

	<p>2. RECOMMEND TO COUNCIL THAT THE COUNCIL JOINS THE EAST MIDLANDS FREEPORT COMPANY;</p> <p>3. RECOMMENDS TO COUNCIL THAT IT DELEGATES THE FINALISATION OF THE MEMBERS AGREEMENTS, ARTICLES OF ASSOCIATION AND ANY OTHER AGREEMENTS NECESSARY TO FACILITATE THE INCORPORATION OF THE EMF COMPANY TO THE CHIEF EXECUTIVE;</p> <p>4. NOTE THE INTENTION OF THE CHIEF EXECUTIVE TO APPOINT THE PORTFOLIO HOLDER FOR INFRASTRUCTURE AS DIRECTOR OF THE EAST MIDLANDS FREEPORT COMPANY.</p>
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1.0 BACKGROUND

1.1 The East Midlands Freeport submitted an expression of interest and outline business case to government in September 2021. It is the only airport centred inland Freeport in England based around three core sites:

- East Midlands Gateway Industrial Cluster (EMAGIC)
- Uniper’s Ratcliffe on Soar Site
- East Midlands Intermodel Park (EMIP)

1.2 Cabinet have considered reports in relation to the Freeport project at their meetings on 25 January and 9 November 2021. At the meeting of Cabinet on 25 January 2021, Cabinet endorsed the submission of the Freeport proposition to Government following which an interim board was established to develop the proposition further with Leicestershire County Council being the lead accountable body.

1.3 Cabinet considered the progress made in the development of the Final Business Case (FBC) on 15 February 2022. They endorsed the work of the Freeport Board; agreed to support in principle the draft FBC, noted that there was further work to be done on the governance of the EMF and delegated authority for final sign off to the Chief Executive in consultation with the Portfolio Holder. Cabinet also recognised the ongoing work around business rates and noted that a report would be brought to them in relation to the Discretionary Rate Relief Policy. That report is at item 6 on this agenda.

1.4 The Cross Party Devco and Freeport Working Group met on 5 April 2022. They were briefed on the latest position on the EMF project, governance documents and decision making timeline and had the opportunity to ask questions and make comments about progress.

1.5 The Freeport Board met on 7 April 2022 to review the final draft FBC and accompanying appendices. The Portfolio Holder advised the Board that the Council was able to support the submission of the FBC to government and that full Council would be asked to make the decision on whether to join the EMF Company at their meeting on 10 May 2022. The FBC was submitted to government on the 15 April

2022. If the EMF submission is successful, it is expected that the EMF Company will be incorporated at the end of May 2022.

2.0 PLANNING IMPLICATIONS

- 2.1 The report to Cabinet on 15 February 2022 set out the position in relation to the East Midlands Airport and Gateway Industrial Cluster (EMAGIC) site. That need not be repeated here and Cabinet are referred back to the earlier report for that detail. Since that meeting, Cabinet will be aware that the Government designated the EMAGIC site as a tax site on 22 March 2022. The Government also designated 2 other areas within the Freeport area as tax sites (East Midlands Intermodel Park (EMIP) and the Uniper's Ratcliffe on Soar Site at the same time. Neither of these areas fall within NWL.
- 2.2 Cabinet will recall, from the February report, that work was being done by the Council, as Local Planning Authority, to assess how the designation of the tax site would affect the consideration of the site through the Local Plan or Development Management processes. Cabinet were advised that the outcome of that work would be reported back to members via the appropriate route.
- 2.3 That work has now been concluded and while not planning legislation, the designation of EMF as a Freeport is a statement of government policy which has been re-enforced very recently in the Levelling Up White Paper. As such, the designation and economic benefits of the EMF would need to be given significant weight as part of the consideration through the Local Plan process, or the case of a planning application, the economic benefits would be a material consideration to be balanced against all other environmental impacts such as severe impact upon the highway network, impact upon visual and rural amenity and the setting of heritage assets, in particular Diseworth Conservation Area, and risk of increased flooding.
- 2.4 All matters relating to the role of the Council, as Local Planning Authority will be dealt with via the statutory planning process and are not for consideration by Cabinet in this report.

3.0 LEGAL AND GOVERNANCE IMPLICATIONS

Power to join a company

- 3.1 The Council has the power to join a company limited by guarantee under the general power of competence in Section 1 of the Localism Act 2011 ("the 2011 Act"). This gives the Council the power to do anything that an individual might do. The power is restricted by Section 4 of the 2011 Act which requires that: a thing done for a commercial purpose must be something that the Council may also do for a non-commercial purpose; it must not be something that the Council is required to do by statute; and if done for a commercial purpose, then it must be done through a company.
- 3.2 The aim of the Freeport is to attract investment and spur local and regional economic growth as well as enhancing international trade, by simplifying the customs procedures for firms within the Freeport zone and reducing administrative costs of trading goods with the rest of the world thereby increasing competitiveness. These are not activities that the Council is required to do by statute and are activities that can be done

for a non-commercial purpose, therefore, the general power of competence is engaged and can be relied upon to join the Freeport company.

3.3 Governance documents

3.4 As Cabinet will be aware, the Freeport is currently operating under an informal collaboration agreement between the relevant public and private sector partners. The Board decided that, should the government designate the Freeport after submission of the FBC, it will establish itself as an incorporated body. The preferred option for an incorporated body is a Company limited by guarantee. The FBC sets out the proposed governance structure for the EMF Company, including the draft Members Agreement and Articles of Association. The Council has been represented on the EMF Governance Working Group, which has been working on these documents, by the Monitoring Officer and Legal Team Manager. A summary of the key matters contained within both agreements is set out at appendix A to this report.

3.5 The Members Agreement sets out the relationship between the Limited Company and its Members, of which the Council is one. It includes, amongst other things:

- The objectives of the Company, its powers and activities
- The Board composition, role of Chair and arrangements for appointment of Directors
- The process for approving the Business Plan
- Reserved matters and requirements for decision making within the Company
- Member liabilities (if any)
- Funding of the EMF Company
- Member and EMF Co obligations
- Provisions for default and termination
- Role of Leicestershire County Council as the lead authority.

3.6 The Members agreement also notes that other legal agreements may be required to facilitate the operation of the Freeport Company. For example, there will need to be a Business Rates Agreement to govern the payment of Business Rates by the Council and other Billing Authorities to the EMF Freeport. In addition, to support the initial set up and early operation of the Company, Leicestershire County Council will provide support services to the Company. This will be the subject of a separate services agreement between the Company and the County Council.

3.7 The Articles of Association govern how the EMF Company will operate, effectively its Constitution. It includes, amongst other things:

- Directors' powers and responsibilities
- Directors' decision-making
- Appointment of Directors
- Membership and member decision-making
- Arrangements for general meetings of the Company
- Administrative matters, e.g. company seal and record-keeping

3.8 This Council has contributed to the drafting of these key governance documents via the working group process. The work has focussed on agreeing key principles and arriving at a draft of the documents which all the Board are comfortable can be submitted to government as part of the FBC. It is accepted that it may be necessary to refine the drafting post submission. Council will be asked to delegate the power to finalise the governance documents to the Strategic Director, when they consider the matter on 10 May 2022.

- 3.9 One of the key issues which was discussed by the Governance Working Group was the alignment of the EMF Company and EM Devco Company. It is understood that this will be the subject of a memorandum of agreement between Leicestershire and Nottinghamshire County Councils as the respective lead authorities for the two entities. A report will be brought back to a later meeting of Cabinet which looks at the first years' work of the EM Devco.

Role of Directors and the Council as Member of the Company

- 3.10 The Council will need to appoint a Director to sit on the EMF Company Board. Directors have various duties to the Company, including those codified in the Companies Act 2006. They include ensuring that the company follows its constitution, acting in good faith and in the interests of the company, exercising independent judgement and avoiding any conflicts of interest, promoting the success of the company, exercising skill and care, ensuring company compliance and having oversight of the work of the Executive team.
- 3.11 The Chief Executive has the power to appoint a Director to a company in accordance with Section 3 of the Constitution. It is proposed that the Portfolio Holder for Infrastructure be so appointed.

4.0 INTERNAL GOVERNANCE PROCESS

- 4.1 The Board have been working at pace on what has been a large and complex project. The deadlines for the submission of the FBC have been fixed by government and they have not allowed for the prior consideration of this matter by Scrutiny. The internal project team have briefed the cross party working group as set out at para 1.2 above.
- 4.2 Full Council will be asked to consider the decision to join the EMF Company at its meeting on 10 May 2022.

5.0 FINANCIAL IMPLICATIONS

- 5.1 On the 1 March the government announced the designation of the tax sites that would be included within the East Midlands Freeport. The tax site designation took effect from 22 March 2022 and cabinet will be considering recommendations for a new Business rate retention policy under Item 6 of the Cabinet agenda.
- 5.2 The District continues to take an active role within the Infrastructure Working Group ensuring that a co-ordinated approach is taken to balance the growth and impact of infrastructure and there will be a group of S151 officers responsible for ensuring that projects are fully financed and include sufficient funds to deal with any infrastructure requirements together with the allocation of business rates. North West Leicestershire District Council will be fully represented on this group.

Policies and other considerations, as appropriate	
Council Priorities:	- Support for businesses and helping people into local jobs.
Policy Considerations:	None identified
Safeguarding:	None identified
Equalities/Diversity:	Inclusive growth is a key theme in the business case ensuring that, as far as possible, the Freeport brings benefits for all. As well as creating jobs the focus is on the quality as well as the accessibility of those jobs.
Customer Impact:	None identified
Economic and Social Impact:	The East Midlands Freeport has the potential to attract investment and spur local and regional economic growth as well as enhancing international trade. This means new jobs and associated infrastructure to benefit our local residents and communities.
Environment and Climate Change:	Government Net Zero goals are at the heart of the East Midlands Freeport value proposition and the Board are fully committed to supporting clean growth, supporting businesses to deliver on ambitious emissions targets. In addition the freeport partners are working to net zero; Segro is committed to achieving Net Zero by 2030 and East Midlands Airport aims to achieve net zero carbon by 2038.
Consultation/Community Engagement:	The East Midlands Freeport has developed a focused and robust stakeholder management and communications strategy as part of the full business case, which aims to establish sustainable and inclusive partnerships with a broad array of external stakeholders and strengthen EMF's local and commercial offer.
Risks:	Risks associated with the approval of the East Midlands Business Rates Relief as set out in the accompanying report under item 6 are minimal. Planning considerations are set out in this report under paragraph 2. The risk of reduced revenue to the district through loss of business rates income has been considered and a no detriment policy on business rates forms the basis of the full business case.
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