives:

- A strong voice for business who dominate the federated and strategic boards.
- An efficient structure which uses existing employers, pension arrangements and financial systems.
- Local accountability so that local authorities have an input in allocation of funds via the Strategic Board via the joint committee and are accountable for the activities of recipients of funding by signing agreements with the Accountable Body.

3.4 A diagram showing how SELEP currently operates is at appendix 3.

3.5 Although SELEP members and partners are happy with how SELEP is operating, there have been some concerns about how other LEPs are operating and in 2018 the Government decided that all LEP's would need to operate via a company and SELEP are required to incorporate by April 2020

3.6 The SELEP partners have been working on how best to achieve this. The consensus is that a company should be included in the arrangements with as little change as possible to the current arrangements to ensure continuation of the robust governance arrangements currently in place.

3.7 It is therefore proposed that a company limited by guarantee should be created. A diagram showing how the company will operate is at appendix 3. The members of the company would be:

- Members of the Federated Boards who wish to become members of the company.

- One member nominated by each local authority.

This will continue to give Federated Boards a strong voice in the running of the company and the members/Federated Boards will continue to make recommendations on allocation of funding and will continue to have a say in the appointment of the board of the company.

- 3.8 The board of the company would be comprised of between 20-25 unpaid directors as follows:

(1) Fourteen Private Sector Directors:

- The Chair (independently appointed)
- The Deputy Chair (independently appointed)
- Two individuals nominated by the Success Essex Members
- Two individuals nominated by the Opportunity South Essex Members
- Five individuals nominated by Kent & Medway Members
- Three individuals nominated by East Sussex Members

(2) Six Public Sector Directors, one appointed by each of the six local authorities.

(3) Up to five co-opted directors:

- Two District/Borough/City Council Leaders or Cabinet Members
- One Further Education representative
- One Higher Education representative
- One Third Sector representative

- 3.9 It is important to note that company directors are required to act in the best interests of the company rather than representing their employer. The proposals on the composition of the Board is the maximum size of board permitted by central Government and strikes a balance between Essex, Kent and East Sussex. The Government also requires a local authority to remain as Accountable Body since the statutory power used to pay money only allows money to be paid to local authorities.
- 3.10 In order to disturb the arrangements as little as possible the Strategic Board has decided that it does not want the company to hold the funding or employ any staff. This minimises risk and cost, but does have the consequence that it is still the local authorities which will be making the final decision on allocation of funding via the Accountability Board and money will still pass from the Accountable Body to the local authority or FE college for the beneficiary's area.
- 3.11 The business members of the SELEP Boards have decided that this is the way in which they want to work. They are comfortable with this because in practice the SELEP partners and the Secretariat have worked hard to develop consensus on funding, meaning that in practice funding is rarely contentious by the time decisions are taken. The joint committee will of course continue to

give great weight to the views expressed by the Federated Boards and the business representatives.

3.12 The SELEP Strategic Board has therefore recommended that this approach is taken.

3.13 The other main option considered was to have the company employing the Secretariat and receiving and distributing the funding, but this would involve a lot of legal and financial structures and the consensus is that the costs and bureaucracy involved in this outweighs the benefits.

3.14 The recommended approach has been developed in consultation with the Ministry of Communities, Housing and Local Government and the Department for Business, Energy and Industrial Skills who are happy with the proposals.

4. Issues for consideration

4.1 Financial Implications

4.1.1 This report will have no direct financial implications since SELEP will continue to operate in the current manner and the Council will continue to contribute and passport funding to recipients in the same way as it currently does.

4.1.2 As the Accountable Body, Essex County Council, retains overall legal accountability for the funding streams, and is responsible for overseeing the proper administration of financial affairs when these affairs relate to public funds.

4.1.3 The Accountable Body will receive funds from Government on behalf of the SELEP Ltd. The Accountable Body ensures that public funds are handled in line with the relevant procedures and grant conditions and that funds are used with propriety, regularity and deliver value for money. This includes an oversight function of processes such as LEP governance and transparency arrangements, compliance with the framework and agreement on scrutiny arrangements, to ensure that the checks and reporting requirements of the Section 151 Officer are met, this includes retaining appropriate documentation on decisions around funding.

A.1. The oversight function includes ensuring;

- A.1.1. all grants are transferred to Partner Authorities under an SLA or grant agreement, as appropriate, which reflects the grant requirements of the awarding body and any additional requirements agreed by the SELEP Ltd Strategic Board and/or Accountability Board;
- A.1.2. all loans are transferred to Partner Authorities under a loan agreement, which reflects the loan requirements of the awarding body and any additional requirements agreed by the SELEP Ltd Strategic Board and/or Accountability Board;

- 4.1.4 The Framework Agreement in place between SELEP Ltd, the respective County and Unitary Authorities, including Essex County Council clearly defines the roles and relationships between the SELEP Ltd and the Accountable Body; this will be supported by a service level agreement (SLA) which will be agreed between the Accountable Body and SELEP Ltd and published on the SELEP Ltd website. The SLA will set out how the Accountable Body will collaborate with the SELEP Ltd to ensure that the terms of the Framework Agreement and the SLA are met.
- 4.1.5 ECC will be paid a sum set and agreed each year for the reasonable costs of acting as the Accountable Body. This will comprise of a fixed charge for the basic services. This service level is the minimum service required for ECC to represent SELEP Ltd as the Accountable Body. ECC will also be paid a sum for services provided during the year for enhanced activities as the Accountable Body. The basic and enhanced services will be detailed in the SLA.
- 4.1.5 The service levels will be reviewed annually and agreed with SELEP Ltd during the budget setting process.

4.2 Legal Implications

- 4.2.1 The recommendations in this report have been developed in consultation with the other five local authorities and with the current SELEP boards.
- 4.2.2 SELEP has obtained counsel's advice on liabilities of directors of the company. 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 via the Accountable Body.

5. Equality and Diversity implications

- 5.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (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.
- 5.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 5.3 No equality impact assessment has been written as this report will largely continue with SELEP's existing processes. One positive impact which is related to but not directly caused by the incorporation of SELEP is that the new Assurance Framework requires SELEP to meet requirements relating to equalities and diversity which is therefore likely to lead to a greater participation in public life by people with a protected characteristic.

6. List of Appendices

Appendix 1 – Articles of Association

Appendix 2 – Framework Agreement

Appendix 3 - Diagrams showing how SELEP operates

7. List of Background papers

None