



## Background

- The work on implementing the recommendations of the LEP Review is drawing to a conclusion, with only a few more steps to be taken before the new 'SELEP Ltd' comes into operation.
- Discussions on board composition are now completed, with final decisions on the makeup of the board agreed at the last SELEP Strategic Board meeting on 4 Oct 2019. The legal personality discussions are also concluding – the subgroup met for the final time on 11 Nov 2019 and draft documents (Articles of Association and Framework Agreement) have now been drawn up and circulated.
- ***TES members attending the SELEP Strategic Board meeting on 6 Dec 2019 will be asked to approve these draft documents.***
- Full details on the progress of the legal personality work, including the draft Articles of Association and Framework Agreement, are contained within the Strategic Board papers for the 6 Dec meeting. There's also a short briefing attached at *Appendix 1* (written for the County Council's Monitoring Officer in early November) containing a summary of the changes being made and the next steps, which you may also find helpful.

## TES members choosing Company Directors of SELEP Ltd, plus overall 'membership' of SELEP

- In order for SELEP Ltd to be properly incorporated at Companies House it will need to name its 20 Company Directors, as per the new SELEP Strategic Board structure. Each federated board will therefore need to nominate its Strategic Board members according to the agreed board composition allocation – Team East Sussex has 4 positions on the new Strategic Board, made up of the Leader of the County Council, the TES Chair, plus 2 further business representatives.
- SELEP has asked that we give due consideration to gender balance and diversity in putting forward our members to support the overall diversity requirements of the SELEP Strategic Board.
- Furthermore, TES members should take an informed judgement on the roles and responsibilities of becoming a Company Director of SELEP Ltd, with the risks and liabilities being limited through the provision of an appropriate level of Director's Insurance cover (as outlined in the Strategic Board papers for the 6 Dec meeting).
- TES members should note that SELEP's Annual Conversation with Government is scheduled to take place on 27 Jan 2020, and it's been made clear that Government expects SELEP to be incorporated at Companies House by that time. We therefore have only a very short period of time to select our two business members.
- ***Team East Sussex is asked to note and discuss the limited risks and liabilities of becoming a Company Director of SELEP Ltd.***
- ***Team East Sussex is asked to provisionally nominate the two business members it wishes to put forward as Company Directors of SELEP Ltd and represent TES on the SELEP Strategic Board.***
- ***The two nominated business members are asked to formally agree to serve as Company Directors on SELEP Ltd, and thus to seek approval through their own internal governance process as appropriate (either as a business organisation or independently as an individual business person).***
- On that final point, ESCC colleagues with the help of the SELEP Secretariat can assist in providing further details/papers to support the decision-making process. ***Our two nominated business members will need to confirm their internal approval (or otherwise) by email to Dave Evans by Mon 6 Jan 2020.***
- Also to note, the company limited by guarantee model includes a board of directors and a 'membership'. As agreed by the SELEP Strategic Board on 4 Oct 2019, the membership of SELEP Ltd will be made up of all of the federated board members, allowing for greater inclusivity and engagement of the federated boards (invited to AGMs and able to ask questions of the Strategic Board, taking a challenge/oversight role); each of our TES members will therefore automatically<sup>1</sup> be members of SELEP Ltd.

<sup>1</sup> it's not quite automatic, members will have to pay £1, refundable on retirement.

## Additional decisions to be made by Team East Sussex

- As the details of SELEP Ltd are finalised we'll obviously need to make some amendments to our own TES Terms of Reference. Fortunately the TES ToR is already quite robust, with its recruitment policy in particular a well-proven process, so any changes are likely to be minimal. However, in order to be fully aligned with SELEP Ltd from the outset it's recommended that we make the following changes immediately.
- **TES members are asked to approve the following four proposals:**
  1. Reset the clock on TES business membership

As we conducted a complete business member recruitment exercise during the summer of 2018, the current TES ToR states that business members can serve for 2 years from Sep 2018. **It's proposed that we reset this date to Mar 2020**, bringing it in line with the new tenures of SELEP Ltd (the first meeting of which will take place in Mar 2020). This means that all current TES members can continue to serve on TES without having to go through the recruitment process again next summer (as would otherwise be the case).
  2. Allow business member tenures to be extended

The current TES ToR allows business members to serve for a period of 2 years, after which they need to reapply through an open recruitment process. **It's proposed that we allow business members to simply be reappointed at the end of their two-year tenure**, subject to a decision by the TES Board to extend their tenure. Business members will be allowed to extend in this manner twice, thereby serving for 2+2+2 years, at the end of which they'll have to again reapply through the open recruitment process. There will be no limit on the number of terms a business member may choose to serve on TES. This change will still fulfil the 'open recruitment' requirements, as all business members will have been appointed in this way originally, but it brings the policy into closer alignment with that of the new SELEP Ltd.
  3. Recruit to the currently-vacant business member role

For almost all of this year we've had a vacant business member position following the departure of Derek Godfrey. At that time we chose not to immediately recruit to the position, as the ongoing task of implementing the LEP Review recommendations added a level of uncertainty. **It's proposed that we now immediately go ahead and conduct an open recruitment process for the position.**
  4. Increase our 'maximum' membership allowance

Including the above vacant position, TES has a membership of 17 (65% private- and 35% public-sector, assuming HE/FE are counted as private-sector). This number of members is satisfactory and there is no wish to change it at this time. Note however that the new SELEP Articles of Association, which includes information on federated areas, sets *a maximum limit of 50 members* per federated board. Whilst we have no intention to amend our membership at present, we should still update our TES ToR to include this clause so that it has parity with the SELEP documentation. If we do then choose to increase our membership at any time in the future, the TES ToR will give us leeway to do so at our own discretion at any time. **It's proposed that we amend our TES ToR to allow a maximum of 50 members.**
- Note that all of the above has been discussed with the SELEP Chief Operating Officer Suzanne Bennett and SELEP Governance Officer Amy Ferraro, who confirmed that the proposals are appropriate and can be legitimately incorporated into the TES Terms of Reference.
- Any changes will be implemented early in the new year and an updated draft TES Terms of Reference document will be brought back to the next full TES meeting on 16 Mar 2020 for approval.

The South East Local Enterprise Partnership (SELEP) is changing its legal personality to become *SELEP Ltd*. As one of the constituent upper-tier authorities, East Sussex County Council (ESCC) will need to approve the changes through our internal governance procedures and sign-up to a new Partnership Agreement.

### **Background**

In July 2018 the government published its 'Strengthened Local Enterprise Partnerships' document, referred to as the *LEP Review*. It included a series of recommendations/requirements on such things as openness, transparency, accountability and scrutiny in order to ensure a consistent approach to governance across all 38 LEPs. Through its Assurance Framework, SELEP already had a robust set of governance arrangements well-established, so the majority of the recommendations were adopted with a minimum of fuss.

Two of the requirements involved a much greater level of consideration: *Board Composition* (reducing the number of board members, adjusting the public/private-sector ratio, increasing diversity) and *Legal Personality* (making SELEP a limited company).

Earlier this year SELEP established two working groups to consider each of the above and come up with proposals for a way forward. The final recommendations on Board Composition were approved by the SELEP Strategic Board in October 2019, so will now be implemented. The proposals of the Legal Personality subgroup were also accepted, *but as this will involve a Partnership Agreement between SELEP Ltd and the six upper-tier local authorities of SELEP*, further approvals are required before the changes can be fully adopted (see below).

All of the above changes need to be in place by March 2020.

### **SELEP Legal Personality**

One of the key requirements of the LEP Review was that all LEPs should have a legal personality. Whilst no particular model was specified, the government did make it clear that any future funding will continue to be awarded via a local authority Accountable Body.

The Accountable Body for SELEP is Essex County Council. Previously, to allow the organisation to direct funds whilst remaining within the law and its own governance structures, SELEP devolved authority for those funds to a 'Joint Committee' (a mechanism under public law that allows local authorities to come together to make decisions such that responsibility for allocating funding is not restricted to the single organisation acting as Accountable Body). The Joint Committee was formed and continues to function under the name of the *SELEP Accountability Board*. The powers of the SELEP Accountability Board are delegated from the six upper-tier authorities who are partners in the Joint Committee Agreement. Note that the SELEP Accountability Board is not a sub-board of the SELEP Strategic Board.

Throughout the process of considering the legal personality it's been SELEP's intention *to keep things as close to the current operating model as possible* whilst at the same time 'ticking the box' for the limited company setup. SELEP has therefore agreed to the following:

- The legal personality to be adopted will be a Company Limited by Guarantee (CLG).
- The financial transactions, assets and liabilities of the partnership will remain within the Accountable Body, and the SELEP Accountability Board will continue to function.
- It is not possible to make the Accountability Board part of the new company structure (as it's a function of Local Government and therefore Public Law rather than Corporate Law), so the functions of SELEP will actually be wider than 'SELEP Ltd' and can be considered to be made up of three components – SELEP Ltd, SELEP Accountability Board and the Accountable Body.
- Whilst all of these functions can't be captured in a single organisation, the relationship between them can be set out within a **Partnership Agreement** (also referred to by SELEP as a Framework Agreement) which will lay out the respective responsibilities of the different components of SELEP described above. It will also be necessary to construct new **Articles of Association** to define the constitution of SELEP Ltd. The current **Joint Committee Agreement** setting out the responsibilities of the SELEP Accountability Board will be included within the new Partnership Agreement as an additional schedule.

- SELEP operates a ‘federated’ model, with local boards by geographical area allowing for decision making at a local level. There is close interaction between the federated boards and SELEP, with the federated boards providing an advisory function on local issues, plus project endorsement and prioritisation for their local areas. The federated boards also put forward members to sit on the SELEP Strategic Board. There are four federated boards – Team East Sussex, Kent & Medway Economic Partnership, Success Essex (formerly the Essex Business Board) and Opportunity South Essex. *This operating model will continue unchanged.*
- The Company Limited by Guarantee model includes an overall membership and a board of directors. The membership of SELEP Ltd will be made up of all the members of the four Federated Boards listed above, whilst the Company Directors will be the 20 members of the SELEP Strategic Board. Note that there are certain requirements of Board Directors of limited companies, as laid out in Corporate Law, so SELEP will seek further advice on the liabilities of the company and its Directors (in particular for the business members) and insurances will be taken out to underwrite any risks that remain (despite financial considerations not being made by the Board of Directors).

### **Next steps**

SELEP is currently drafting the overall Articles of Association and the Partnership Agreement (including the revised Joint Committee Agreement); as these will need to go through the various internal governance procedures of the upper-tier authorities, the draft documentation will be shared with local authority colleagues in early November 2019 for review/comment. At this point we’ll ensure it’s shared with our Monitoring Officer and Legal Services colleagues so they can cast a critical eye over the content and highlight any concerns.

SELEP’s Legal Personality subgroup will meet again for the final time on 11<sup>th</sup> November 2019 to consider the draft documents, after which any revised versions will be reissued.

On 19<sup>th</sup> November 2019 Suzanne Bennett, SELEP’s Chief Operating Officer, will facilitate a telecall with the Monitoring Officers of the six upper-tier authorities. The intention is to take the officers through the documentation, set out the rationale behind it and then ask the legal teams to review it after that point.

The final version documents will be presented to the SELEP Strategic Board on 6<sup>th</sup> December 2019 for approval (subject to the additional approvals of the six upper-tier authorities through December/January).

For our own internal governance process, as agreed with Democratic Services, we’ll take a report to Lead Member (Strategic Management & Economic Development) for approval on 14<sup>th</sup> January 2020. The papers will need to be published on 6<sup>th</sup> January 2020.

The overall Partnership Agreement can’t be completely finalised until ‘SELEP Ltd’ actually exists (as it needs to be party to the agreement). Once the Articles of Association are agreed by the SELEP Strategic Board in December, the registration of the company can then go ahead, and the Partnership Agreement can then be finalised/signed during January 2020.

The new Board of SELEP Ltd will meet for the first time in March 2020.