

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**COUNCIL – TUESDAY, 18 JUNE 2024**



<b>Title of Report</b>	<b>EAST MIDLANDS FREEPORT UPDATE</b>	
<b>Presented by</b>	Councillor Keith Merrie MBE Portfolio Holder Infrastructure	
<b>Background Papers</b>	<a href="#">East Midlands Freeport Update - Council 10 May 2022</a>	<b>Public Report:</b> Yes
<b>Financial Implications</b>	There are no direct financial implications arising from this report.	
	The Council will allocate incentives through the East Midlands Freeport Business Rates Relief scheme, which will be refunded to the Council subsequently by the Government. The East Midlands Freeport Business Rates Relief Policy is largely technical in terms of operation and application. The Policy closely follows Government Guidance, which has gone through appropriate due diligence, and provides for five years of relief from businesses moving into or expanding (under strict criteria) within the Freeport designated areas.	
	<b>Signed off by the Section 151 Officer:</b> Yes	
<b>Legal Implications</b>	Legal implications are detailed in the report.	
	External legal advice has been provided to the Council (and the other Billing Authorities) by DWF in relation to the establishment of the EMF company and associated governance documents, subsidy control and reports to Council and Cabinet.	
	<b>Signed off by the Monitoring Officer:</b> Yes	
<b>Staffing and Corporate Implications</b>	There are no staffing and corporate implications arising from this 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.	
<b>Recommendations</b>	<b>THAT COUNCIL:</b> <ol style="list-style-type: none"> <li><b>1. NOTES THE LATEST POSITION IN RESPECT OF THE EAST MIDLANDS FREEPORT.</b></li> <li><b>2. SUBJECT TO CABINET APPROVING THE FREEPORT BUSINESS RATES RELIEF POLICY, CONFIRMS THE DELEGATION OF THE FINALISATION OF THE MEMBERS' AGREEMENTS,</b></li> </ol>	

	<p style="text-align: center;"><b>ARTICLES OF ASSOCIATION AND ANY OTHER DOCUMENTS/AGREEMENTS NECESSARY TO FACILITATE THE INCORPORATION OF THE EMF COMPANY TO THE CHIEF EXECUTIVE IN CONSULTATION WITH THE RELEVANT PORTFOLIO HOLDER.</b></p>
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## **1.0 BACKGROUND**

- 1.1 This report provides an update on the developments of the EMF as overseen by the Council. Significant progress has been made since the last report dated 10 May 2022, with key milestones achieved in governance, infrastructure planning, and strategic partnerships.
- 1.2 The Full Business Case (FBC) was submitted to Government on the 15 April 2022.
- 1.3 At its meeting on 10 May 2022, Council received an update in respect of the EMF at that time. The report highlighted progress made to date, in particular that the Freeport Board had 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 the meeting of 10 May 2022. A decision was made at this meeting to join the EMF company.
- 1.4 Cabinet considered the latest position on the project at its meeting on 26 April 2022. Council was advised that Cabinet and Council have different decisions to make based on their 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 for Infrastructure 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 joins the EMF Company based on 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.
- 1.5 The report outlined the legal implications, governance structure and the process for the Council to join the EMF.
- 1.6 On 10 May 2022, Council approved, in principle, to enter into the Members' Agreement and delegated 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.
- 1.7 The formation of the East Midlands Freeport, like other freeports in the UK, is a complex process that involves various stages, including securing government approval, completing tax and customs designation processes, and receiving approval on business cases.
- 1.8 One of the key aspects of the Freeport initiative is the provision of various financial incentives and subsidies to businesses operating within the Freeport zones. These include measures such as zero rate of secondary National Insurance contributions for Freeport employees, Stamp Duty Land Tax relief, Enhanced Structures and Buildings Allowances, Enhanced Capital Allowances, Business Rates Relief and Seed Funding.

- 1.9 For the billing authorities (North West Leicestershire District Council, South Derbyshire District Council and Rushcliffe Borough Council) to approve the final business rates relief policy, the approval of a subsidy control scheme was a prerequisite, followed by the subsequent agreement on the business rates relief policy.
- 1.10 There has been a delay relating to Subsidy Control which can be attributed to the Government announcing that it would publish guidance which sets out the conditions which apply to the award of Freeport business rates relief. This was published in late April 2024 in the form of government of guidance.
- 1.11 This guidance states that billing authorities, when awarding relief, will need to meet the conditions of the stated legacy subsidy scheme. This operates in a similar manner to other council business rates relief schemes, with Government reimbursing the billing authority for the amount of relief awarded.
- 1.12 The issue of a subsidy scheme has been the subject of legal advice from DWF, which confirms that any legal risk around the establishment process has in theory passed (as the challenge window has now expired, even if that is dated back to April 2024). The Subsidy Control Act 2022, introduces new legal considerations, including legacy subsidy schemes. It is improbable that the Freeport scheme, endorsed by central government as the preferred exemption method, would face legal challenges. If the Council adheres to the scheme's conditions and maintains proper records, the risk of further challenges is minimal.
- 1.13 The confirmation of the Subsidy Control Scheme marks a significant milestone, allowing for the advancement of the EMF governance structure and the establishment of the company's operational framework. Additionally, the Business Rates Relief Policy will be considered by Cabinet on the 25 June 2024.
- 1.14 Further updates to note are:
- In January 2023, Tom Newman-Taylor was appointed as the Chief Executive of EMF. Additionally, Nora Senior CBE was appointed as the non-executive Chairperson of the Board on 21 June 2022.
  - The Council continues to play a strategic role as a board member, collaborating with other councils, business groups, and industry leaders to drive the project forward.
  - The EMF received formal government approval to commence operations on 30 March 2023.
  - The Government announced in November 2023 an extension of the window to claim Freeport tax reliefs by an additional five years.
  - The Business Rates Retention Agreement has been drafted which includes a "no detriment" agreement, this being a pivotal component of the retained business rates retention scheme, ensuring that billing authorities participating in the pilot are not financially disadvantaged compared to their position under the national 50% scheme.
- 1.15 This decision will be made by the Chief Executive, unless the Council chooses a different process. 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.

## **LEGAL AND GOVERNANCE IMPLICATIONS**

- 1.16 The report to Council on 10 May 2022 set out the power of the Council to join the Company. The report also detailed the governance documents which would be required. In summary, it is intended that the EMF will form a company limited by guarantee. This will require members of the company to enter into a Members' Agreement and agree Articles of

Association. A summary of the key matters contained in both documents is attached at Appendix One to this report. A full copy of the draft documents is available to members on request.

1.17 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.

1.18 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.

1.19 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.

Policies and other considerations, as appropriate	
Council Priorities:	<ul style="list-style-type: none"> <li>- Planning and regeneration</li> <li>- A well-run council</li> </ul>
Policy Considerations:	None.
Safeguarding:	None.
Equalities/Diversity:	None.
Customer Impact:	None.
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, Climate Change and zero carbon:	None.
Consultation/Community Engagement:	None.
Risks:	As part of its Corporate Governance arrangements, the Council must ensure that Risk management is considered and satisfactorily covered in any report put before elected Members for a decision or action.
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