



CABINET – 26TH APRIL 2022

EAST MIDLANDS FREEPORT – COUNTY COUNCIL MEMBERSHIP

REPORT OF THE CHIEF EXECUTIVE

PART A

Purpose of the Report

1. The purpose of this report is to advise the Cabinet of the latest position on progress towards the incorporation of the East Midlands Freeport covering sites in Leicestershire, Nottinghamshire and Derbyshire and to set out the next steps in that process including:
 - i) the County Council formally joining as a member of the Freeport Company and appointing a member to serve on the Board;
 - ii) conferring authority to incorporate the company;
 - iii) the County Council becoming the Lead Authority and Accountable Body. The County Council has acted as the Lead Authority and Accountable Body for the set-up phase (approximately the last 12 months) and Government guidance on Freeport governance anticipates that role continuing in the delivery phase which is expected to last until 2027.

Recommendations

2. It is recommended that the Cabinet -
 - a) Notes the latest position and next steps in the incorporation of the East Midlands Freeport company;
 - b) Agrees that the Council becomes a member of the Freeport Company with the Leader of the Council as the nominated member to serve on the East Midlands Freeport Board;
 - c) Authorises the Chief Executive and Director of Corporate Resources to take such actions as are necessary for the Council to implement the above decisions including to incorporate the Freeport Company as initial subscriber;
 - d) Agrees that the Council assumes the role of Lead Authority and Accountable Body for the newly incorporated Freeport Company and authorises the Chief Executive following consultation with the Director of

Corporate Resources and Director of Law and Governance to make decisions as required i) as Council in the event of conflict of interest arising or as required by the Freeport Company governance arrangements and ii) on behalf of the Lead Authority and Accountable Body.

Reasons for Recommendation

3. To ensure that the Cabinet is aware of the latest position and agree the next steps in establishing the Freeport and for the Council to become a member of and incorporate the Freeport Company.
4. Government guidance, published on 1st April 2021, on Freeports Governance requires each freeport to have a nominated local authority as its Lead Authority and Accountable Body. The Cabinet previously agreed that the County Council should assume this role for the Interim Board and the proposal is that this should continue to be the case once the Freeport is formally established and incorporated.
5. Given the likely pace of decisions required to complete the formal incorporation of the Freeport the proposal is for the Chief Executive and Director of Corporate Resources to take such decisions as may be required to give effect to the incorporation.

Timetable for Decisions (including Scrutiny)

6. The Full Business Case for the Freeport was due to be submitted to the Department for Levelling Up, Housing and Communities (DLUHC) by 14th April 2022 with feedback expected during early Summer 2022. Incorporation will follow after 14th April 2022 and a formal launch will follow a positive DLUHC decision.

Policy Framework and Previous Decisions

7. On 15th December 2020 the Cabinet received a report regarding the Council's participation in the Development Corporation Interim Vehicle and the emerging East Midlands 'Freeport' proposal and resolved 'that the Chief Executive, following consultation with the Leader of the Council and the Cabinet Lead Member for Resources, be authorised to agree the Council's support or otherwise, for the submission of a Freeport bid.' The bid (in effect an Expression of Interest or EoI) was submitted to Government, with the Council's support, on 5th February 2021. The Chancellor announced that the EoI had been successful during his Budget announcement on 3rd March 2021.
8. On 22nd June 2021 the Cabinet was advised of the latest position regarding the creation of the Freeport including that the County Council would assume the role of Lead Authority and Accountable Body and incur expenditure to support progression of the Freeport proposal.

9. On 17th September 2021 the Cabinet received a further report regarding the establishment of the Freeport. Members noted action taken by the Chief Executive to support the submission to Government of an Outline Business Case (OBC) ahead of the submission deadline of 10 September and authorised the Chief Executive to submit the Full Business Case (FBC) for the Freeport on behalf of the County Council as the Lead Authority and Accountable Body for the Interim Board, and to enter into such governance and other agreements as might be required to progress the Freeport's designation.
10. Tax site designation was secured from the Treasury on 1st March 2022 with effect from 22nd March representing a key milestone in the development of the Freeport.
11. Following further discussions with DLUHC and detailed work carried out by partners, the FBC was due to be submitted on 14th April 2022, the required Government date.

Resource Implications

12. The Government provided 'Capacity Funding' for the preparation of the OBC, the engagement work needed to develop the FBC final business case and governance proposals.
13. During the set-up phase and the first year of operation the County Council as Lead Authority will fund net operating expenditure costs of c.£1.5m in the form of a commercial loan to the Freeport. This will be paid back to County Council from retained business rates. The Freeport is expected to generate c.£900m in retained business rates over the 25-year life of the Freeport.

Legal Implications

14. In January 2022, the prospective members agreed that the Freeport would be a corporate entity, in the form of a company limited by guarantee with membership of six public sector members and six private sector members as detailed in paragraph 244 below.
15. There is no specific legislation that governs the establishment of a Freeport as an incorporated association and therefore, the County Council will rely on s1 Localism Act 2011 which confers a general power of competence on the County Council to do what an individual may do (subject to any express restrictions) and s111 of the Local Government Act 1972 which confers a power to do anything that is calculated to facilitate, or is conducive or incidental to, the discharge of any of the council's functions, such as regeneration, placemaking, job creation and economic growth.
16. HM Treasury introduced a statutory instrument (the Designation of Freeport Tax Sites (East Midlands Freeport) Regulations 2022) which designated the three Freeport sites as special area for the purposes of the tax site benefits referred to below with effect from 22nd March 2022.

17. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

18. This report has been circulated to Mr. T. Pendleton CC.

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PART B

Background

19. As set out in Part A of this report the Council agreed to support the submission in February 2021 of an Expression of Interest (Eoi) to create a Freeport in the Derbyshire, Nottinghamshire, Leicestershire area which will bring additional powers and tools to strengthen the regional economy as it 'builds back better' from COVID19 and responds to the opportunities and challenges generated by the UK's exit from the EU. The Eoi was the only one from within the Midlands region (East and West) and is the only proposed inland Freeport.

20. The Government's Freeport Bidding Prospectus stated that Freeports are "a flagship Government programme that will play an important part in the UK's post-Covid economic recovery and contribute to realising the levelling up agenda, bringing jobs, investment and prosperity to some of our most deprived communities across the four nations of the UK with targeted and effective support."

21. The Eoi was submitted to Government on 5th February 2021 by the D2N2 Local Enterprise Partnership (LEP) on behalf of Derbyshire, Leicestershire and Nottinghamshire County Councils, South Derbyshire and North West Leicestershire District Councils, and Rushcliffe Borough Council, and the two LEPs, together with a range of private sector landowners with interests in the proposed Freeport sites. It was supported by local and regional MPs.

22. The Freeport proposal is intended to bring the following benefits to the economy:
 - Increase local and regional economic activity by incentivising new investment.
 - Boost international trade in high-value manufacturing goods.
 - Boost skills opportunities, increasing the number of apprenticeships, and increasing the level of skills qualifications.
 - Support regeneration by creating sustainable employment.
 - Reduce greenhouse gas emissions in industrial and energy production.
 - Improve physical and digital regional, national, and international connectivity and integration.
 - Enhance labour productivity in key sectors, such as manufacturing and logistics.

23. The Chancellor, in the Budget announced on 3rd March 2021, confirmed that the Freeport had been shortlisted to progress to the next stage. Seven other Freeports were also shortlisted: Felixstowe and Harwich, Humber, Liverpool, Plymouth, Solent, Thames, and Teesside. Part of the Humber proposal is also in the 'East Midlands' as defined by the Government for administrative purposes.

24. The members of the Freeport are as follows:

Leicestershire County Council	East Midlands International Airport Limited
Nottinghamshire County Council	SEGRO Properties Limited
Derbyshire County Council	Maritime Transport Limited
North West Leicestershire District Council	Goodman Limited
Rushcliffe Borough Council	Etwall Land Limited
South Derbyshire District Council	Uniper UK Limited

Advantages of Freeport Designation

25. A range of benefits are available to Freeports in the following policy and fiscal areas as identified in sections 3.4 and 3.5 of the Freeport Bidding Prospectus, attached as an Appendix.
26. HM Treasury has designated the tax sites at three locations within the Freeport. These are within:
 - (a) Ratcliffe-on-Soar Power Station in Nottinghamshire which is owned by Uniper, whose vision for the site is to move towards becoming a zero-carbon technology and energy hub for the East Midlands supporting continued economic growth, and helping meet the region's decarbonisation goals. These plans have the potential to create employment opportunities based around modern industrial and manufacturing uses. This could include sustainable onsite energy generation and a centre for innovation, bringing together industry and academia to help identify and develop the technologies, solutions and skills needed to help meet the UK's Net Zero. In parallel with the successful Freeport bid, work is ongoing with regional stakeholders, including the East Midlands Development Corporation, to bring forward plans for the redevelopment of the site to drive inward investment. This could happen well ahead of the closure of the power station at the end of September 2024, after it has fulfilled its commitments under the capacity market, and in line with government policy to end coal-fired power generation.
 - (b) East Midlands Airport and Gateway Industrial Cluster (EMAGIC) which is in Leicestershire and includes the Freeport's primary customs site at East Midlands Airport, the UK's largest freight airport handling 350,000 tonnes of cargo per year. EMAGIC includes plots on SEGRO's Logistics Park at the East Midlands Gateway, including access to a 50-acre Strategic Rail Freight Interchange and freight terminal, operated by Maritime Transport.
 - (c) East Midlands Intermodal Park (EMIP) which is in Derbyshire, located adjacent to the nationally significant Toyota manufacturing plant. The site has the potential to become one of the next generation of rail

connected business parks. The proposed investment would also enable a significant modal shift, from road to rail freight, reducing carbon emissions for businesses within the region.

Together the three tax sites comprise 533ha of land and are estimated to deliver c.60,000 jobs in the region and an additional £8.9bn for the local economy over the next 30 years.

Business Rates

27. Business rates retention will enhance and accelerate regional development by increasing the funds available to rate collecting authorities and managing authorities to reinvest in the EMF area and surrounding Travel to Work Area. These funds will underpin the EMF Board's investment in connectivity and skills and will turbocharge productivity and innovation in the region. The funds will drive regeneration through job growth and wage uplift triggered by the Freeport levers, and will facilitate a flourishing and innovative cluster around the target sectors.
28. Applications for Retained Rates Funding will undergo a two phased assessment approach, firstly a Gateway Review to satisfy initial eligibility criteria and then a project assessment against core themes. Based on high level modelling the Freeport is expected to generate an estimated £0.8-0.9bn in additional business rates over 25 years (after deductions by the three billing authorities in recognition of the 'no detriment' agreement) which will be used to deliver regeneration and public infrastructure. It is intended that the Freeport will pool Business Rates from the billing authorities within a single pot that has identified workstreams and projects approved by the Board to meet Freeport and regional priorities. This eases the decision-making process and reflects that, in many cases, the investment in transport and other infrastructure will benefit all sites in the Freeport given their close geographical proximity.
29. The retained business rates will be used to fund the Freeport's operational expenditure, including the funding of necessary revenue expenditure incurred through the employment of the East Midlands Freeport's executive delivery team, evaluation partner and other items as deemed necessary during the course of the delivery of the Freeport. The strategy for the use of the retained business rates will be set by the Board subject to delegation for decision making and allocation.

Role of the Lead Authority /Accountable Body

30. The Government guidance requires a single local authority (or mayoral combined authority) to act as the accountable body for a Freeport. With the primary customs site being within East Midlands Airport, which is located in Leicestershire, it was agreed that the County Council should fulfil this role in the interim and the Council took on this role from April 2021. It is now proposed that the County Council should continue as the Accountable Body for the new Freeport Company, which will involve key duties including:

- receiving and managing Government funding and monitoring/ reporting against the use of these funds;
 - upholding procurement practices;
 - providing effective support to the Freeport Board in delivering its objectives;
 - maintaining appropriate project documentation e.g. project plans and risk registers;
 - ensuring the Board operates in line with transparency, propriety and inclusivity standards;
 - publishing relevant papers, minutes and a register of interests; and
 - acting as a single point of contact for Government officials.
31. It is noted that the Government is expected to produce further or confirmatory guidance on the responsibilities of the Lead Authority and Accountable Body.
32. As the Freeport will be responsible for the proper administration of significant public monies over its life (in the region of £0.8-0.9bn of business rates plus direct grant funding including £25m of seed capital), proper oversight is required with particular responsibility on the accountable body, and in particular the Finance Director to fulfil s151 duties to 'oversee the proper financial affairs within a local authority'. This role is generally extended to cover partnership arrangement when one Authority is designated the accountable body. This is the case with Local Enterprise Partnerships (LEPs) and other public/private partnerships and also combined authorities.

Liabilities

33. The Freeport Company will be a company limited by guarantee. The Council's liability to the Freeport Company upon it being wound up will be £1. The Freeport Company is responsible for discharging its liabilities and these do not pass back to the Council in its capacity as a member. There will be agreement between members relating to the sharing of post winding up liabilities.

Governance of the Freeport

34. The Delivery Phase governance structure is centred around the EMF Board. The Interim Set Up Board is operational during the Set Up Phase and will transition to the Delivery Board upon designation of the Freeport by DLUHC. The Government's guidance on governance is that Board membership should not exceed 12 "to ensure efficacy". A case by exception has to be made to increase the Board membership. The Interim Board decided that a case should be made for the Board to comprise 13 members: an independent Chair, 6 representatives from the public sector members, and 6 representatives from the private sector/landowners. The local authority and landowner representation is prescribed in the guidance.
35. The Leader of the Council represents the Council on the Interim Board and it is proposed that he should continue as a Director of the newly incorporated

Freeport Company and to make decisions on behalf of the Council at the board. In the event of a conflict arising that precludes the Leader from making a decision or if the governance arrangements require a separate decision-making process then it is proposed that the Chief Executive be authorised to make decisions on behalf of the Council as a member of the Freeport Company.

36. To help fulfil the Council's accountable body role the Section 151 officer, the Director of Corporate Resources, the Monitoring Officer and Chief Executive, in line with Government guidance, will be entitled to attend Board meetings as observers.
37. The Board's operations will be formally defined within the Articles of Association outlining the formation of the incorporated body of the company and which are publicly available, and the Members' Agreement setting out the relationships between the Freeport and its members which are private arrangements. The Members' Agreement covers such issues as:
 - The objectives, powers and activities of the company
 - Business planning processes
 - Board composition, authority and Directors
 - Matters reserved to the County Council as lead Local Authority or the public sector partners in relation to public sector matters
 - Delegation arrangements
 - Decision making
 - Membership and admission of new members
 - Termination arrangements
 - Contractual liability sharing
 - Member obligations
 - Contracting arrangements
 - Role of the lead Local Authority
 - Governance processes for customs and tax sites operators
 - Funding arrangements including the requirement to set a strategy for allocation of retained business rates
 - Provision for delegation of decision making and allocation of retained business rates to the public sector and s151 group.
 - Accounting arrangements
 - Termination arrangements
 - Dispute resolution procedures
38. The governance arrangements provide for there to be seven subcommittees to oversee specific workstreams. It is also intended that there will be a wider Engagement Network, also in line with Government guidance, to ensure the views of key stakeholders such as LEPs, the Chamber of Commerce, Midlands Engine, Midlands Connect, universities and colleges are secured.
39. The Members' Agreement also covers the proposal that there be a Managing Director and Executive Delivery Team with responsibility for conducting the integral day-to-day operations underpinning live programme delivery. The

Executive Delivery Team will span across four core functions that are fundamental to implementation of the proposal: Executive Leadership, Marketing & Investment, Operations and Resources & Growth. The Government has also said that it has appointed an Evaluation Partner to lead on progress and performance-related data collection, monitoring, reporting and evaluation, communicating updates across the freeports as well as reporting externally to DLUHC and other authoritative bodies such as Border Force and the NCA as required.

40. The governance of the Freeport requires adherence to the principles of good governance relating to confidentiality, standards in public life (Nolan principles) conflict management etc. There is a suite of governance policies to support the work of the Freeport and it is intended that this will be supplemented by an operating manual.

Equality and Human Rights Implications

41. As the inception and implementation of EMF will drive significant investment and infrastructure development in the region, a regional transformation is anticipated, and the consequent impact upon protected groups within the region must be assessed. EMF have conducted a high-level impact assessment of the Freeport proposals upon the nine protected groups set out in the Equality Act 2010.
42. The EMF Freeport Board have expressed a commitment to managing any negative impacts upon protected groups, and to capitalising upon the potential benefits it can deliver. The Freeport is therefore committed to ensuring that diversity and inclusiveness is a fundamental driver in its activities and the interim board has committed as part of its diversity statement to:
- a. give all partners, stakeholders, consultation groups and members of the local and wider community a platform to have their voices heard and ideas discussed,
 - b. embrace differences in age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation to ensure all partners, stakeholders and members of the community feel valued, involved and proud to be part of the East Midlands Freeport initiative,
 - c. bring together people from a broad range of backgrounds, geographies, organisations, disciplines, and specialisms to promote informed and forward-thinking discussions as well as rounded and intelligent decision-making,
 - d. ensure representation on the Board at both a local and wider regional level, to promote a spirit of communal pride and harvest engagement across a broader geography of stakeholders and consultation groups,
 - e. strive to create a collaborative, inclusive and respectful environment in which innovation, information sharing, creative thinking and bold ideas are actively encouraged and listened to,
 - f. build a safe environment of openness and honesty to promote a culture of listening, learning, empathy and wellbeing.

Background Papers

Report to the Cabinet on 15 December 2020 “East Midlands Development Corporation ‘Interim Vehicle (Devco)’ and Freeport Proposal”

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6000>

Report to the Cabinet on 22nd June 2021 - “East Midlands Global Gateway Freeport”

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6444>

Report to the Cabinet on 17th September 2021 - “East Midlands Global Gateway Freeport”

<https://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=6446>

Appendix

Freeport Bidding Prospectus extract - Sections 3.4 and 3.5

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