

<b>Report title:</b> LGF spend within Growth Deal period	
<b>Report to Accountability Board</b>	
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<b>Date:</b> 15 <sup>th</sup> February 2019	<b>For:</b> Decision
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<b>SELEP Partner Authority affected:</b> All	

## 1. Purpose of Report

- 1.1 The purpose of this report is to seek agreement from Accountability Board (the Board) on SELEP's position in relation to expenditure of Local Growth Fund (LGF) within/ beyond the Growth Deal period.

## 2. Recommendations

- 2.1. The Board is asked to:

- 2.1.1. **Approve** one of the three following options, detailed in Section 8 of this report, including:

**Option 1** – Reallocate LGF funding which cannot be spent within the Growth Deal period

**Option 2** – Retain LGF allocations against projects, subject to certain conditions being satisfied, as detailed in section 8.9 of this report; or

**Option 3** – Hold such funding decisions until the 12<sup>th</sup> April 2019 whilst clarity is sought from MHCLG to confirm whether it is considered acceptable for SELEP to plan for LGF spend beyond 31<sup>st</sup> March 2021

- 2.2. **Note** that Government have not confirmed whether they are comfortable with the planned spend of LGF beyond 31<sup>st</sup> March 2021 and therefore the repercussions of SELEP agreeing planned LGF spend beyond this timescale are unclear.
- 2.3. **Note** that the business case assessment and LGF funding award for the A127 Fairglens Interchange Junction Improvements (£15m LGF) project will be considered by the Department for Transport (DfT) directly, as a fully DfT retained LGF project. As such, the project is exempt from the principles agreed through this report.

### **3. SELEP's Growth Deal commitment and funding context**

- 3.1. The Growth Deal agreed between SELEP and Central Government, provides a mechanism through which LEPs drive economic growth through local capital infrastructure. Through the three Growth Deals to date, SELEP has been awarded a total of £570m Local Growth Fund (LGF), as a means to unlock the delivery of jobs and houses within SELEP's geography. In receiving this funding award from Central Government, SELEP provided a commitment to deliver a total of 78,000 jobs and 29,000 houses by 31<sup>st</sup> March 2021.
- 3.2. The Government has provided funding allocations to the end of 2020/21, with SELEP having received £335.548m LGF to date. SELEP is due to be awarded £54.915m LGF in 2019/20 and £77.873m LGF in 2020/21, subject to compliance with the requirements of the LEP review. *This excludes the funding for DfT retained schemes.*
- 3.3. The early years of LGF allocations were received by SELEP with messages from Central Government, that future year LGF allocations would be dependent on the outcome of the annual conversation, which focuses on Growth Deal delivery. As a result, SELEP have always worked on the basis that if we were unable to show LGF spend and delivery progress, the future year allocations may be reduced.
- 3.4. This has been the case with the funding received directly from the DfT in relation to the six DfT retained schemes, as detailed in the Capital Programme Update (Agenda Item 15). Whilst the total funding to be received by SELEP for retained schemes will remain the same as previously committed by the DfT through the lifetime of the project, the annual funding awards having been reduced to take account of the funding slippage from the previous financial year.
- 3.5. SELEP has developed mechanisms to accelerate LGF spend wherever possible. Where it has not been possible to spend the grant in full on LGF projects, SELEP has worked with local partners to implement temporary capital swaps of LGF into local authority capital programmes. This funding is then returned to the LGF programme for spend on LGF projects during subsequent years.
- 3.6. There has been continuous use, by MHCLG and BEIS, of LGF spend as a performance measure for SELEP's success in delivering on its Growth Deal. LGF expenditure is reported back to Central Government on a quarterly basis.
- 3.7. Whilst capital funding streams beyond the current Growth Deal are unclear, the 2018 LEP Review was undertaken by Central Government with the intension of strengthening LEPs to act as custodians of future funding streams, such as the Shared Prosperity Fund. The criteria for awarding this future funding is currently unknown, but LEP performance and record of delivery is likely to be a consideration.

#### 4. LGF slippage to date

- 4.1. SELEP continues to make good progress on the delivery of its Growth Deal, having spent £256.334m to date (excluding LGF retained funding) and completed a total of 23 projects. However, the amount of LGF slippage between financial years, relative to the LGF available, has been relatively high to date. Table 1 below sets out the LGF slippage to date.

**Table 1 LGF slippage (excluding Department for Transport retained schemes)**

Financial Year	LGF available (£m)			LGF spend (£m)	LGF slippage to next financial year (£m)	LGF slippage relative to LGF available (%)
	Grant from MHCLG	Carried forward (from previous financial year)	Total available			
2015/16	69.450	-	69.450	55.563	13.887	20.00%
2016/17	82.270	13.887	96.157	69.681	26.476	27.53%
2017/18	92.088	26.476	118.565	79.332	39.233	33.09%
2018/19	91.739	39.233	130.972	87.637*	43.334*	33.09%*

*\*These figures are forecasts rather than actuals.*

- 4.2. In the final year of the Growth Deal period current spend forecast is a total of £96.619m LGF. If a slippage of 33.09% were also experienced during the final year of the programme (such as the scale of slippage from 2017/18 to 2018/19), this would result in £31.971m LGF being spent beyond 31<sup>st</sup> March 2021.
- 4.3. In addition, there are a number of projects for which LGF spend is already anticipated beyond the Growth Deal period, as set out in section 6 below. If the Board choose to award funding to these projects or enable these projects to retain their LGF allocation then a planned re-profiling of LGF spend beyond the Growth Deal period will substantially increase LGF expenditure beyond 31<sup>st</sup> March 2021.
- 4.4. Furthermore, introducing flexibility to spend LGF beyond 31<sup>st</sup> March 2021 will remove the pressure on projects to progress in delivering the outputs committed to within the Business Case and spending LGF contributions. It is likely that a substantial number of projects would come forward to seek the reallocation of LGF beyond the Growth Deal period.
- 4.5. The following projects have been identified as having a very high risk of LGF spend beyond the Growth Deal:
- 4.5.1. Beaulieu Park (£12m LGF allocation)
  - 4.5.2. A28 Chart Road (£10.2m LGF allocation);

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- 4.5.3. Leigh Flood Storage Area and East Peckham (£4.636m LGF allocation);
- 4.5.4. A289 Four Elms Roundabout to Medway Tunnel - Journey and Network Improvements (£11.1m LGF allocation).  
*(Note: An extension to LGF spend has been sought by Medway Council, to align with the Housing infrastructure Fund bid. However, if the flexibility is not possible then Medway Council will deliver the project, as per the original programme.)*

## 5. Current LGF programme

- 5.1. A funding decision in relation to the Beaulieu Park Railway Station which is showing a slippage of £9.7m LGF beyond the Growth Deal is sought later in the meeting agenda.
- 5.2. To date, the Board has only **approved** LGF awards to projects which, at the time of Board decision making, have planned to spend the full LGF allocation within the Growth Deal period.
- 5.3. Whilst some minor slippages to LGF spend beyond 31<sup>st</sup> March 2021 are inevitable, due to delays to the project during the construction phase of the project, a number of funding decisions are now being brought forward to the Board for **planned** LGF spend beyond the Growth Deal at the point of the funding decision being taken by the Board.
- 5.4. The issue of slippage beyond the Growth Deal has been raised with Central Government on a number of occasions, including through a letter to MHCLG in November 2018 and the SELEP Annual Performance Review in January 2019. However, MHCLG has been unable to formally confirm its position and are unlikely to be able to do so until at least April 2019.
- 5.5. To date, Government officers have informally indicated that, “The expectation of Government is that LEPs will deliver on the outcomes they have specified in their published Growth Deal documents”.

“LEPs have flexibility to manage delivery of their programmes, using the flexibility of wider local authority budgets to swap projects around where some can deliver sooner and thereby compensate for delivery delays with other projects. The Grant Offer letter confirms that LEPs are expected to use this flexibility to manage their programmes”.

## 6. LGF3b Pipeline Development

- 6.1. As an outcome of the Annual Conversation in January 2018 and the subsequent Deep Dive by MHCLG, Government has identified the need for SELEP to develop a single pipeline of LGF projects to utilise any LGF underspends which are identified.
- 6.2. SELEP has therefore established the LGF3b process to develop this single pipeline and which has received an overwhelming level of interest. The 60

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project bids submitted, seeking over £145m LGF, demonstrated the substantial demand for capital investment in 2019/20 and 2020/21 from emerging priorities.

- 6.3. Through January 2019, the Independent Technical Evaluator (ITE) has met with the scheme promoters for all projects which have been submitted to SELEP through the LGF3b process. These meetings have provided the opportunity for scheme promoters to respond to the technical assessment and provide additional clarification and information, as appropriate.
- 6.4. It also provided the opportunity for the ITE to probe further on the deliverability and pace of benefit realisation. This aims to ensure that, as the technical assessment is concluded in advance of the Investment Panel meeting, the ranked list of projects reflects those aligned to strategic priorities, but also projects where there is a high level of certainty on deliverability and benefit realisation (as per the agreed assessment criteria).
- 6.5. As such, the LGF3b pipeline of projects, due to be agreed by the Investment Panel at their meeting on the 8<sup>th</sup> March 2019, will provide a list of projects which can maximise LGF spend by 31<sup>st</sup> March 2021 and support the delivery of SELEPs Growth Deal commitments, in terms of houses, jobs and skills.

## 7. What other LEPs are doing

- 7.1. SELEP is aware that similar discussions are being held between other LEPs and Central Government. From discussions with neighbouring LEPs it is understood that they are working to spend their LGF allocations in full by the 31<sup>st</sup> March 2021 and are currently in a similar position to SELEP in opening new calls for projects which can utilise any LGF underspends.

## 8. Options available to SELEP

- 8.1. With a number of projects coming forward to seek a funding award beyond 31<sup>st</sup> March 2021, there is a need for SELEP to develop a position as to whether planned spend beyond the Growth Deal should be permitted.
- 8.2. As such, three options are available:

### **Option 1 – Reallocate LGF funding which cannot be spent within the Growth Deal period**

- 8.3. The first option is to agree that no LGF planned spend should be agreed by the Board beyond the 31<sup>st</sup> March 2021. Under this scenario then the project can remain on SELEP's investment pipeline but alternative future funding sources would be sought by the relevant authorities to support the delivery of these interventions.

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- 8.4. The LGF funding allocation which cannot be spent within the Growth Deal period will be reallocated to support those LGF3b pipeline projects which can demonstrate LGF spend by the 31<sup>st</sup> March 2021.
  - 8.5. In practice, this would mean that the Board can agree the award of LGF which can be spent within the Growth Deal period but cannot support the award of funding where it is planned for spend beyond 31<sup>st</sup> March 2021.
  - 8.6. For projects that are identified as high risk of LGF spend beyond the Growth Deal, there is a requirement for these projects to come back for consideration by the Board within 6 months of the issue being flagged. This requirement is aimed at tackling stalled projects, where LGF has been awarded to the project, but there are concerns about the deliverability of the project due to delivery constraints which have materialised since the funding decision was made.
  - 8.7. If Option 1 is agreed, local partners will be required to provide reassurance that mitigation measures can be undertaken to address the delivery constraints or the LGF allocation to these stalled projects will be considered for reallocation.
- + The reallocation of the funding will enable alternative investments to progress, rather than the funding being held unutilised within SELEP accounts. This provides the opportunity to accelerate jobs and housing delivery through alternative interventions and new LGF3b priorities to support economic growth.
  - The benefits which will be delivered through the alternative use of LGF in LGF3b projects may not deliver the same magnitude of benefits which could be achieved through the original intervention. However, the scale of benefits will be considered as one of the assessment criteria as part of the LGF3b prioritisation.

### **Option 2 – Retain LGF allocations against the project, subject to certain conditions being satisfied.**

- 8.8. Alternatively Board members could support Option 2; for existing LGF projects to retain the LGF allocation against specific projects, with the expenditure being incurred beyond the 31<sup>st</sup> March 2021, subject to certain conditions being satisfied, as set out in 8.9 below.
- + This will support existing LGF projects which have been previously been identified by the Strategic Board as a funding priority.
  - The consequences of slipping LGF spend beyond the Growth Deal on future funding allocations is currently unclear. However, if SELEP stills holds a substantial amount of LGF underspend in 2021/22, 2022/23 and beyond, this is highly likely to weaken the case for further funding.
  - The holds of LGF allocations against specific projects for spend in future years will prevent the delivery of alternative projects which have been identified through the LGF3b process.

- 8.9. Should Option 2 be supported by the Board, it is recommended that certain conditions must be satisfied for the funding allocation to be retained by a project beyond the Growth Deal. These conditions include requirements for the Project to have:
- 8.9.1. A clear delivery plan with specific delivery milestones and completion date to be agreed by the Board;
  - 8.9.2. A direct link to the delivery of jobs, houses or improved skills levels within the SELEP area;
  - 8.9.3. All funding sources identified to enable the delivery of the project. Written commitment will be sought from the respective project delivery partner to confirm that the funding sources are in place to deliver the project beyond the Growth Deal; and
  - 8.9.4. Endorsement from the SELEP Strategic Board that the funding should be retained against the project beyond 31<sup>st</sup> March 2021.
- 8.10. Under this Option, a specific grant agreement would be required to transfer the LGF for such projects. This grant agreement would require the local authority to spend the grant within their own local authority capital programme in 2020/21 and swapped out for spend on the LGF project when it is required for spend. If the LGF funding was not spent by the local authority by 31<sup>st</sup> March 2024, the local authority would be required to return the grant to SELEP.
- 8.11. For projects which have previously received full funding approval but which are currently RAG rated as high risk of LGF slippage beyond the Growth Deal period, these projects will be required to come back to the Board for a funding decision within six months to confirm that the conditions listed in 8.9 can be satisfied.

**Option 3 – Hold such funding decisions until the 12<sup>th</sup> April 2019 whilst clarity is sought from MHCLG to confirm whether it is considered acceptable for SELEP to hold substantial amounts of LGF spend beyond 31<sup>st</sup> March 2021**

- 8.12. SELEP is still awaiting a formal response from Central Government, to confirm whether it is considered acceptable for SELEP to plan for LGF spend beyond 31<sup>st</sup> March 2021 and to understand the consequences of this slippage.
- 8.13. There is a requirement for all projects to come forward for a funding decision by the 12<sup>th</sup> April 2019, at the next Accountability Board meeting. The Board may wish to delay considering a funding decision until this meeting, to allow further time to seek clarity from Central Government.
- + The clarification of Government's position would be helpful in informing the decision making by the Board and ensure that the decision by SELEP does not conflict with the advice from Central Government.

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- While it has been indicated that Government is more likely to be able to confirm its position by the April Accountability Board meeting, there is no certainty as to the timing of this response.
- Waiting until the next Board meeting in April is likely to delay the delivery of projects and will reduce the amount of time available to deliver alternative projects. For specific projects, such as Beaulieu Park Railway Station (to be considered under agenda item 8), the funding decision by the Board is time pressured due to the need to submit the Housing Infrastructure Fund (HIF) Business Case to MHCLG on the 22<sup>nd</sup> March 2019.

### **9. Financial Implications (Accountable Body comments)**

- 9.1. LGF is transferred to Essex County Council, as the Accountable Body of the SELEP, for allocation to delivery partners to support delivery of projects within the Growth Deal. All funding allocations must meet the requirements of the SELEP Assurance Framework.
- 9.2. LGF is allocated through a grant determination from MHCLG via section 31 of the Local Government Act 2003; this 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.
- 9.3. The Accountable Body is ensuring that the grant is spent in line with the Grant Determination letter condition, which does not impose an end date for use.
- 9.4. Alongside the annual grant determination letter, Government has written to SELEP and the Accountable Body, emphasising the requirement for the grant to be spent on the Growth Deal (which has a lifetime of April 2015 to March 2021) and that future funding allocations remain subject to the outcome of future annual conversations and compliance with the National Local Growth Assurance Framework.
- 9.5. SELEP have raised the issue of the application of the LGF grant beyond the end of the growth deal period with central government and have sought clarity on this over a number of months, but this is not yet confirmed, and it remains unclear when a response will be provided.

### **10. Legal Implications (Accountable Body comments)**

- 10.1 The implications of the Board approving the allocation of LGF beyond the Growth deal period is currently unknown, despite SELEP's best efforts to seek clarification from Government on the issue. If the announcement from Government determines that expenditure beyond March 2021 is not permissible, then SELEP will have to revisit its decision, and either seek approval from Government to continue on the proposed course of action, seek



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to re-scope projects where permissible so as to enable spend within the Growth Deal period, or look at reallocation. Any decisions taken by the Board will need to fully understand the risk associated with the LGF allocation, until such time as ultimate clarification has been obtained from Government.

- 10.2 If the Board approves spend beyond the Growth Deal period, then all projects will require a grant agreement to be in place between SELEP and the delivering Authority. The Agreement will require the local authority to spend the grant within their own local authority capital programme in 2020/21 and swapped out for spend on the LGF project when it is required for spend. If the LGF funding was not spent by the local authority by 31<sup>st</sup> March 2024, the local authority would be required to return the grant to SELEP. In doing so this would result in an underspend of the LGF, which would need to be reported to Government, and which will be considered in the future funding allocations to SELEP.

## **11. Equality and Diversity implication**

- 11.1. 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.
- 11.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation.
- 11.3 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 it is possible to identify mitigating factors where an impact against any of the protected characteristics has been identified.

## **12. List of Appendices**

- 12.1. None

## **13. List of Background Papers**

- 13.1. None

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**(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)**

<b>Role</b>	<b>Date</b>
<b>Accountable Body sign off</b>  Stephanie Mitchener (On behalf of Margaret Lee, S151 Officer, Essex County Council)	07/02/19