



SOUTH EAST
LOCAL ENTERPRISE
PARTNERSHIP

STRATEGIC BOARD AGENDA PACK

Friday 24th May 2024
Zoom Video Conference

Agenda

Please note that this meeting opens with a confidential session. Members of the public may join the meeting from Item 2.

	09:30	Welcome Declarations of Interest	Sarah Dance	
Item 1	09:35	CONFIDENTIAL ITEM Discussion on draft report from DLUHC	Sarah Dance/Helen Russell	
Item 2	10:15	Minutes from 22 nd March 2024 meeting	Sarah Dance	Pg. 3
Item 3	10:25	SELEP Ltd Accounts 2023/24	Lorna Norris	Pg. 6
Item 4	10:35	Transition and SELEP Closure	Helen Russell	Pg. 20
	11:00	AOB & Close	Sarah Dance	

Minutes of the Strategic Board meeting:

22nd March 2024

Attendees:

Sarah Dance	Chair
Simon Cook	Deputy Chair
Helen Russell	CEO
Ana Christie	Team East Sussex
Andrew Metcalf	Kent and Medway Economic Partnership
Carol Ford	Kent and Medway Economic Partnership
Clive Soper	Team East Sussex
Cllr Adam Carter	Thurrock Council
Cllr Christine Bayliss	District/Borough/City Councils representative
Cllr Keith Glazier	East Sussex County Council
Cllr Kevin Buck	Southend-on-Sea City Council
Cllr Lauren Edwards	Medway Council
Cllr Lee Scott	Essex County Council
Cllr Roger Gough	Kent County Council
David Milham	Kent and Medway Economic Partnership
David Rayner	Success Essex
David Sheppard	Team East Sussex
Lara Fox	Success Essex
Liz Gibney	Kent and Medway Economic Partnership
Mark Curle (Virtual)	Opportunity South Essex
Penny Shimmin	Social Enterprise Representative
Perry Glading (Virtual)	Opportunity South Essex
Vince Lucas	Kent and Medway Economic Partnership

Other Attendees:

Adam Bryan	Medway Council	Michael Neumann	Essex County Council
Alex Riley	SELEP Secretariat	Nicholas Brown	Southend-on-Sea City Council
Amy Ferraro	SELEP Secretariat	Paul Chapman	Essex County Council
Dave Evans	East Sussex County Council	Richard Dawson (virtual)	East Sussex County Council
David Smith (virtual)	Kent County Council	Sharon Spicer	SELEP Secretariat
Emma Taylor	DLUHC	Stephanie Mitchener	Essex County Council (s151)
Gregory Wilkinson	DLUHC	Steve Samson	Kent County Council
Helen Dyer	SELEP Secretariat	Sunny Ee (virtual)	Medway Council
Howard Davies	SELEP Secretariat	Susan Moussa	Essex Legal Services
Jo Simmons	SELEP Secretariat	Tristan Smith	Essex County Council
Lorna Norris	Essex County Council	Tudor Price	Kent Invicta Chambers of Commerce
Louise Aitken	SELEP Secretariat/Essex County Council	Vivien Prigg (virtual)	SELEP Secretariat

This meeting was held in person with some Board members attending online via Zoom and a recording can be found by clicking [here](#); the timestamp of the start of the discussion for each item is indicated in brackets.

Item 1: Welcome and apologies for absence

- 1.1. Sarah Dance opened the meeting and welcomed the Board to the last in-person meeting of the Strategic Board.
- 1.2. The following apologies had been received:
 - i) Jeremy Kerswell, Further Education Representative
 - ii) Cllr Tony Cox, who is substituted by Cllr Kevin Buck
 - iii) Cllr Andrew Jeffries, who is substituted by Cllr Adam Carter
 - iv) Professor Karen Cox, Higher Education Representative
- 1.3. Sarah Dance noted that there were no decisions to be taken at this meeting due to the current fast changing situation. She gave her thanks to the continued patience of the Board and the support of Simon Cook and the Federated Board Chairs.
- 1.4. Sarah Dance recognised the difficult situation for SELEP staff, with particular tribute to Helen Russell.

Item 2: Minutes of last meeting, declarations of interest (9'52" timestamp on video)

- 2.1. The Board agreed the minutes of the last meeting as an accurate record.
- 2.2. The following interests were declared:
 - i) Sarah Dance declared a non-pecuniary interest as the Chair of the South East Creative Economy Network (SECEN).
 - ii) Sarah Dance declared an interest relating to the Turner Contemporary and the England's Creative Coast project.
 - iii) Andrew Metcalf declared an interest as Deputy Chair of Kent Invicta Chamber of Commerce who deliver the Kent and Medway Growth Hub.

Item 3: SELEP Integration Plan Progress (10'55" timestamp on video)

- 3.1. Helen Russell presented to the Board.



March Strategic
Board Integration Plan

- 3.2. The Board held considerable discussions regarding the latest updates. Gregory Wilkinson representing DLUHC answered questions posed by the Board.
- 3.3. Simon Cook commented that it would be helpful for Strategic Board members to read the finance and legal paper presented to the Accountability Board in February 2024. This report can be found [by clicking here \(page 213 onwards\)](#).
- 3.4. David Rayner stated that he felt he would have to tender his resignation as a Director of the South East LEP and that Government were placing Directors in a very difficult position.
- 3.5. The Board noted the progress made in executing the SELEP Integration Plan.
- 3.6. The Board noted the remaining key risks highlighted in the paper and the Integration Plan.

- 3.7. The Board noted the current position regarding discussions with DLUHC on the Accountable Body arrangements for the legacy capital programme and related progress on the Transition Agreement.
- 3.8. The Board noted that due to the delay caused in concluding arrangements for the transfer of the legacy capital programme, the Board will not be able to resolve to close SELEP Ltd by 31st March 2024.

Item 4: Capital Programme Impact Report (1h10'26" timestamp on video)

- 4.1. Helen Dyer presented to the Board.
- 4.2. The Board noted the update on the reported impact of the Capital Programme.
- 4.3. The Board noted the lessons learnt through delivery of the Capital Programme.
- 4.4. The Board noted the update on the remaining High Risk projects.
- 4.5. The Board noted the next steps with regard to monitoring and managing the Capital Programme post 31st March 2024.
- 4.6. Sarah Dance thanked Helen Dyer for all her hard work on the capital programme.

Item 5: Sector Support Fund Evaluation (1h19'10" timestamp on video)

- 5.1. Alex Riley presented to the Board.
- 5.2. The Board noted the summary findings contained within the report which provided an overview of the purpose, delivery and outcomes of the SSF programme.
- 5.3. The Board noted that SSF project evaluation reports (where provided by the scheme promoters) are available on the SELEP website.

Item 6: Growth Hub Update (1h26'05" timestamp on video)

- 6.1. Jo Simmons presented to the Board.
- 6.2. The Board noted the successful delivery of the SELEP-wide Growth Hub service in 2023/24.
- 6.3. The Board noted that SELEP and Essex County Council as Accountable Body will no longer be administering Growth Hub funding from 31st March 2024 for the SELEP area and that East Sussex, Essex, and Kent County Councils will become the Accountable Bodies for future Growth Hub funding.
- 6.4. The Board noted the Essex County Council as Accountable Body for SELEP will complete the residual activities relating to 2023/24 funding in quarter 1 of 2024/25.
- 6.5. Sarah Dance thanked Jo for all her hard work on the Growth Hub.

Item 7: AOB & Close

- 7.1. Sarah Dance noted that she had received a Director resignation from Perry Glading, effective from 31st March 2024 and gave her sincere thanks to Perry for his considerable contribution over his years on the SELEP Board.
- 7.2. Sarah Dance closed the meeting.

Item 3: South East LEP Ltd Statement of Accounts 2023/24 and SELEP 2023/24 Finance Update

Executive Summary

1. Overview

- 1.1. The purpose of this paper is to approve the South East LEP Ltd Statement of Accounts 2023/24 and to update the Board on the on the decisions taken by the Accountability Board with respect to the finalisation of the 2023/24 SELEP Accounts managed by Essex County Council (ECC) as the Accountable Body on behalf of SELEP, including the distribution of the final balances of funds.
- 1.2. The decisions agreed by the Accountability Board were subject to each SELEP Upper Tier Local Authority (UTLA) and the Department for Levelling Up, Housing and Communities (DLUHC) entering into a Transition Agreement to formalise the arrangements in respect of integration of the LEP functions into the UTLAs and for the Accountable Body to defray any residual funding held in accordance with the decisions of the Accountability Board.

2. Decisions: Board is recommended to:

- 2.1. Approve the South East LEP Ltd Statement of Accounts 2023/24 (Appendix A)
- 2.2. Note that the SELEP Statement of Accounts 2023/24 have been agreed to be finalised by the Section 151 Officer of the Accountable Body and will be subject to External Audit prior to publication;
- 2.3. Note the decisions of the Accountability Board with respect to the distribution of funding held by the Accountable Body at the end of March 2024; and
- 2.4. Note that it was agreed by Accountability Board that no funding can be transferred until:
 - 2.4.1. the Transition Agreement has been signed by all six upper tier local authority partners;
 - 2.4.2. DLUHC has released and discharged Essex County Council from all liabilities as Accountable Body of SELEP, excepting completed projects, for projects outside of administrative Essex; and
 - 2.4.3. the three new Accountable Bodies have taken on responsibility for on-going projects within their administrative areas.

3. Rationale for Decisions

- 3.1. In the establishment of the articles and governance arrangements to support South East LEP Ltd, it was agreed that none of the financial transactions or assets in relation to SELEP would be operated through the company and that the pre-existing arrangements of financial management by the Accountable Body would continue. It is, however, a requirement under the Companies Act 2006, for accounts to be delivered to Companies House, whether the company is trading or not. As a consequence, two sets of Accounts are prepared: The SELEP Statement of Accounts, reflecting the financial position managed by the Accountable Body on behalf of SELEP; and the Statement of Accounts of South East LEP Ltd.
- 3.2. South East LEP Ltd Statement of Accounts 2023/24



3.2.1. The South East LEP Ltd Statement of Accounts for 2023/24 are included in Appendix A; the company is dormant and did not trade in the period. The company received no income and incurred no expenditure in the period and therefore did not make either a surplus or deficit.

3.2.2. The Accounts are required to be approved by the Board and include the following statements:

- For the year ending 31 March 2024 the company was entitled to exemption (from audit) under section 480 of the Companies Act 2006 relating to dormant companies.
- The members have not required the company to obtain an audit in accordance with section 476 of the Companies Act 2006.
- The directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.
- These accounts have been prepared and delivered in accordance with the provisions of the small companies regime applicable to micro-entities.

3.3. SELEP Statements of Accounts 2023/24

3.3.1. The SELEP Statements of Accounts for 2023/24 are currently being completed and will be audited to confirm that the Statements of Accounts for the year ended 31 March 2024 are prepared, in all material respects, in accordance with the financial reporting provisions of CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom 2023/24.

3.3.2. The Accountability Board has responsibility and oversight of the SELEP Financial position, however, in anticipation of the closure of SELEP, have delegated responsibility for the approval and publishing of the SELEP accounts to the Section 151 Officer of the Accountable Body. The Strategic Board are usually afforded the opportunity to consider the Statements of Accounts and pose any questions they may have to the Accountable Body, however, should the Board choose to take the decision to close under agenda item 4, this will not be possible. Board members will, however, have the opportunity to view the accounts, once published and raise any questions that may arise to the Accountable Body.

4. **Background**

4.1. When SELEP was an unincorporated partnership, it had no formal legal identity. To allow the partnership to function, Essex County Council (ECC) acts as the Accountable Body, meaning all financial transactions are managed through the Council on behalf of the LEP; in this role, ECC is not able to utilise SELEP funds for its own purposes and so separate financial records are maintained on behalf of SELEP and separate Statements of Accounts are produced for the partnership.

4.2. When SELEP became a company limited by guarantee in March 2020, it was agreed that no monetary transactions would be made through the Company and that Essex County Council would continue in its role as the Accountable Body. Through this arrangement, all funding allocated to SELEP has been managed and accounted for by the Accountable Body, including the



allocation of over £700m in capital grants to SELEP funded projects (including (Local Growth Fund, Getting Building Fund and Growing Places Fund)), since 2012; the vast majority of these funds have been allocated to the six Upper Tier Local Authorities (UTLAs) within the SELEP geography via funding agreements to ensure on-going accountability for project delivery was transferred with the respective grants.

- 4.3. The Statement of Accounts are prepared in accordance with proper practices as set out within the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom and will be subjected to an external audit. This means that the Accounts take a similar form to Local Authority statements rather than those of a commercial entity. The Section 151 Officer of the Accountable Body has responsibility for the production of the Statements of Accounts and the content therein.
- 4.4. Accounts are also required to be prepared for South East LEP Ltd to be submitted to Companies House; as dormant accounts (reflecting that no trading has occurred through South East LEP Ltd in the year), they are exempt from audit under the Companies Act 2006 section 480. These Statements are included in Appendix A.

5. SELEP Transition Arrangements

- 5.1. In August 2023, Government announced it would not continue to fund LEPs from 1 April 2024, and that their functions should be integrated into UTLAs. This requires the existing Accountable Body arrangements to be amended and for the introduction of three separate Accountable Bodies: Essex County Council for Greater Essex (including the administrative areas of Essex, Southend and Thurrock); Kent County Council for Kent and Medway; and East Sussex County Council for East Sussex. The three new Accountable Bodies will provide on-going oversight of the on-going legacy projects that received funding from the SELEP Capital Programmes (Local Growth Fund, Getting Building Fund and Growing Places Fund).
- 5.2. It is proposed to formalise these arrangements in a Transition Agreement, requiring, from the date of agreement, that each Accountable Body will be responsible for finance, governance, transparency, and accountability arrangements (Accountable Body functions), and as Accountable Bodies, the respective Authority will receive and distribute the 2024/25 core funding allocation from Government and be responsible for reporting on monitoring and evaluation and assurance requirements with respect to the legacy capital programmes and any new funding received.
- 5.3. The Transition Agreement will also set out the arrangements for managing the residual SELEP funding in accordance with the decisions of the SELEP Accountability Board.
- 5.4. At the February 2024 meeting, the Accountability Board resolved under agenda item 13, the Legal and Finance Update ([Agenda Pack 16.02.24.pdf \(southeastlep.com\)](#)) – the extract from the Accountability Board report is as follows:
 - 5.4.1. To Note the Councils and Department for Levelling Up, Housing and Communities are expected to enter into a Transition Agreement to formalise the arrangements in respect of integration of the LEP functions and for the Accountable Body to defray the funding in line with paragraphs 2.1.5 and 2.1.6 of the report.
 - 5.4.2. To Agree the 2023/24 forecast outturn position set out in Table 1 of the report, noting that this includes the planned movements in reserves set out in Table 4 of the report.
 - 5.4.3. To Agree that an appropriation can be made from the Redundancy Reserve in 2023/24 to plan to meet the cost of redundancies arising in respect of employees in the SELEP Secretariat that, following consultation due to the closure of SELEP, are unsuccessful



in securing an alternative role, noting that:

- This will impact on the 2023/24 final outturn position for SELEP; and
- Sufficient funding has been provisioned within the reserve to meet the redundancy costs.

5.4.4. To Agree that the final outturn position for SELEP, including for each reserve, can be agreed by the Section 151 Officer of the Accountable Body following preparation of the 2023/24 accounts in accordance with proper practices, noting that the accounts will be subject to External Audit.

5.4.5. To Agree that once (i) the Transition Agreement has been signed by all six upper tier local authority partners and (ii) the Department for Levelling Up, Housing and Communities releases and discharges Essex County Council from all liabilities as Accountable Body of SELEP for projects outside of administrative Essex and each upper tier local authority takes on responsibility for projects within their administrative areas prior to 1 April 2024, the Accountable Body can transfer to the respective upper tier local authority partner(s) of SELEP the following:

- The balance of funding in the SELEP Operational Reserve at the March 2024 to be transferred to the six local authority partners in accordance with the approach agreed by the Board in January 2024, that is exemplified in Table 5 of the report.
- In accordance with the principle agreed at the January 2024 (Accountability) Board meeting, transfer to any of the six upper tier local authority partners, the redundancy liability, up to the 31st March 2025, in respect of the employment of current permanent members of the SELEP Secretariat, in a capacity supporting the close down of SELEP or the continuation of LEP functions; noting that sufficient funding has been provisioned within the Redundancy Reserve, as set out in Table 4 of the report, to meet this cost.
- Transfer to Essex County Council the final balance of the Future Commitments reserve to meet costs arising in 2024/25 in respect of the close down costs for SELEP; noting that the costs will be impacted by the outcome of the on-going SELEP Secretariat staff consultation process¹, that is not yet known and the balance on the reserve will be adjusted accordingly; but the forecast in Table 4 of the report is expected to be the maximum amount required.
- Transfer to Essex County Council the balance of the Risk Reserve, as forecast in Table 4 of the report to meet any risks arising as a consequence of being the Accountable Body, only if known risks remain unmitigated and DLUHC has not fully released and discharged Essex County Council from all liabilities arising from its role as the Accountable Body for SELEP by 31st March 2024.
- Transfer any residual uncommitted reserves following the dispersal of funds in accordance with [the recommendations of the report] to the six upper tier local authority partners in accordance with the approach agreed by the Board in January 2024, to allocate on the same basis as the Operational Reserve [i.e. on a per capita basis], as exemplified in Table 5 of the report.

¹ The staff consultation process completed on the 13th March 2024 and the impact of the outcome of that process is being reflected in the 2023/24 outturn position.



- 5.4.6. Transfer the Growing Places fund balance held by the Accountable Body at 31st March 2024, as set out in Table 3 of the report, in accordance with the approach agreed by the Board under Agenda item 6, noting that the balance held will be impacted by the decision under that item in respect of the Sovereign Harbour Project and should not all payments due to be repaid be received by 31st March 2024².
- 5.4.7. To Agree that subject to the Transition Agreement being signed by all six upper tier local authority partners and the Department for Levelling Up, Housing and Communities releasing Essex County Council as Accountable Body from responsibility for projects outside of administrative Essex and that each upper tier local authority takes on responsibility for projects within their administrative area, the Accountable Body is not required to recover any Growing Places Fund Loan repayments due after the 31st March 2024 and that the current recyclable Loan Scheme is ended; noting that specific provisions may be agreed in respect of the Sovereign Harbour Project under Agenda item 6, which will be incorporated into the Transition Agreement.
- 5.4.8. To Note that for SELEP to close it must have a zero balance sheet and all monies held by Essex County Council as Accountable Body will be allocated in accordance with the decisions of the Board, at the close of 2023/24 subject to the conditions set out in this report, which will result in a zero balance sheet.
- 5.5. With respect to the note set out in 5.4.8, which anticipated that all adjustments be made to enable a zero balance sheet for the funds held by ECC on behalf of SELEP, this position was not possible to achieve due to the delay in the closure arrangements for SELEP (see agenda item X); work is now underway, alongside the development of the Transition Agreement, to enable close down, as soon as practically possible, in 2024/25. It remains the intension, however, on the completion of the Transition Agreement, to effect the intention of the decisions made at the February Accountability Board meeting, whilst taking into account that some costs are necessarily being incurred into 2024/25.

6. Next Steps

- 6.1. To sign and submit to companies House the 2023/24 South East LEP Ltd Accounts.
- 6.2. To support the external audit and publication of the 2023/24 SELEP accounts managed by the Accountable Body on behalf of SELEP.
- 6.3. To agree the final form and implementation of the Transition Agreement across the six Upper Tier Local Authorities and DLUHC, to enable the transfer of the residual funding to partners.

7. Comments from the Accountable Body

- 7.1. This report has been authored by the Accountable Body and the recommendations are considered appropriate.

8. Appendices, Supporting Documents and Previous Decisions

- 8.1. Appendix A - South East LEP Ltd Statement of Accounts 2023/24
- 8.2. Background Paper: Legal and Finance Update to the February 2024 SELEP Accountability Board:

² All expected repayments were made save that in respect of the Sovereign Harbour project that was granted an extension to the repayment terms.

[Agenda Pack 16.02.24.pdf \(southeastlep.com\)](#)

8.3. For further information please contact Lorna Norris (lorna.norris@essex.gov.uk)

SOUTH EAST LEP LIMITED

The company is Limited by guarantee and consequently does not have share capital

**Company Registration Number:
12492037 (England and Wales)**

**Unaudited accounts for the year ended 31 March 2024
(Dormant)**

Period of accounts

**Start date: 01 April 2023
End date: 31 March 2024**

Page 1

SOUTH EAST LEP LIMITED

The company is Limited by guarantee and consequently does not have share capital

Contents of the Financial Statements

For the Period Ended 31 March 2024

[Company Information - 2](#)

[Income and Expenditure Account - 3](#)

[Balance sheet – 4 and 5](#)

[Footnotes to the Balance Sheet – 6 and 7](#)

Page 2

SOUTH EAST LEP LIMITED

The company is Limited by guarantee and consequently does not have share capital

Company Information

For the Period Ended 31 March 2024

Registered office:

County Hall,
Market Road,
Chelmsford,
Essex,
United Kingdom,
CM1 1QH

Company Registration Number:

12492037 (England and Wales)

SOUTH EAST LEP LIMITED

The company is Limited by guarantee and consequently does not have share capital

Income and Expenditure Account

For the Period Ended 31 March 2024

The company was dormant and did not trade in the period. The company received no income and incurred no expenditure in the period and therefore did not make either a surplus or deficit.

SOUTH EAST LEP LIMITED

The company is Limited by guarantee and consequently does not have share capital

Balance sheet

As at 31 March 2024

	<i>2023/24</i> £
Fixed Assets:	0
Current assets:	0
Prepayments and accrued income:	0
Creditors: amounts falling due within one year:	(0)
Net current assets (liabilities):	<u>0</u>
Total assets less current liabilities:	0
Creditors: amounts falling due after more than one year:	(0)
Provision for liabilities:	(0)
Total net assets (liabilities):	<u>0</u>
Reserves:	<u>0</u>

Balance sheet continued

Statements

- a) For the year ending 31 March 2024 the company was entitled to exemption from Audit under section 480 of the Companies Act 2006 relating to dormant companies.
- b) The members have not required the company to obtain an audit in accordance with section 476 of the Companies Act 2006.
- c) The directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.
- d) These accounts have been prepared and delivered in accordance with the provisions of the small companies regime applicable to micro-entities.

**This report was approved by the board of directors on:
And Signed On Behalf Of The Board By:**

Name:
Status: South East LEP Ltd Board Director

The notes form part of these financial statements

SOUTH EAST LEP LIMITED

The company is Limited by guarantee and consequently does not have share capital

Footnotes to the Financial Statements

for the Period Ended 31 March 2024

- **1. Employee Information**

Average number of employees: 0

SOUTH EAST LEP LIMITED

The company is Limited by guarantee and consequently does not have share capital

Footnotes to the Financial Statements

for the Period Ended 31 March 2024

- **2. Off balance sheet disclosure**

No

Item 4: Transition of LEP Functions and Closure of South East LEP Ltd

Executive Summary

1. Overview

- 1.1. This report presents to Board members an update on the progress with transition of LEP functions to the Upper Tier Local Authorities (UTLA).
- 1.2. This report presents to Board members the decisions that need to be taken to close South East LEP (SELEP) Ltd, in line with the decision taken at the Strategic Board meeting in July 2023.
- 1.3. The report sets out the steps that need to be taken to close SELEP Ltd, the timing of those steps and informs Board members about their role as company Directors and how and when this concludes as part of the closure process.
- 1.4. The report also informs Board members about the wider closure activity that will be undertaken by the Accountable Body to ensure that all transition activity has been completed and any wider SELEP affairs are concluded.

2. Decisions/Actions: Board is recommended to:

- 2.1. **Note** the progress made on transitioning LEP functions to UTLAs.
- 2.2. **Agree** that an application be made to the Registrar of Companies for SELEP Ltd's name to be struck off the Register and that all Directors are authorised to sign the Form DS01.
- 2.3. **Agree** whether to put in place run off insurance cover.
 - 2.3.1. Option 1: No run off cover – insurance ends with the closure of the company
 - 2.3.2. Option 2: Run off cover for 6 years (in line with the limitation period as set out in statute)
- 2.4. **Agree** that, due to the closure of SELEP Ltd, Directors will not be given oversight of the SELEP Accounts held by the Accountable Body (these are separate to the accounts of SELEP Ltd which are addressed in item 3), **noting** that these will be externally audited and signed off by Essex County Council (ECC) Section 151 Officer on behalf of the Accountability Board.
- 2.5. **Note** the activity that will still need to be undertaken by ECC as SELEP Accountable Body to transfer all elements of LEP functions to ULTA and ensure that all closure activities are concluded.

3. Rationale for Decisions

- 3.1. Following the announcement by Department for Levelling Up, Housing and Communities (DLUHC) that it will no longer provide core funding to LEPs beyond 2023/24 and that LEP functions should be delivered by UTLAs from 2024/25 onwards, this Board took the decision, in July 2023, to integrate LEP functions into its UTLAs by 31st March 2024, or as soon as possible thereafter.
- 3.2. SELEP has been working closely with the Accountable Body and UTLA officers, including Section



151 and Monitoring Officers and those responsible for economic development in their areas, since summer 2023, to create and execute an integration plan that achieves this task.

- 3.3. The final SELEP integration plan was signed off by this Board in December 2023 and the three functional economic areas (East Sussex, Greater Essex (Essex, Southend-on-Sea and Thurrock) and Kent & Medway) also created local plans to ensure that the overall plan can be delivered within each local area. These have been in the form of a detailed local plan that align with the SELEP one and, separately a template submission to DLUHC from the three areas, in November 2023.
- 3.4. The SELEP integration plan set out three activities and milestones that have needed to be achieved to secure the transfer of LEP functions and the closure of SELEP:
 - 3.4.1. Agreement and signing by all parties¹ of the Transition Agreement
 - 3.4.2. Confirmation from DLUHC that they approve the release of ECC as Accountable Body for SELEP and that this status is held by the UTLAs from 1st April 2024 for their areas (*this arrangement is no longer being implemented as planned – see section 3.5*).
 - 3.4.3. Conclusion of the staff consultation, confirmed outcomes and smooth transition of members of the SELEP Secretariat from 1st April 2024.
- 3.5. However, there has been delay with some aspects of the integration plan, namely the Accountable Body arrangements for the legacy capital programme. As reported at the Board meeting on 22nd March 2024, DLUHC wrote to SELEP and partners on the 22nd February 2024 stating that they would not support the longstanding local proposal that full responsibility for the capital programme would reside with the UTLAs for projects within their area. Instead, they stated that they expected ECC to retain full responsibility for funding allocated to projects that commenced prior to the 31st March 2024. Following subsequent discussions between DLUHC and ECC and a clear position from Directors at the March Board meeting, further discussions have taken place and progress has been made in agreeing the transition arrangements. More information on this is presented in section 5.
- 3.6. Due to this delay on transition arrangements for the legacy capital programme, it was proposed to the Board in March 2024 that, as the resolution for the transition arrangements was unknown and would likely follow an elongated timescale, a variation to the current SELEP Framework Agreement would be implemented to remove the Strategic Board from the Framework Agreement and decouple it from the Accountability Board. As such, Accountability Board could then operate independently for as long as required for the legacy capital programme to be transitioned, and the Strategic Board could disband and SELEP Ltd close. This approach was agreed by the Board.
- 3.7. A Deed of Variation was drafted by ECC Legal Services and shared with the UTLAs on the 26th April 2024. With a final version for decision issued on the 13th May 2024.
- 3.8. There are two sets of closure activities that need to take place – one for SELEP Ltd as a company, which is set out under Decisions 2 and 3 and the other for ECC as Accountable Body for SELEP, set out under Decision 5.

¹ ECC as Accountable Body and all six UTLAs



4. Further Information

- 4.1. SELEP operates a federated model, which has governance structures with clearly set out roles and responsibilities. SELEP Ltd provides the corporate structure for SELEP as required by Government following the LEP review in 2018. The Company's Articles of Association set out the way in which Company Directors will oversee operations as members of the SELEP Strategic Board.
- 4.2. The Strategic Board is business led and provides strategic leadership and direction for the delivery of LEP activities including investment. It is made up of members from SELEP's federated boards, which comprise representatives from the private, public and third sectors.
- 4.3. Alongside this sits SELEP's Accountability Board, through which formal democratic decision-making takes place to approve all major funding decisions for SELEP's investment programme. The Accountability Board abides by the Assurance Framework and implements the processes by which bids for funding are assessed, funding approvals made and performance managed.
- 4.4. ECC as the Accountable Body for SELEP retains overall legal accountability for the investment programme and the Accountability Board is advised directly by ECC's Chief Finance Officer and Monitoring Officer.
- 4.5. SELEP Ltd has a board of directors (Strategic Board), which is comprised of between 20-25 Company Directors: 14 Private Sector Directors, 6 Public Sector Directors and up to 5 co-opted directors. A list of active Company Directors can be found in Appendix A.
- 4.6. It should be noted that SELEP Ltd is a dormant company and owns no assets. All 'trading', financial management and transactions take place through ECC as the Accountable Body and is governed through the Accountability Board. ECC, as Accountable Body also employ the Secretariat.

5. Decision 1: Note the progress made on transitioning LEP functions to UTLAs.

- 5.1. Despite this Board being unable to make the decision in March to formally close SELEP Ltd, SELEP in earnest ceased its ongoing functions as of the 31st March 2024. This aligned to Government guidance which stated clearly that they expect the core LEP responsibilities to be undertaken by Functional Economic Areas, led by the UTLAs, from 1st April 2024. Government guidance set these functions out under three headings:
 - 5.1.1. Business representation
 - 5.1.2. Local strategic economic planning
 - 5.1.3. Delivery (of new 2024/25 programmes as directed by Government e.g. Growth Hub)
- 5.2. As reported at the March Board meeting, SELEP and partners completed the integration of all functions that were in local control to transition, by 31st March 2024 as planned. This included:
 - 5.2.1. New UTLA secretariat arrangements for continuing LEP working groups
 - 5.2.2. Employment of members of the SELEP secretariat by UTLAs to support future delivery of LEP functions and successfully integrating these team members into Local Authorities. (Please note the remaining secretariat is only in place until 31st May 2024)



- 5.2.3. Arrangements agreed for future delivery of the Growth Hub service by the three new Accountable Bodies
- 5.2.4. Provision of up-to-date economic intelligence and data for the region, by local area, to support local economic planning and strategy development as required by DLUHC
- 5.3. Arrangements for ongoing management of the legacy capital programme is the remaining issue and is not under local control and, as set out in 3.5, the letter received from DLUHC on 22nd February was contrary to the position that SELEP and partners had been working towards since summer 2023. It presented an unacceptable position for ECC as current Accountable Body and, despite attempts to reach a resolution, there remained an impasse between SELEP, ECC and DLUHC as to how to resolve. However, subsequent to the March Board meeting, on the 5th April 2024, DLUHC presented an alternative proposal:
 - 5.3.1. Essex County Council retains liabilities for completed projects. DLUHC define these as projects which have completely spent their allocated funding and delivered all of their benefits.
 - 5.3.2. Incomplete projects in East Sussex and Kent and Medway would transfer to the new Accountable Bodies in the respective place.
 - 5.3.3. Incomplete projects in Greater Essex (ECC, Thurrock and Southend) would remain with Essex County Council as the Accountable body.
- 5.4. Following consideration of this by ECC, meetings have now taken place with all the UTLAs and in principle all parties agree with this transition arrangement for the legacy capital programme, subject to the content of the Transition Agreement. The draft Transition Agreement is therefore being rewritten by Essex Legal Services to reflect these arrangements and will be shared with UTLAs as soon as complete.
- 5.5. As SELEP Ltd will not be part of this arrangement, the Strategic Board is not required to remain in place until the Transition Agreement is complete. The variation to the Framework Agreement, as set out in 3.6 and 3.7, decouples the Strategic Board from the SELEP governance arrangements, and as such, the outstanding business of the Transition Agreement. Consequently, this no longer prevents the Strategic Board from taking the decision to disband the Board and close SELEP Ltd as a company.
- 5.6. In terms of risk, whilst good progress is generally being made towards the transition of LEP functions to UTLAs, as Board members are aware, we have been significantly delayed now and that continues to make capacity and timescales challenging. The Section 151 and Monitoring Officer at ECC have kept in close contact with their counterparts within the UTLAs to ensure that all parties are kept informed, have opportunity to discuss how things are progressing, and have foresight of forthcoming documentation for review and sign off. Senior Officers are also being kept informed, currently by the remaining SELEP secretariat (and subsequently will be by ECC) to support internal discussions and help to ensure that governance arrangements are in place to enable efficient and timely decisions for entering into the Transition Agreement. Dialogue also continues with DLUHC as they are intending to be party to the agreement and will therefore need to approve its content.
- 5.7. As transition arrangements for the legacy capital programme have not yet concluded, ECC remain as current SELEP Accountable Body and will continue to perform those functions, as usual, until the agreement is signed by all parties. SELEP Accountability Board (Joint Committee) will also continue, for as long as required, for the purposes of the legacy capital programme.



- 5.8. A final point to note is regarding the Annual Performance Review process for 2023/24. As reported in March, a light touch process commenced and we were advised by DLUHC that given the cessation of Government funding for LEPs, there would be no formal outcome to the process. We therefore will not have an outcome to report to the Board. Due to the ongoing resolution around the transition, we have not been able to conclude the process yet, but this will form part of the tasks that ECC will complete, if required. Please see section 9.

6. Decision 2: Agree to close South East LEP (SELEP) Ltd.

- 6.1. SELEP Ltd was incorporated on 2nd March 2020. It is a private company limited by guarantee without share capital constituted under [Articles of Association that prescribe the regulations for the company](#). SELEP Ltd was incorporated following central Government's requirement for all LEPs to operate via a company. SELEP Ltd provides a frame and forum for public and private sector members to communicate and make recommendations that are considered by Accountability Board.
- 6.2. For the reasons set out above, SELEP Ltd is now no longer required. In the last 3 months, SELEP Ltd has not changed its name, not traded or carried on business, not disposed of any property as it does not hold any property. SELEP Ltd is not the subject, or proposed subject, of any insolvency proceedings or any compromise agreements with creditors or members. Therefore, Strategic Board is asked to consider passing a resolution to apply to strike off SELEP Ltd and to delegate relevant activities relating to the application to strike off.
- 6.3. The application form to strike off the company needs to be signed by either all or the majority of the Company Directors. It is proposed that all Directors sign the application to strike off the company on behalf of all the Company Directors.
- 6.4. Once Essex Legal Services has submitted the application to Companies House on behalf of the Company, Companies House will send an email to all the Directors directly for approval of the DS01 Application Form.
- 6.5. The steps that must be taken to close the company are as follows:
- 6.5.1. SELEP Strategic Board take the decision to close SELEP Ltd.
- 6.5.2. Prepare and approve the SELEP Ltd (dormant company) accounts for 2023/24 (see Agenda item 3); these Accounts will then be filed with Companies House in advance of the closure of the company. For the accounting period from 1 April 2024, the company does **not** need to deliver final accounts to Companies House if the company closes during this period.
- 6.5.3. Announce plan to apply to strike off SELEP Ltd to interested parties and HM Revenue and Customs.
- 6.5.4. Essex Legal Services to file DS01 Application Form (Appendix B) to strike off company at Companies House (at an on-line fee of £33); and all Directors to then sign the DS01 Application Form once received from Companies House.
- 6.5.5. Send a copy of the application to strike off within 7 days to anyone who could be affected, including (if applicable):
- Members
 - Creditors (SELEP Ltd does not have any employees)



- Employees (SELEP Ltd does not have any employees)
- Any directors who did not sign the application form or have the application form signed on their behalf under a Power of Attorney

6.6. Once the steps in paragraph 6.5 have been completed, Companies House will write to the company to confirm if the form has been filled in correctly. Then the request for the company to be struck off will be published as a notice in the Gazette. If no one objects, SELEP Ltd will be struck off the register once 2 months has passed. A second notice will be published in the Gazette to confirm that the company has been struck off and does not legally exist anymore.

7. Decision 3: Agree whether to put in place run off insurance cover.

7.1. The role and responsibilities of the Company Directors are set out in legislation, including the Companies Act 2006, common law and case law. The Company Directors duties include acting in the best interest of the company, acting in accordance with the company's constitution, exercising independent judgment, exercising reasonable care, skill and diligence and avoiding conflicts of interest.

7.2. The Directors will cease to be directors of SELEP Ltd once the company is struck off the Register and does not legally exist. In terms of Directors' liabilities, unless the directors have breached their duties, which is unlikely given that SELEP Ltd is a dormant company and does not hold any money, these will cease at the point SELEP Ltd closes. Independent advice was provided in 2020 prior to SELEP Ltd being established, and which can be found in Appendix C, sets out the position in terms of the liabilities that Directors have, which concurs with the position of Essex Legal Services.

7.3. If Directors wish to have run off cover put in place, then Directors can be indemnified for a period of up to six years. These insurances are a form of professional indemnity insurance that applies when a company stops trading and covers claims made after the company has been struck-off. This will cover the cost of defending any claim made against SELEP Ltd or its directors. The insurances must be valid at the time any claim is brought and they would cover where a claim is made, including spurious or speculative claims against a director personally and the costs of defending these claims. The policy will be held by ECC for continuity and as the current Accountable Body and in the event that a claim was received once the company has been struck-off, ECC would report the claim to the insurer in line with the claims reporting terms and conditions of the policy.

7.4. The Board is therefore asked to agree one of the following **two options**:

7.4.1. Not to have run off cover and insurance would end with the company closure.

7.4.2. To put run off cover in place, which would run for a period of six years, at an indicative cost of £12,640.00 + 12% IPT (£14,156.80 total).

8. Decision 4: Agree that, due to the closure of SELEP Ltd, Directors will not be given oversight of the SELEP Accounts held by the Accountable Body, noting that these will be externally audited and signed off by ECC Section 151 Officer on behalf of the Accountability Board.

8.1. As cited previously, SELEP Ltd is not responsible for the SELEP accounts for funds held by the



Accountable Body. This is the responsibility of ECC, governed by the SELEP Accountability Board. At the last meeting of Accountability Board on the 16th February 2024, they resolved to delegate the approval of the finalised accounts for 2023/24 to the ECC Section 151 Officer. If it becomes necessary to hold a further Accountability Board meeting, the 2023/24 outturn position for the accounts managed by ECC as the Accountable Body on behalf of SELEP, will be reported to that Board.

- 8.2. However, the Assurance Framework does set out that the Strategic Board should have oversight of these SELEP accounts and as such, in previous years, they have been brought to a Strategic Board meeting. This is not for agreement, as the Accountability Board agree the position, but it is for Board members to confirm that they have considered the accounts.
- 8.3. The Strategic Board is not proposing to meet again following this meeting and the DLUHC guidance on LEP Integration states the following:
 - 8.3.1. The National Local Growth Assurance Framework (NLGAF) will remain in force and will 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.²
- 8.4. It is suggested that it is reasonable that the application of the Assurance Framework is not adhered to in this instance and that Board members agree that they will not be presented with the SELEP accounts being prepared by the Accountable Body, noting that they will be externally audited and signed off by the ECC Section 151 Officer. Following the audit, the Accounts will be published and can be made available to any Director for review.
- 8.5. Should Board members agree to decision 2 presented in this paper and approve agenda item 3 pertaining to the 2023/24 SELEP Ltd accounts, this would mean that the company can be closed, and Board members would cease to be Directors of the company.
- 8.6. However, should Board members wish to have oversight of the 2023/24 SELEP Accounts for funds held by ECC as Accountable Body, these accounts would be prepared, approved and submitted and the closure documentation submitted following completion of this activity, expected by quarter 3 of 2024/25 at the latest. This would mean that the company cannot be closed (i.e. decision 2 could not be agreed) until this has taken place and an additional extraordinary meeting of the Strategic Board would need to take place to consider the accounts. By default this requires current Directors to remain Directors, for a longer period of time and remain quorate, until this process has concluded. It would be following this that the company can then be closed and members would cease to be Directors of the company.

9. Decision 5: Note the activity that will still need to be undertaken by ECC as Accountable Body to transfer all LEP functions to UTLA and ensure that all closure activities are concluded.

- 9.1. ECC, as the Accountable Body for SELEP, has responsibility for the financial and contractual management of funds they hold on behalf of SELEP, including the functions of the Accountability Board that govern the decisions on use of SELEP funding. ECC, as Accountable Body, also employs the SELEP Secretariat, which will be disbanding at the end of May.
- 9.2. There are a number of activities that the Accountable Body need to undertake, not pertaining to

² [Guidance for Local Enterprise Partnerships \(LEPs\) and local and combined authorities: integration of LEP functions into local democratic institutions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/guidance-for-local-enterprise-partnerships-leps-and-local-and-combined-authorities-integration-of-lep-functions-into-local-democratic-institutions)



SELEP Ltd and therefore are not the direct responsibility of SELEP Ltd Directors but are required in order to fully conclude the operation of the SELEP.

9.3. These include the following:

- 9.3.1. Preparation of the 2023/24 SELEP accounts for funds held by the Accountable Body for SELEP
- 9.3.2. External auditing of these accounts and approval and signatory of ECC's Section 151 Officer, followed by submission to HMRC/ Companies House, as required.
- 9.3.3. Facilitation of any final decisions that need to be taken by the Accountability Board.
- 9.3.4. Retention of members of the SELEP Secretariat working their notice period who will be leaving through redundancy.
- 9.3.5. Conclusion of any remaining contractual requirements for 2023/24, including: Growth Hub returns to the Department for Business and Trade.
- 9.3.6. Completion of the Transition Agreement with the UTLAs and DLUHC.
- 9.3.7. Formal closure of the Joint Committee (Accountability Board)
- 9.3.8. Transfer of LEP funds, as set out in the Transition Agreement, to UTLAs.
- 9.3.9. Completion of any remaining 2023/24 Annual Performance Review documentation, if required.

9.4. The Accountable Body will ensure that the above steps are taken. As members are aware, as part of the transition work a new post was identified within ECC to support the Accountable Body in completing closure activities post April 2024. As of 1st April 2024, Helen Dyer moved into this post and is now supporting ECC as Accountable Body in these and other wind down related activities.

10. Accountable Body Comments

- 10.1. For the company to take the decision to close, the Board must be satisfied that there is no outstanding business for it to consider. The Board, also, must be satisfied that the company has not undertaken the following activities in the previous three months:
 - 10.1.1. Changed its name;
 - 10.1.2. Traded or otherwise carried on business;
 - 10.1.3. Entered into a voluntary arrangement or administration.
- 10.2. After the application to strike off the company has been submitted to Companies House, the first step to closing down the company legally, is submission of a copy of the application to close to interested parties, including members and HM Revenue and Customs, within seven days of the application being made in line with section 1006 of the Companies Act 2006.
- 10.3. Companies House will review the application form once submitted and if it is acceptable, Companies House will:
 - 10.3.1. Register the information and put it on the company's public record
 - 10.3.2. Send an acknowledgement to the address shown on the form
 - 10.3.3. Send a notification to the company at its registered office address to enable it to

object if the application is bogus

10.3.4. Publish notice of the proposed striking off in the Gazette to allow interested parties the opportunity to object

10.3.5. Place a copy of the Gazette notice on the company's public record.

10.4. The registrar will then strike the company off the registrar two months after the date of the notice. The company will be dissolved on publication of another notice in the London Gazette.

10.5. As the company is considered dormant, that is, it does not directly employ anyone, trade or hold any assets or liabilities, there are no other considerations for the Board in this respect, except approval of the 2023/24 dormant company accounts (see agenda item 3).

10.6. The 2023/24 dormant company accounts will be submitted to Companies House prior to closure, following approval by the Board.

10.7. The 2023/24 SELEP accounts for the funds that are managed by the Accountable Body on behalf of the partnership, are currently being finalised; these will be subject to external audit and published by quarter 3 of 2024/25. The SELEP Accountability Board agreed for these Accounts to be signed-off by the section 151 officer of the Accountable Body, in anticipation of the closure of SELEP.

10.8. The Accountable Body recognises the requirement for the Company to close and is therefore supportive of the recommendation that the Government guidance can be relied upon for an exception to be made to the requirements of the SELEP Assurance Framework and the final SELEP accounts not to be presented to the Board.

10.9. The Accountable Body will undertake the actions set out in section 9; these costs are to be funded from the reserves set aside for the Accountable Body to support the close down of SELEP and associated residual activities.

10.10. Should the Board agree the option to purchase run-off insurance cover, this will be funded from SELEPs residual revenue funds, as part of the close down costs.

10.11. Subject to the finalisation of the Transition Agreement, the uncommitted residual funds of SELEP have been agreed to be disaggregated to the six upper tier local authorities, in accordance with the decisions made by the Accountability Board in February 2024.

11. Appendices, Supporting Documents and Previous Decisions

11.1. Appendix A - SELEP Ltd Company Directors (active)

11.2. Appendix B – DS01 Application Form

11.3. Appendix C - SELEP Ltd Counsel Opinion

Current Directors

Name
BAYLISS, Christine Ann, Councillor
BENTLEY, Kevin Paul, Cllr
CHRISTIE, Ana Maria
COOK, Simon Ashley
COX, Tony, Cllr
CURLE, Mark
DANCE, Sarah Chloe
EDWARDS, Lauren Rae
FORD, Carol
FOX, Lara Cathryn
GIBNEY, Elizabeth Mary
GLAZIER, Keith John, Councillor
GOUGH, Roger William
JEFFRIES, Andrew
KERSWELL, Jeremy Alun
LUCAS, Vincent Lloyd
METCALF, Paul Andrew
MILHAM, David Geoffrey
RAYNER, David
SHEPPARD, David
SHIMMIN, Penelope Anne
SOPER, Clive Alexander

DS01

Striking off application by a company



Companies House

A fee is payable with this form

Please see 'How to pay' on the last page.

✓ **What this form is for**
You may use this form to strike off a company from the Register.

✗ **What this form is NOT for**
You cannot use this form to strike off a Limited Liability Partnership (LLP). To strike off an LLP please use form LL DS01 'Striking off application by a Limited Liability Partnership (LLP)'.

For further information, please refer to our guidance at gov.uk/companieshouse

Warning to all interested parties

This is an important notice and should not be ignored. The company named has applied to the Registrar to be struck off the Register and dissolved. Please note that on dissolution any remaining assets will be passed to the Crown. The Registrar will strike the company off the register unless there is reasonable cause not to do so. Guidance is available on grounds for objection. If in doubt, seek professional advice.

1 Company details

Company number

Company name in full

→ **Filling in this form**

Please complete in typescript or in bold black capitals.

All fields are mandatory unless specified or indicated by *

2 The application

Warning to all applicants

It is an offence to knowingly or recklessly provide false or misleading information on this application.

You are advised to read Section 4 and to consult the guidance available from Companies House before completing this form. If in doubt, seek professional advice.

I/We as director(s) / the majority of directors apply for this company to be struck off the Register and declare that:

i) none of the circumstances described in section 1004 or 1005 of the Companies Act 2006 (being circumstances in which the directors would otherwise be prohibited under those sections from making an application) exists in relation to the company and

ii) we have complied with the requirements of sections 1006 and 1007 of the Act and have given/will give copies of the application to the people listed in those sections as required. ①

This form must be authenticated by the sole director if only 1, by both if there are 2, or by the majority if there are more than 2.

→ **Go to Section 3** Authentication of the directors

① Please read the guidance on our website at: companieshouse.gov.uk or section 1004 or 1005 of the Companies Act 2006 for circumstances under which an application may not be made.

Please note that on dissolution all property and rights etc will be passed to the Crown.

DS01

Striking off application by a company

3 Authentication of the director(s)

	I am authenticating this form on behalf of the company.							
Forename								
Surname								
Authentication date	d	d	m	m	y	y	y	y
	I am authenticating this form on behalf of the company.							
Forename								
Surname								
Authentication date	d	d	m	m	y	y	y	y
	I am authenticating this form on behalf of the company.							
Forename								
Surname								
Authentication date	d	d	m	m	y	y	y	y
	I am authenticating this form on behalf of the company.							
Forename								
Surname								
Authentication date	d	d	m	m	y	y	y	y

Warning to all applicants
It is an offence to knowingly or recklessly provide false or misleading information on this application.

Please note that on dissolution all property and rights etc will be passed to the Crown.

You are advised to read Section 4 and to consult the guidance notes available from Companies House before completing this form. If in doubt, seek professional advice.

Name and date
Please ensure that you complete the name and authentication date

Authentication
This form must be authenticated by the sole director if only 1, by both if there are 2, or by the majority if there are more than 2.

Further directors
Please use a continuation page if you need to enter further authentication.

4 IMPORTANT: What to do next

Notify all parties

You must send copies of this application to all notifiable parties e.g. creditors, employees, shareholders, pension managers or trustees and other directors of the company within 7 days from the day on which the application is made.

You must also send copies to anyone who later becomes a notifiable party within 7 days of this taking place. This applies from the day of application and before the day on which the application is finally dealt with or withdrawn. Please check the guidance notes which contain a full list of those who must be notified. Failure to notify interested parties is an offence which is punishable by up to 12 months in prison (for English or Welsh companies) or 6 months in prison (for Scottish or Northern Irish companies). It is advisable to obtain and retain some proof of delivery or posting of copies to notifiable parties.

Withdrawal of striking off application by a company

If the company ceases to be eligible for striking off at any time after the application is made, and before the application is finally dealt with, as specified in section 1009 of the Companies Act 2006, then the application must be withdrawn using form DS02 'Withdrawal of striking off application by a company' available from our website: gov.uk/companieshouse

DS01

Striking off application by a company

Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name

Company name

Address

Post town

County/Region

Postcode

Country

DX

Telephone

Checklist

We may return the forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- The company name and number match the information held on the public Register.
- The correct number of current directors have authenticated and dated the form – 1 director if there is only 1 director, both if there are 2, and the majority if there are more than 2 e.g. Out of 6 directors, 4 must authenticate.
- You have included a continuation sheet (available from gov.uk/companieshouse) if applicable.
- You have enclosed the correct fee.

Important information

Please note that all information on this form will appear on the public record.

How to pay

A fee of £44 is payable to Companies House in respect of a striking off application.

Make cheques or postal orders payable to 'Companies House.'

How to send your form

You can upload certain forms to Companies House instead of sending them by post.

If you need to post your form, you must send it to the correct address.

For more information on where to send the form visit:

gov.uk/companies-house/offices

Further information

For further information, please see the guidance notes on the website at gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on our website: gov.uk/companieshouse

re South East Local Enterprise Partnership

OPINION

1. I am instructed on behalf of Essex County Council ('ECC') in relation to a proposed restructuring of the South East Local Enterprise Partnership ('SELEP'), a Local Enterprise Partnership covering East Sussex, Essex, Kent, Medway, Southend-on-Sea and Thurrock. At present SELEP operates as an unincorporated association but it is proposed that, in accordance with the LEP Review published by HMG in July 2018, SELEP will be restructured as a limited company. I am asked to advise in this regard.

Background

2. Local Enterprise Partnerships were created in 2011 to replace regional development agencies. Originally LEPs received no public funding, but from 2012 funds were made available to LEPs from the Local Growth Fund. The funds available to SELEP now also include the Growing Places Fund and the Sector Support Fund. All funds available to LEPs have to be administered by an Accountable Body. At present SELEP's Accountable Body is ECC and it is intended that it will continue to have this role after SELEP's incorporation.
3. I have been provided in my instructions with a document entitled 'Assurance Framework' which is dated June 2019. This sets out both how SELEP currently operates and refers to its planned incorporation, which a view to satisfying the requirements of the National Local Growth Assurance Framework. Paragraph 1.4 of the Assurance Framework states that 'The Assurance Framework is not a legal document, but provides a guide to the structure of SELEP together with the processes and systems which are used to manage its business including the detailed

processes applied to manage the funding delegated from Government budgets'. Unlike paragraphs 1.5, 1.6 and 1.8 paragraph 1.4 refers to '*The Assurance Framework*' rather than '*This Assurance Framework*' but it seems clear that paragraph 1.4 is intended to refer to the SELEP Assurance Framework and not the National Local Growth Assurance Framework and that the Assurance Framework intended merely as guidance on how SELEP is intended to operate on a day-to-day basis. The Assurance Framework notes that it will be updated on the incorporation of the SELEP in clause 1.6¹, although it does not seem to me that a great deal of the Assurance Framework would be affected by SELEP's incorporation save for alterations to the references to the Strategic Board and its composition, as I would assume that the board of directors of the new company would assume broadly the responsibilities currently undertaken by the Strategic Board.

4. It is envisaged that SELEP's prime function will be to provide a forum for communication between the public and private sector members and to make recommendations for the use of the Local Growth Fund allocated to SELEP. It is not proposed that SELEP will itself have any assets, staff or expenditure of its own but will operate in essence as a shell company albeit with active officers.
5. In addition to the Assurance Framework I have also been provided with:
 - a. SELEP Terms of Reference. As noted in paragraph 1.2.2 of the Terms of Reference they too will need to be updated following incorporation;
 - b. A draft framework agreement to be entered into by the incorporated SELEP and the constituent local authorities;
 - c. The existing Accountability Board Joint Committee Agreement 2015 which gave rise to the Accountability Board;

¹ Although I note there is a formatting error in clause 1.6

- d. Draft Articles of Association for the new company which will assume the current role played by SELEP ('Newco').

I shall refer to the above documents in more detail below as and when necessary.

Issues

6. I am asked to advise on the following points:
 - a. The extent and nature of any liabilities of Directors and Members of Newco arising from the future arrangements and undertaking their roles within Newco including my assessment of all potential liabilities, not merely financial liabilities;
 - b. The potential liabilities of the Local Authorities that are party to the Framework Agreement under that agreement.;
 - c. Whether changes are needed to either the draft Articles, or the draft Framework Agreement to better implement the LEP Review and/or to better protect the directors, members or Local Authorities. I have not been instructed to consider whether the draft documents are consistent with the National Local Growth Assurance Framework and do not therefore propose to do so in this Opinion.

I shall deal with these in turn.

Liabilities of members and directors of Newco

7. The potential liability of members of Newco can be dealt with very simply as there

are in reality no potential liabilities. The members of a company have rights in that company as contained in and reflected by the Companies Act 2006 ('the 2006 Act') and the company's Articles. However, unless a company's Articles impose any additional liabilities upon them, the only obligations of a member of a company are to pay the share capital (in a company limited by shares) or to pay on demand the sum guaranteed by the member (in a company limited by guarantee).

8. In this case therefore the only liabilities incurred by the members of Newco would be the potential liability to pay the sum of £1 in the event that Newco is wound up. Other than the obligation to contribute towards the capital of the company, either by way of a guarantee or purchase of shares, the only general obligation which members of a company might owe is the obligation which can sometimes arise to disclose details of ownership of shares in Part 22 of the 2006 Act. However, Part 22 only applies to public companies limited by shares, and so could not apply to Newco in any event.
9. In some cases a company's Articles can impose obligations on members of the company, some of which can be extremely onerous, such as put and call options in small quasi-partnership companies or tag-along and drag-along rights in companies formed with a view to a later acquisition by a third party. However, those types of clauses are only appropriate in commercial companies and there are no provisions of this type in the draft Articles as they stand, nor would any such clauses be possible given that Newco will not have a share capital.
10. My advice therefore is that the members of Newco would not be under any obligations as a result of their status as members of Newco, other than the obligation to pay the nominal sum of £1, by virtue of their status as a member of Newco. Of course membership of SELEP, whether incorporated or not, might be seen to carry with it societal and moral obligations and responsibilities associated

with the use of public funds. These are not legal matters which I am qualified to advise upon but in any event it does not seem to me that such wider obligations would turn on the legal structure and standing of SELEP or would be altered or increased if SELEP is incorporated.

11. The position of the directors of Newco is very different however. Directors owe a wide range of duties to a company which, while the majority have evolved through the common law and the law of equity, are now largely codified in Chapter 2 of Part 10 of the 2006 Act albeit subject to the same legal and equitable principles which applied before the introduction of the 2006 Act by virtue of the qualification to that effect in section 170(4) of the 2006. The statutory obligations in sections 171 to 177 of the 2006 Act would be binding on the directors of Newco. The statutory obligations cover:
 - a. A duty to act within powers in section 171;
 - b. A duty to promote the success of the company in section 172;
 - c. A duty to exercise independent judgment in section 173;
 - d. A duty to exercise reasonable care, skill and diligence in section 174;
 - e. A duty to avoid conflicts of interest in section 175;
 - f. A duty not to accept benefits from third parties in section 176;
 - g. A duty to declare an interest in any proposed transaction or arrangement in section 177.

12. These duties are of course owed not to members of the company, but to the company itself. It is trite law that a director's fiduciary duties are owed to the company itself, and that underlying principle is reflected by section 170(1) of the 2006 Act which provides that 'The general duties specified in sections 171 to 177 are owed by a director of a company *to the company*.' [emphasis added]

13. Given that Newco will not be a trading entity, will not have any assets, will not itself be administering the funds it is advising on and will in essence merely have an advisory role it is in my view difficult to see how its directors could in practice be held liable to Newco for a breach of any of the duties owed to it. Even if the directors of Newco acted in a way which amounted to a breach of their duties to Newco and which resulted in financial losses being incurred by the members of Newco, the members of Newco could not bring a claim against the directors based upon any losses they had incurred as a result, since the relevant duties would be owed not to them but to Newco itself.

14. In exceptional circumstances, where a company is on the verge of insolvency, directors of the company may owe a duty to creditors in addition to the duties owed to the company itself. The nature of this duty and the circumstances in which it arises was considered recently by the Court of Appeal in the decision in BTI 2014 LLC v. Sequana SA [2019] EWCA Civ 112 which confirmed that it only arose where there was a ‘real risk’ of insolvency. Once again, however, since Newco will not be a trading company and will not itself be incurring any liabilities it is difficult to see how it could become insolvent so as to trigger such a duty arising in this case.

15. The same considerations would also apply to the various provisions of the Insolvency Act 1986 (‘the 1986 Act’) under which directors can be made personally liable for losses incurred by a company, such as wrongful trading contrary to section 214, fraudulent trading contrary to section 213. Since Newco will not be trading, there does not appear to be any prospect of the directors of Newco becoming liable under these provisions in practice. The same would apply to section 212 of the 1986 Act, giving liquidators a right to recover company assets lost as a result of misfeasance by directors, given that it is not intended that Newco will at any point own any assets of its own.

16. In addition to civil liability, directors of companies may of course also face criminal sanctions by virtue of their status as directors. Criminal sanctions exist for failures to comply with obligations relating to corporate governance such as filing accounts and providing other information to Companies House. Even a failure to comply with the requirements of The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 (S.I. 2015/17) in accordance with section 82 of the 2006 Act, such as a failure to display the company's name at its registered office, is a criminal offence by virtue of section 84 of the 2006 Act.

17. The majority of criminal offences contained in the 2006 Act relate to public and publically quoted companies or companies with share capital. However, some would potentially apply to Newco and while the list below is not necessarily exhaustive there are at least fifteen potential criminal offences under 2006 Act for directors of private companies limited by guarantee:
 - a. Section 84 - failing to disclose company name in accordance with section 82;
 - b. Section 113 - failing to keep a register of members;
 - c. Section 183 - failing to disclose an interest in a transaction or arrangement in accordance with section 182;
 - d. Sections 387 and 389 - failure to keep accounting records;
 - e. Section 425 - failure to circulate annual accounts and reports;
 - f. Section 451 - failure to file accounts and reports;
 - g. Sections 501 and 507 - misleading auditors or circulating a misleading auditor's report;
 - h. Section 747 - knowingly or recklessly deceiving debenture holders;
 - i. Section 993 - fraudulent trading;

- j. Section 1004(5) - application to dissolve a company in circumstances where section 1004(1) applies;
 - k. Section 1006(4) - failure to distribute copies of an application to dissolve a company to the recipients listed in section 1006(1);
 - l. Section 1112 - misleading the Registrar of Companies;
 - m. Section 1155 - failure to give notice of appointment of company officers.
18. Some of these would once again be unlikely to apply to Newco since it will not be a trading company. It is unlikely, for example, that it will ever grant debentures so section 747 would never apply, and as a non-trading company its accounting obligations will be minimal. Overall, the offences outlined above fall broadly into two categories:
- a. offences involving dishonesty, which can be avoided relatively easily simply by the directors acting in good faith at all times; and
 - b. administrative offences such as notifying Companies House of appointments and filing accounts, which can easily arise due to innocent errors but which are, in practice, only very rarely the subject of prosecutions. For example, in the first ten years following the enactment of the 2006 Act, there were no prosecutions whatsoever under section 1155. Where prosecutions are brought for offences under the 2006 Act they are in my experience generally pursued as part of a prosecution for wide-ranging fraudulent activities, not an honest oversight.
19. A person may also become liable, by virtue of their status as a director of a company, to disqualification proceedings under the Company Directors Disqualification Act 1986. However, other than the grounds for disqualification requiring fraud or convictions of serious offences, the only grounds on which an application could be made for a disqualification order would be that the director's

‘conduct as a director of that company (either taken alone or taken together with his conduct as a director of one or more other companies or overseas companies) makes him unfit to be concerned in the management of a company’. Further, before an application can be made the company in question has to be insolvent, and since Newco will not trade insolvency is once again an unlikely prospect. The risk of disqualification proceedings is therefore in my view more theoretical than real in the absence of fraud or actual dishonesty.

20. Overall, the potential liabilities of company directors are extensive, given the wide range of fiduciary, statutory and common law duties they owe the company, the provisions of the 1986 which can impose personal liability on company directors, and the large number of criminal offences included in the 2006 Act. However, given the nature of Newco and its status as a non-trading company limited by guarantee it is my advice that in the absence of dishonesty it is extremely unlikely that any directors of Newco would be in breach of their obligations as a director so as to give rise to any real rather than theoretical liability.

Liabilities under the Framework Agreement

21. The Framework Agreement, as opposed to the Assurance Framework which I shall briefly consider below, is clearly intended to be a legal document imposing legal rights and obligations on its parties. The key obligation imposed by the Framework Agreement is the obligation in clause 3.1 requiring the parties, including the local authority parties, to ‘work together to deliver the SELEP Aims and Objectives acting in their respective capacity as Accountable Body, Accountability Board and SELEP Co’.
22. While this would in theory be a contractually-enforceable covenant, given the way in which the Framework Agreement is drafted, I cannot envisage any

circumstances in which it would give rise to any actual liabilities on the part of parties to the Framework Agreement. The obligation to ‘work together’ is too vague and uncertain to be the subject of a mandatory injunction or an order for specific performance, and given the purpose of the Framework Agreement I find it difficult to see how any of the parties to the Framework Agreement could claim to have suffered any financial loss as a result of any failure to comply with clause 3.1 so as to give rise to a claim in damages.

23. Looking at the Framework Agreement overall, most of its provisions do not impose any obligations on the local authority members at all, but are instead declaratory as to how Newco will operate. Other than the obligation to co-operate imposed by clause 3.1 the primary liability for the local authority members contained in the Framework Agreement seems to me to be the obligation to pay the Council Contributions in clause 5.11. However, since clause 5.5.1 makes the level of Council Contributions subject to approval by the relevant Council (albeit that such consent is not to be unreasonably refused) the liability arising under clause 5 will in practice be very much determined by the local authority providing the relevant contribution themselves.
24. The only other significant liability in financial terms which the Framework Agreement imposes is the obligation to reimburse other parties to the Framework Agreement for any costs incurred by those parties as a result of one member leaving the Framework Agreement. This obligation is contained in clause 24.4 and is unlimited in amount. It is also very broadly drafted, referring as it does to ‘any cost’ with the only qualifying criterium being that the cost must be ‘as a result of a Council withdrawing from this agreement’. It would appear therefore that any causal connection between a local authority withdrawing from the Framework Agreement and a cost incurred by another party would be sufficient to trigger the indemnity contained in clause 24.4. While it may be considered unlikely that any

of the local authorities would wish to exercise their right to leave the Framework Agreement, given that there is little incentive to do so, clause 24.4 could conceivably result in any local authority which did so being under significant liabilities.

25. Considering the Framework Agreement as a whole, it is my view that, other than the provisions considered above, the Framework Agreement imposes only modest liabilities on the local authority members. They are obliged to comply with the obligations to comply with FOI requests (clause 10), to comply with equality and diversity policies (clause 13) and to comply with GDPR requirements (clause 11) but given that these are all standards and policies which I assume the local authority members would comply with in any event the additional obligations to comply with them in the Framework Agreement do not seem to me particularly onerous.

Changes required to the draft Articles or the draft Framework Agreement

26. The draft Articles are clearly based on the Model Articles for private companies limited by guarantee but have substantial amendments. In my view the Articles will need quite extensive alterations as at present the Articles are internally inconsistent in places and are also inconsistent with the Framework Agreement.
27. For example, the draft Articles provide that there will be 12 Private Sector Directors, 6 Public Sector Directions and 5 Co-opted Directors in the definitions of those terms, which would make a total of 23 directors. Article 7.1 then goes onto state that there shall be 25 directors including fourteen Private Sector Directors, which is inconsistent with the definition of that term and the total number of directors provided for in the definitions section.

28. The draft Articles go on to refer to the Co-opted Directors, but do not identify how they are to be appointed other than providing, in the definition of that term, that they will be 'selected in accordance with the Assurance Framework'. However, the Assurance Framework does not at present provide any mechanism for the selection of Co-opted Directors and there are, as considered below, difficulties regarding the status of the Assurance Framework and the extent to which it is capable of modification and by whom.

29. Article 7.1, which states that Newco shall have 25 directors, is also inconsistent with Article 11.3 which anticipates that Newco might have less than 15 directors, 15 being the quorum for a board meeting by virtue of Article 11.2. Article 11.3 goes on to state that if there are fewer than fifteen board members the directors cannot take any decision other than to appoint further directors, but the Articles do not give the board any power to appoint new directors as all directors are appointed by entities other than SELEP given the definitions of the terms Private Sector Directors, Public Sector Directions and Co-opted Directors in the definitions section of the Articles. Article 19 deals with the appointment of directors and does not give the board the power to fill casual vacancies. As a result, if the number of directors fell below 15 then board would be unable to take any decisions at all. Article 17(1)(b) of the Model Articles would normally cover this position by authorising the directors to appoint further directors, but the whole of the Model Articles have been disapplied in their entirety in the draft Articles by virtue of Article 1.7.

30. Article 7.1, in stating that Newco will have a fixed number of 25 directors, is also inconsistent with Article 18, which says that the number of directors may be anything between 20 and 25. If the number of directors is intended to be fixed at 25 then there would be no inconsistency but Article 18 would be redundant. If it is intended that the number of directors will be anything between 20 and 25 then

Article 7.1 needs amending.

31. The Articles have clearly been drafted with a view to satisfying the requirements of the National Local Growth Assurance Framework and the LEP Review *Strengthened Local Enterprise Partnerships*. The latter states at page 17 that ‘Government will work with Local Enterprise Partnerships to establish a maximum permanent board of 20 people, with the *option* to co-opt an additional five board members with specialist knowledge on a one year basis’. [emphasis added] This is also inconsistent with clause 7.1 which states that Newco will have 25 directors.

32. However, while the drafting of the Articles on the number and appointment of directors will need amendments for the reasons set out above, it seems to me that they do generally satisfy the requirements of the LEP Review. This requires at least two-thirds of the board to be private sector. The Articles have clearly been drafted with this in mind, given the 12/6 private sector/public sector split in the definitions section of the Articles. However, I assume that the numbers in Article 7.1 are the correct ones and that it is in fact intended that there should be 14 private sector directors. In that case, given the definition of the term Co-opted Directors in the Articles and given that higher and further education directors fall to be treated not as public sector directors, this would leave 17 private sector directors (including Co-opted Directors) and 8 public sector directors (again Co-opted Directors) thereby just satisfying the 2/3rds to 1/3rd ratio.

33. I would note, when dealing with the issue of the appointment of directors, that there appears to be some confusion in the Articles as to how members of Newco achieve that status. Articles 23.4 provides for the appointment of members, either by members of the relevant Federated Board or by local authorities within the SELEP area. However, no person can be appointed as a member of a company

since membership of a company is a wholly voluntary act. Article 21.5 (which in fact appears after Article 23.4 and should presumably be renumbered Article 23.5²) uses a better formulation, giving the local authorities the power to nominate one member rather than a power to appoint someone as a member.

34. The LEP Review *Strengthened Local Enterprise Partnerships* requires AGMs of the Newco to be public, the former at paragraph 74 and the latter at page 6. This is reflected by the inclusion of Article 26.1, which states that the AGM will be open to the public. Clause 27.1 appears to be drafted with the intention of allowing anyone present at the AGM to speak on any matters they wish to speak on. Both of these provisions are however inconsistent with Article 30 which says that attendance and speaking at general meetings is at the discretion of the Chair and while it goes on to provide that members of the public may speak in accordance with the Public Questions Policy, a document I have not seen, it does not give them a right to attend. Articles 26.1 and 27.1 and Article 31 are therefore inconsistent and it seems to me that Article 31 does not reflect the spirit of inclusion which *Strengthened Local Enterprise Partnerships* requires.
35. The Articles have been drafted with a view to entrenching both the Articles themselves and the Assurance Framework. So far as the Articles are concerned, entrenchment is now possible following the coming into force of the 2006 Act as a result of the provisions of section 22 of the 2006 Act. The provision in the Articles at Article 40.1 which prevents any amendment to the Articles without the consent of ECC as Accountable Body would therefore be effective. I would note, however, that Article 9.3 as drafted is entirely redundant as the power to amend

² On the topic of minor amendments, I note that in Article 6.1 there should be a space between 'whilehe' on the third line, and Article 24.1.1 contains the typographical error 'mMember'

the Articles is a power conferred on the members of a company under section 21 of the 2006 Act and not the directors. Article 9.3 is therefore seeking to prevent the directors from doing something they would never have the power to do in any event.

36. Further, clause 8.2 of the Framework Agreement is inconsistent with the draft Articles. The Articles say that the Articles cannot be changed without the consent of the ECC as Accountable Body while the Framework Agreement says that they cannot be changed without the consent of the Accountability Board. Clause 8.2 of the Framework Agreement would in any event be void. A company cannot by contract fetter the rights of the members of the company to alter the company's Articles since this is a right conferred on them by statute and not something that the company can contract out of.
37. It seems to me that there is also a fundamental problem regarding the status of the Assurance Framework and the means by which it will be adopted and its terms settled. There is a fundamental and inherent problem in having a company's constitution governed by more than one document, which is that if the two documents are inconsistent and there is no provision giving one precedence over the other then the company's constitution is uncertain. As noted above, the draft Articles seek to elevate the Assurance Framework into a legally binding document, at least in parts, when it does not appear to have been drafted for that purpose. This is complicated further in the present case by the presence of the Framework Agreement, the provisions of which conflict with the Articles regarding the Assurance Framework.
38. The draft Articles refer to the Assurance Framework as being 'the local assurance framework adopted by the Company with the agreement of the Accountable Body from time to time in accordance with the requirements of the central Government

in order to pay funding to local enterprise partnerships’. This is inconsistent with the provisions of the Framework Agreement, which provides at clause 8.1 as follows:

‘8.1 The SELEP Assurance Framework sets out governance and decision making and may only be changed:

8.1.1 With the agreement of SELEP Co

8.1.2 By the Accountability Board where agreement in accordance with 8.1.1 has not been possible and the change is the minimum required in order to comply with the requirements of the National Local Growth Assurance Framework, as may be amended from time to time, and the terms upon which any Funding is paid or is proposed to be paid or which SELEP Co and/or the Accountability Board is required to make.’

39. There are various problems with the drafting of clause 8.1. Clause 8.1 provides that the Assurance Framework ‘may ... be changed’ but does not say by whom it may be changed, the perennial difficulty in drafting contractual provisions in the passive voice. It goes on to provide that it may only be changed with the agreement of Newco, but in order to have an agreement Newco must be agreeing with someone else - a person cannot agree with itself as a matter of logic and language - and that other party is not identified. It is not clear therefore in what circumstances the Accountability Board has the right to step in under clause 8.1.2 and unilaterally amend the Assurance Framework, but in any event the Framework Agreement, by giving the Accountability Board the right to unilaterally amend the Assurance Framework in certain albeit unclear circumstances is inconsistent with the Articles which does not give the Accountability Board that right.

40. The Articles are also inconsistent with clause 8.1 of the Framework Agreement given that the Articles require only the agreement of the Accountable Body to any alteration of the Assurance Framework whereas clause 8.1 refers to the Accountability Board and not the Accountable Body. The ECC as Accountable Body is of course a member of the Accountability Board, but they are not the

same.

41. In my view therefore the Articles and the Framework Agreement need revisions in order to ensure that they are internally consistent and consistent with one another. The difficulties reconciling the Framework Agreement with the Articles and the Assurance Framework seem to me, however, to reflect a much deeper underlying problem with the proposed constitution of Newco.
42. At present it is clear that decision making powers relating to the affairs of SELEP rest ultimately with the Accountability Board. SELEP can make proposals as to the use of public grant monies to be used for the purposes of the SELEP but the ultimate decision making power rests with the Accountability Board. This is clear from the flowchart at page 41 of the Assurance Framework and from clause 19.2 of the Accountability Board Joint Committee Agreement 2015.
43. The Articles as drafted say very little about the Accountability Board, other than referring to it in the definitions of the terms 'Confidential' and 'Secretariat'. However, the Framework Agreement to which Newco would be a party provides at paragraph 1.2 of Schedule 1 to the Framework Agreement that the Accountability Board would be responsible for approvals of all grants and loans, with Newco's role limited to making recommendations. It therefore appears that the proposal is that Newco's role will be the same as that current played by SELEP in that it will essentially merely be an advisory role with the Accountability Board making final decisions on funding and, under paragraph 1.3 of Schedule 1, approving any variations.
44. As to the issue of the Articles providing protection to directors and members, for the reasons set out above the members of Newco would be under no liabilities by virtue of that status other than the obligation to provide a nominal £1 and so it does

not seem to me that further protection is required. Directors are under greater potential liabilities, and the Articles include at clause 39.1.1 an indemnity in favour of the directors, although in practice the value of this is questionable given that Newco will be a shell company without assets. Similar considerations apply to the Article providing for contributions towards legal costs at Article 39.1.2.

45. It used to be commonplace for a company's Articles of Association to provide greater levels of protection for directors by either indemnifying them against all losses, even the consequences of their own breaches of duty, or by preemptively relieving them of any liability for breaches of their duties to the company save for fraud or dishonesty. However, such provisions are now void by virtue of section 232 of the Companies Act 2006 and given that statutory restriction I do not consider that the directors' obligations and liabilities could be reduced further by amendments to the Articles.

Postscript

46. Since writing my original Opinion of 3rd December 2019 I have since been asked to deal with the following issue by way of clarification of various points in my Opinion:
 - a. What steps could be taken to better protect members and directors of Newco.
47. I have also been asked to advise on the following additional issues:
 - a. What the liability, if any, of the directors of Newco would be if the board of Newco took a decision to do a particular act or provide funding to a particular recipient, but the Accountability Board disregarded that advice

and decided to take a different step or provide funding to a different recipient;

- b. Whether the directors of Newco could have any liability for decisions or actions taken by the Accountability Board and, if they could, in what circumstances any such liability might arise;
- c. Whether it is possible to restrict, or even exclude, the power of the members of Newco from doing anything apart from attending the AGM. If it is possible, what those restrictions could be and how they could be imposed and implemented.

I shall deal with these in turn.

What steps could be taken to better protect members and directors of Newco

48. As considered in paragraphs 7 to 10 above and summarised in paragraph 55, the members of Newco would not be under any liability by virtue of their status as such other than their contingent liability to pay the sum of £1 which is the sum guaranteed by them as members of a company limited by guarantee. As I advised in my email of 15th December 2019 therefore, the members are under no liabilities or obligations as members of the new SELEP company other than their obligation to contribute £1 in the event that the company becomes insolvent. There is therefore nothing from which they can be protected, better or otherwise. The only step which could be taken to provide any greater protection to the members other than the limited liability status which goes hand-in-hand with a limited liability company is to reduce the amount of the guarantee. If this was reduced to 1p then this would reduce the members' potential exposure by 99p. There are in my view no other steps which could be taken since it is impossible to protect someone against a liability which does not exist.

49. As to the directors, their position is set out in paragraph 56 above. There is a statutory limit to the degree of protection which can be afforded to directors of a company. As I also advised in my email of 15th December 2019, section 232 of the Companies Act 2006 limits the protection which can be provided to them by the company of which they are directors and to which they owe fiduciary and other duties. Section 232 is entitled ‘Provisions protecting directors from liability’ and this is an accurate reflection of its contents. It limits the extent to which provisions in a company’s constitution can protect directors from liability, and so covers this exact point. Section 232 reads as follows:

- ‘(1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.
- (2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or of an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as permitted by—
 - (a) section 233 (provision of insurance),
 - (b) section 234 (qualifying third party indemnity provision), or
 - (c) section 235 (qualifying pension scheme indemnity provision).
- (3) This section applies to any provision, whether contained in a company's articles or in any contract with the company or otherwise.
- (4) Nothing in this section prevents a company's articles from making such provision as has previously been lawful for dealing with conflicts of interest.’

50. The draft Articles already provide the protections permitted under section 234 and permit the directors to cause Newco to acquire insurance under section 233. SELEP is not a pension scheme, and so section 235 does not and cannot apply. The Articles therefore give the only protection which the directors can legally receive. Any attempt to provide the directors with a greater degree of protection under the company’s Articles would be void, by virtue of section 232(2) of the

Companies Act 2006.

51. There are, therefore, no steps which could be taken to provide better protection to the directors in the Articles. They already have, or are permitted to acquire in the form of insurance, the greatest degree of protection legally permitted. The directors have the best degree of protection they are legally allowed to have. Any attempt to give them better protection would be void. There is, therefore, by definition no better protection they could be afforded since any attempt to do so would be unlawful and void by virtue of section 232 of the 2006 Act.

Accountability Board disregarding advice from Newco's directors

52. As noted in my original Opinion, the duties owed by the directors of Newco in their capacity as such, and in the absence of any prospect of insolvency of Newco, are owed solely to Newco itself. If the directors of Newco decided that Newco should do a particular act or recommend funding but this decision was overruled by the Accountability Board under the powers vested in it under the Framework Agreement then I cannot envisage any circumstances in which this would expose the directors of Newco to any liability.
53. If the decision taken by the directors of Newco amounted to a breach of their duties to Newco, but it was overruled by the Accountability Board under the powers vested in it under the Framework Agreement, then Newco would not have suffered any loss as a result since the decision would never have been acted upon. If the decision taken by the directors of Newco was not a breach of their duties to Newco then no liability could arise as a result.
54. In the circumstances, it does not seem to me that the directors of Newco would incur any liability if their decisions were overruled by the Accountability Board.

Whether the directors of Newco could have any liability for decisions or actions taken by the Accountability Board

55. The Accountability Board would be a separate entity to Newco and the directors of Newco would not, in their capacity as directors of Newco, have any power or authority to determine the actions of the Accountability Board. Newco's directors would have the power to determine the operations of Newco and would, under the terms of the Framework Agreement, have the power to make funding recommendations to the Accountability Board, but the decisions taken by the Accountability Board would be its and is alone.
56. In those circumstances, I do not consider that the directors of Newco could be held liability for the decisions or actions of the Accountability Board.

Whether it is possible to restrict, or even exclude, the power of the members of Newco from doing anything apart from attending the AGM

57. The primary rights afforded to members of a company limited by guarantee are:
- a. the right to call extraordinary general meetings;
 - b. the right to attend general meetings, whether annual general meetings or extraordinary general meetings;
 - c. the power to vote at those meetings.
58. The power to require the directors of the company to call a general meeting is a power conferred on the company's members by statute under the terms of section 303 of the Companies Act 2006. The directors are obliged to call a general meeting if more than 5% of the members with a right to vote (in the case of a

company without a share capital) require them to do so. However, that right could in theory be excluded if none of the members had a right to vote at a general meeting.

59. The right to vote at a general meeting is provided for in section 284 of the 2006 Act. However, section 284(4) provides that ‘The provisions of this section have effect subject to any provision of the company's articles.’ It is possible for a company’s Articles to restrict or exclude a member’s right to vote. It is common in companies limited by shares for share to be divided into different classes, some of which give the holder voting rights and some of which do not. Preference shares, for example, are often issued without any voting rights attached to them.
60. It would therefore be theoretically possible for the Articles of Newco to provide that none of the members should have the right to vote at a general meeting. This would prevent the members from requiring the directors to call an extraordinary general meeting, and the members would therefore have the right to attend any annual general meeting or other general meeting called by the directors but would not have the right to vote at that meeting.
61. However, such a provision would render a number of the articles in the draft Articles completely unworkable. For example, Article 19.2 of the draft Articles provides that ‘Upon a vacancy arising for a Private Sector Director, a replacement shall be appointed by the relevant Members in accordance with any applicable requirements and policies set out in the Assurance Framework.’ If the members had no votes then they could not pass a resolution appointing a new Private Sector Director and so Article 19.2 could never take effect. Vacancies would therefore remain unfilled.
62. A company without any members capable of voting might survive for a short

period of time while the directors are able to act, but eventually it would be unable to operate if the members are unable to pass resolutions. The ultimate decision-making body of any company is its members in general meetings. The directors of a company are bound by and subject to decisions made by its members, and the appointment and removal of the directors of a company is ultimately a matter for its members. Without any members able to vote on the company's affairs, a company is doomed to failure from the outset.

63. While it would therefore be possible to draft the Articles so that members would have the right merely to attend a company's AGM but would have no right to vote that them, such an arrangement would in practice be unworkable.

If those instructing me would like to discuss any aspect of this matter further then I hope that they will not hesitate to contact me.

A handwritten signature in black ink, appearing to read 'D Bromilow', written in a cursive style.

DANIEL BROMILOW

9 Stone Buildings
Lincoln's Inn

3rd December 2019
5th January 2020
9th January 2020

re South East Local Enterprise Partnership

OPINION

ELS
Essex County Council
Seax House
Victoria Road South
Chelmsford, Essex CM1 1QH