

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

ANNUAL COUNCIL – TUESDAY, 10 MAY 2022



<b>Title of Report</b>	<b>EAST MIDLANDS FREEPORT UPDATE</b>	
<b>Presented by</b>	Councillor Robert Ashman Deputy Leader and Infrastructure Portfolio Holder	
<b>Background Papers</b>	<a href="#">Freeport Update (restricted document) Cabinet - 9 November 2021</a>  <a href="#">Freeport Proposition Cabinet - 25 Jan 2021</a>  <a href="#">East Midlands Freeport Update (restricted document) Cabinet - 15 February 2022.</a>  <a href="#">East Midlands Freeport Update and East Midlands Freeport Business Rates Relief Policy Reports – Cabinet 26 April 2022.</a>	<b>Public Report:</b> Yes
<b>Financial Implications</b>	The East Midlands Freeport Final Business Case submitted to Government included a 'no detriment' arrangement which seeks to ensure the Council receives the same level of retained rates that it would have received had no freeport existed. Furthermore, the EMF Company is proposed as a Company limited by guarantee protecting the Council from financial risk.	
	<b>Signed off by the Section 151 Officer:</b> Yes	
<b>Legal Implications</b>	Legal implications are detailed in this report	
	<b>Signed off by the Monitoring Officer:</b> Yes	
<b>Staffing and Corporate Implications</b>	There are no staffing implications. Corporate implications are detailed in the report.	
	<b>Signed off by the Head of Paid Service:</b> Yes	
<b>Purpose of Report</b>	To update Council on the progress of the East Midlands Freeport (EMF) project and to consider whether the Council should join the EMF Company.	
<b>Recommendations</b>	<b>THAT COUNCIL</b>  <b>1. NOTE THE PROGRESS OF THE EMF PROJECT AND</b>	

	<p><b>THE RECOMMENDATIONS OF CABINET FROM THEIR MEETING ON 26 APRIL 2022;</b></p> <p><b>2. APPROVES THE COUNCIL TO JOIN THE EMF COMPANY AND PARTICIPATE IN THE INCORPORATION OF IT;</b></p> <p><b>3. APPROVES, IN PRINCIPLE, TO THE COUNCIL ENTERING INTO THE MEMBERS AGREEMENT AND DELEGATES AUTHORITY FOR AGREEING THE FINAL FORM OF THE MEMBERS AGREEMENT, ARTICLES OF ASSOCIATION AND ANY OTHER DOCUMENTS/AGREEMENTS REQUIRED TO FACILITATE INCORPORATION OF THE COMPANY, TO THE CHIEF EXECUTIVE IN CONSULTATION WITH THE PORTFOLIO HOLDER.</b></p>
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## **1.0 BACKGROUND – WHAT IS A FREEPORT?**

- 1.1 A Freeport is a type of special economic zone. The aim of a Freeport is to create a favourable business environment 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. Goods entering a free zone are not subject to typical import procedures. The goods can be processed and re-exported from the zone without being considered to have entered the host country. This does not, however, imply that the activities carried out within the Freeport are exempted from other regulatory requirements of the host country such as employee rights or health and safety.
- 1.2 Freeports are a flagship government programme that are expected to play an essential part in the UK's post-Covid economic recovery and contribute to realising the levelling up agenda; bringing jobs, investment and prosperity across the four nations of the UK through the benefits and incentives within the policy. The establishment of a Freeport typically leads to the creation of new jobs and associated infrastructure which benefit local residents and communities.
- 1.3 In addition to the customs and tariff benefits, Freeports will also be able to access significant tax benefits, including Stamp Duty Land Tax Relief, Enhanced Structures and Buildings and Capital Allowances, Employer National Insurance Contributions, Rate Relief and Business Rates Relief. Reliefs will be available for all new businesses, and certain existing businesses (where they expand) for a period of 5 years commencing from the tax designation date of Freeport sites.
- 1.4 On creation of a Freeport, Councils are granted the ability to retain all business rates above an agreed baseline to reinvest into their local communities over a 25 year period without reset. The principle behind this arrangement is that it gives councils the ability to reinvest receipts into the Freeport tax site and the certainty to borrow to invest in regeneration and infrastructure that will support further growth. In the case of the EMF, retained business rates from each billing authority will be paid over to the EMF Company (see below).

## **2.0 EAST MIDLANDS FREEPORT PROJECT PROGRESS**

- 2.1 In February 2020 the Government launched a consultation to inform a future Freeports policy. A formal response was submitted on behalf of the East Midlands region which was developed by a working group of key local stakeholders including North West Leicestershire District Council and led by the D2N2 Local Enterprise Partnership (LEP) and Leicester and Leicestershire LEP.
- 2.2 The EMF area is shown on the plan attached at Appendix A. The EMF is a private/public sector project which comprises the County and District/Borough Councils covering the Freeport area (Leicestershire, Nottinghamshire and Derbyshire County Councils and North West Leicestershire District Council, South Derbyshire District Council and Rushcliffe Borough Council) and the businesses within it (including East Midlands Airport, Segro and Uniper UK).
- 2.3 The EMF is an example of public-private partnership, with organisations from each sector working closely together. Private sector partners share the ambition and the objectives of the Freeport, seeking to deliver benefits for the East Midlands region, as well as commercial benefit for their organisations. In evidence of this, private sector partners comprise half of the Delivery Board membership from set up through to delivery.
- 2.4 Cabinet have considered reports in relation to the Freeport project at their meetings on 25 January and 9 November 2021 and 15 February and 26 April 2022. At its meeting 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. The Council has played an active part in the Freeport Board, with representation by the Portfolio Holder and support from the former Chief Executive.
- 2.5 The EMF 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)
- 2.6 Since September 2021, work has continued to develop the Final Business Case (FBC) for submission to government by 15 April 2022. 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 to agree to submit the FBC to Government to the Chief Executive in consultation with the Portfolio Holder.
- 2.7 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.
- 2.8 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 this meeting. 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.

- 2.9 Cabinet considered the latest position on the project at its meeting on 26 April 2022. Cabinet and Council have different decisions to make based on their respective legal and constitutional powers. In terms of those matters within Cabinet's remit, they noted the progress of the project and the intention of the Chief Executive to appoint the Portfolio Holder as a Director of the EMF Company, should a decision to join the company be made by Council. Cabinet also agreed to recommend to Council that the Council join the EMF Company on the basis of the current draft members' agreement and articles of association and delegate the finalisation of those documents and any others necessary to facilitate the incorporation of the EMF Company to the Chief Executive in consultation with the Portfolio Holder.

### **3.0 PLANNING IMPLICATIONS**

- 3.1 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. Members may 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 this Council's area.
- 3.2 Officers have undertaken work on behalf of 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.
- 3.3 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.
- 3.4 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 Council in this report.

### **4.0 LEGAL AND GOVERNANCE IMPLICATIONS**

#### **Power to join a company**

- 4.1 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.

- 4.2 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.

### **Governance documents**

- 4.3 The Freeport is currently operating under an informal collaboration agreement between the relevant public and private sector partners. The EMF 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 based on key principles agreed by the EMF Board, by the Monitoring Officer and Legal Team Manager. A summary of the key matters contained within both agreements is set out at appendix B to this report. A full copy of the draft documents are available to members on request.

- 4.4 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.

- 4.5 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 Company. 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 EMF Company and the County Council.

- 4.6 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

4.7 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. If Council agree to the Council joining the EMF Company, it confirms its agreement to the terms set out in these documents. However, it is accepted that it may be necessary to refine the drafting post submission if any comments are received from any EMF Company Member. Council are therefore being asked to delegate the power to finalise the governance documents to the Chief Executive.

4.8 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**

4.9 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.

4.10 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 once EMF Company is incorporated.

4.11 Private limited companies are owned by one or more individuals (human or corporate). They are known as members. The role of company members includes:

- Providing any capital to the business (no capital is being sought in relation to the EMF Company. Its activities are funded by business rates).
- Appointing directors
- Determining the rights and powers of directors (this is done via the list of reserved matters in the Members Agreement)
- Making decisions on matters reserved to them
- Participating in the EMF Company AGM

4.12 Should the Council need to appoint a Councillor to act as a representative of the Council as a Member, this will be considered at a later date. The Chief Executive has the constitutional power to make such an appointment.

## **5.0 INTERNAL GOVERNANCE PROCESS**

5.1 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 2.7 above.

## 6.0 FINANCIAL IMPLICATIONS

- 6.1 On the 1 March 2022 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.
- 6.2 North West Leicestershire District Council will be the accountable body for administering the business rates for the parts of the Freeport in its area. This means that the Council will grant relief to companies moving to the Freeport in accordance with a Rates Relief Policy agreed by Cabinet on 26 April 2022. The Government will reimburse the Council for all relief granted.
- 6.3 The Council will retain all business rates growth above an agreed baseline, free from any Government levy or reset, for a period of 25 years. The Final Business Case submitted to Government includes a 'no detriment' arrangement which seeks to ensure the Council receives the same level of retained rates that it would have received had no freeport existed. The remaining business rates gain will be available to the Freeport via the Business Rates agreement to be finalised as mentioned in the Governance section above.
- 6.4 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 and no capital contribution is being sought.

<b>Policies and other considerations, as appropriate</b>	
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 proposal 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:	<p>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.</p> <p>Planning considerations are set out in this report under paragraph 2.</p>
Officer Contact	James Arnold Strategic Director <a href="mailto:James.arnold@nwleicestershire.gov.uk">James.arnold@nwleicestershire.gov.uk</a>