
REPORT TO:	COUNCIL	AGENDA ITEM: 8
DATE OF MEETING:	27 JUNE 2024	CATEGORY: DELEGATED
REPORT FROM:	CHIEF EXECUTIVE	CATEGORY: OPEN
MEMBERS' CONTACT POINT:	MIKE ROYLANCE HEAD OF ECONOMIC DEVELOPMENT AND GROWTH mike.roylance@southderbyshire.gov.uk	DOC:
SUBJECT:	EAST MIDLANDS FREEPORT	
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: FM

1.0 Recommendations

- 1.1 Members approve the Council becoming a member of the East Midlands Freeport (EMF).
- 1.2 Members authorise the Chief Executive, in consultation with the Leader, to finalise and approve the EMF Members' Agreement, Articles of Association and other documents necessary to facilitate the incorporation of the EMF Company.
- 1.3 Council appoints the Chair of the Environmental and Development Services Committee as a Director of the EMF Company.
- 1.4 Members approve the Council's East Midlands Freeport Business Rates Relief Policy (Appendix 1) and to authorise the Executive Director – Resources and Transformation, to finalise the Policy.

2.0 Purpose of the Report

- 2.1 This report seeks Member's approval for the District Council to become a member of the Freeport, agreeing to the associated governance and operating arrangements and approval of the East Midlands Freeport Business Rates Relief Policy.

3.0 Detail

Background

- 3.1 In November 2020, the Government launched the Freeport bidding prospectus, setting out plans to provide the designated areas with special tariff and duty status to fuel economic growth, 'level up' underperforming regions, and promote innovation and regeneration.
- 3.2 At the 21 January 2021 Environment and Development Committee, Members endorsed the submission of a Freeport proposal for the East Midlands to Government, including a site within South Derbyshire.

- 3.3 In March 2021, the Government announced that, subject to completing the necessary authorisation processes, bids from eight locations in England had been successful, including the East Midlands.
- 3.4 In September 2021, an Outline Business Case for an East Midlands Freeport was submitted to Government. This was assessed positively, and work progressed to develop a Full Business Case for appraisal by Government.
- 3.5 At the 14 April 2022 Council meeting, Members endorsed the recommendations for Officers to contribute to the development of the Full Business Case, and for the Leader to sign a letter of support.
- 3.6 On 30 March 2023 the Government approved the Full Business Case and the East Midlands Freeport achieved final Government sign off. The next step is for the public and private organisations involved to incorporate the Freeport by seeking approval to become members of the Freeport.

What is a Freeport?

- 3.7 Freeports are special areas within the UK's borders where different economic regulations apply. Freeports in England are centred around one or more air, rail or seaport, but can extend up to 45km beyond the port(s). The Freeport model envisages a package of measures, comprising tax reliefs, customs, business rates retention, planning, regeneration, innovation and trade and investment support.
- 3.8 Eligible businesses in Freeports can enjoy a range of tax incentives, such as enhanced capital allowances, relief from stamp duty and employer national insurance contributions for additional employees. These tax reliefs are designed to encourage the maximum number of businesses to open, expand and invest in Freeports which in turn will boost employment.
- 3.9 Freeports can benefit from a range of customs measures, allowing imports to enter the Freeport custom sites with simplified customs documentation and delay paying tariffs. This means that businesses operating inside designated areas in and around the port may manufacture goods using these imports, before exporting them again without paying the tariffs and benefit from simplified customs procedures.
- 3.10 Each Freeport will be granted seed capital funding, primarily to be used to address infrastructure gaps in tax and/or customs sites that are holding back investment.
- 3.11 Freeports encompass both opportunities and implications for the treatment of Business Rate relief, uplift and recycling. Much like an Enterprise Zone, billing authorities have the scope to retain Business Rates and recycle receipts, including for borrowing to fund infrastructure or other upfront costs. Government anticipate that Business Rate relief will be available for the successful sites which acts as a further incentive for inward investment.
- 3.12 There is no deregulatory agenda in Freeports, with respect to security, health and safety, workers' rights, data protection, biosecurity, tax avoidance and the environment. Freeports – in the same way as every other business in the UK – will have to adhere to the UK's regulatory standards. Moreover, Freeports will be subject to an annual audit, by HMRC and Border Force, to make sure security measures

continue to meet the high standards expected from Freeport operators to mitigate security risks across physical, personnel and cyber domains.

East Midlands Freeport

3.13 East Midlands Freeport is the UK's only inland and air-connected Freeport, aiming to drive economic regeneration across the East Midlands. Underpinning this is a unique combination of partners focused on creating jobs, boosting skills and accelerating the region's commitment to decarbonisation and Net Zero through low carbon energy investments.

3.14 East Midlands Freeport aims to deliver value to the East Midlands across ten distinct focus areas:

- Increase local and regional economic activity - by incentivising new innovative, high-value, low carbon investment in the manufacturing and logistics sectors.
- Boost international trade in high-value manufacturing goods.
- Boost skills levels and opportunities - linking research capabilities with universities and colleges to provide training programmes and support a diverse labour pool.
- Support the regeneration of local areas by creating sustainable employment.
- Reduce greenhouse gas emissions in industrial and energy production.
- Develop innovation and enterprise - positioning the region as a centre of excellence for alternative energy sources and green technologies to drive new market opportunities.
- Improve physical and digital regional, national and international connectivity and integration.
- Enhance labour productivity in key sectors - such as manufacturing and logistics.
- Support the levelling up of a region with industrial strengths in manufacturing and logistics that has been disproportionately impacted by COVID-19 and mitigating the uncertainty of recovery.
- Ensure synergy with key strategic initiatives underway in the region - including High Speed 2 and the work of the East Midlands Development Corporation, to form part of an ambitious levelling up package for the region.

East Midlands Intermodal Park

3.15 The East Midlands Freeport is made up of three proposed sites, based upon East Midlands Airport in North-West Leicestershire, Ratcliffe power station in Rushcliffe, Nottinghamshire, and East Midlands Intermodal Park, in South Derbyshire. East Midlands Intermodal Park is located immediately to the south-west of the A38/A50 interchange at Burnaston.

3.16 The development of the East Midlands Intermodal Park site would be considered through the planning process. The scale and nature of the proposals means that the development would be classed as a Nationally Significant Infrastructure Project and be considered by the Planning Inspectorate. Officers understand that there is no real progress on this development at present.

4.0 Financial Implications

Implications of joining the East Midlands Freeport

- 4.1 The Council will directly benefit from being able to retain all Business Rates growth above an agreed baseline, free from any Government levy or reset, for a period of 25 years. A 'no detriment' arrangement is in place which was designed and agreed 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. Financial projections for the Business Rates to be generated in South Derbyshire are beyond the Council's current medium-term financial plan period.
- 4.2 South Derbyshire plays an active role within the Freeport Section 151 Officer Sub-Committee, which is responsible for reviewing seed capital funding decisions, ensuring that projects are fully financed and include sufficient funds to deal with any infrastructure requirements, together with the allocation of Business Rates Relief.
- 4.3 The Members' Agreement makes the EMF Company members liable to each other in respect of breaches of the agreement to a maximum of £750,000. The Council will therefore be liable to that maximum to other members of the EMF Company should it breach the Members' Agreement. Officers cannot foresee such liability arising and will ensure compliance with the Members' Agreement. The Council's liability to third parties is limited to £1 as the company is structured as a Company Limited By Guarantee.

Business Rates Relief Policy

- 4.4 South Derbyshire District Council will be the accountable body for administering Business Rates for the parts of the Freeport in its area. This means that the Council will also grant relief to companies moving to the Freeport in accordance with a Business Rates Relief Policy. The Government will reimburse the Council for all relief granted.
- 4.5 The Council will allocate incentives through the East Midlands Freeport Business Rates Relief scheme, which will be refunded to the Council by Central Government via the Business Rates Retention System (BRRS).
- 4.6 The East Midlands Freeport Business Rates Relief Policy attached at **Appendix 1**, is a technical document, that will be utilised by the Council's Revenues and Benefits team to operate and apply the reliefs. The Policy has been developed in line with the guidance issued under Central Government's Freeports Subsidy Control Scheme and provides for five years of 100% relief for businesses moving into (or expanding, where certain conditions are met) within the Freeport designated areas. Eligibility requirements around those businesses providing additionality to the East Midlands and avoiding displacement are included.
- 4.7 Freeport Business Rates Relief is subject to the UK's domestic and international Subsidy Control obligations. As such, businesses located in the designated area will therefore need to fulfil any requirements in place to ensure compliance with those obligations in advance of, during, and after claiming relief. The Freeport Subsidy Scheme guidance states that billing authorities, when awarding relief, will need to meet the conditions of the stated legacy subsidy scheme, the Freeports Subsidy Control Scheme. This operates in a similar manner to other Council Business Rates relief schemes, with Government reimbursing the billing authority for relief awarded as long as it is consistent with the Scheme.

4.8 Freeport Business Rates Relief is available for five years from the date it is first claimed, with a criteria for granting the relief from the establishment of the Freeport area until 30 September 2031. This means that if a business first received relief on 30 September 2026, the relief may be applied up to 29 September 2031. Where a business first receives relief on 30 September 2031, the relief may be applied up to 29 September 2036. This has been reflected in the East Midlands Freeport Business Rates Relief Policy.

5.0 Corporate Implications

Legal Implications

Joining the East Midlands Freeport Company

- 5.1 The Council has power to join the EMF Company under the General Power of Competence s1 of the Localism Act 2011. This Act gives the Council the power to do anything an individual might do with the exception of doing something for a commercial purpose. If the Council intends to do something for a commercial purpose it must set up a company to do so. The purpose of the freeport is not for commercial purposes and is consistent with the Council's functions of Economic Development in the District and as Billing Authority.
- 5.2 The incorporation of the EMF Company will involve the Council, as a founding member, agreeing to two company governance documents.
- 5.3 The first being the Articles of Association which is the legal constitutional document of the EMF Company, which sets out how the company is constituted and the basic rules around how the company will be run.
- 5.4 The second is a Members Agreement, which is a "private" contract between the members to the EMF Company and the EMF Company itself that regulates the relationship between them.
- 5.5 The key points to note from the documents are as follows:

Articles:

- The EMF Company will be established as a company limited by guarantee, which means that the Council will only be liable for the amount of the guarantee (being £1) should the company be wound up.
- The board of directors shall be 13, made up of six public sector directors (one from each Council that is a member), six private sector directors (one from each private sector member) and an independent chair. Each founding member has the right to appoint a director and remove that director. The independent chair will be an independent director and will not have a casting vote.
- The quorum for board meetings requires the Lead Authority's director to be present, along with two public sector directors and three private sector directors.
- Decisions made by directors will first be made on a unanimous basis. Where unanimity is not achieved, it will be decided on a 'Public Private Sector Majority', which requires a majority of the public sector directors agreeing and a majority of the private sector directors agreeing.
- Member decisions will be made at EMF Company general meetings. The quorum for those general meetings mirrors the board meeting requirements and requires

the Lead Authority to be present, along with two public sector members and three private sector members.

Members Agreement:

- The Agreement confirms that the EMF Company's day to day working capital and expenditure is to be funded by: Capacity funding provided by Department for Levelling Up, Housing and Communities; A member loan from Leicestershire County Council as Lead Authority; and, Retained Business Rates. There is no requirement for other members to contribute to the day to day working capital and/or expenditure of the EMF Company.
- Capital projects and infrastructure projects may be funded by the EMF Company but the Agreement is clear that the entity or public sector body that will ultimately own or have responsibility for the capital asset or infrastructure will be primarily responsible for procuring, commissioning and funding that project.
- The EMF Company's board will set the strategy for retained Business Rates. There will be a 'Public Sector Directors' Group' which consists of all the directors of the public sector members and that group will be responsible for making decisions on the use and allocation of retained Business Rates.
- Certain decisions are reserved to members (rather than the board of directors) and those are contained in the Reserved Matters schedule. Some of those decisions require all of the members to agree and some decisions require only a Public Private Majority. The Reserved Matters schedule also contains some decisions that are reserved to the board of directors and some decisions that require the consent of the Lead Authority.
- The Council may make a request to withdraw from the EMF Company, which will be subject to certain company decisions, depending on its status in the Freeport at the time of the request.
- There will be an annual business plan that will be approved by the board of directors each year. The business plan will set out how the EMF Company anticipates delivering its objectives over the following four years, including funding considerations.
- The scheme delivery period extends to 30 September 2031 in two discrete five year delivery periods (22 March 2022 to 30 September 2026, and 1 October 2026 to 30 September 2031) (previous drafting was only to 2026 with a potential to extend).
- Each party's (including the Council's) liability to other parties under or in connection with the Members' Agreement is capped in aggregate at £750,000 for each five year delivery period.

5.6 In addition, there are further governance documents that the Council will be party to by joining the EMF Company.

5.7 Officers are content with the current draft governance documents and have commissioned external legal advice to finalise the drafts before signing.

Appointment

5.8 The East Midlands Freeport is a Council Outside Body and the Chair of Environmental and Development Services was appointed to the Outside Body. The Chair has attended shadow board meetings since his appointment.

- 5.9 By joining the EMF Company, the Council will need to appoint a Director, in order for them to attend meetings of the Board and participate in the decision making. It is proposed that the Chair of the Environmental and Development Services Committee be appointed as Director.

Business Rates Relief Policy

- 5.10 Officers have taken external legal advice regarding the Policy and compliance with Subsidy Control. That advice confirms that any legal risk arising from adoption of the Policy has in theory passed. The Subsidy Control Act 2022, introduces new legal considerations, including legacy subsidy schemes. It is improbable that the Freeport Subsidy Scheme will face legal challenges. If the Council adheres to the Scheme's conditions, which the Business Rates Relief Policy does, and maintains proper records, the risk of any challenge is minimal.

Local Planning Authority

- 5.11 The Council joining the EMF Company will not fetter its function as Planning Authority in relation to planning decisions regarding the East Midlands Intermodal Park site.

Council Plan Implications

- 5.12 The East Midlands Freeport has the potential to contribute to the following Council Plan Priority: Drive our Economy - A thriving economy and place that has jobs, skills, education, infrastructure, and opportunity. This includes the key aim to 'Create an environment where a diverse range of new and existing businesses may maximise their potential'.

Risk Impact

- 5.13 The East Midlands Freeport has the potential to generate significant economic benefits for the region. If the District Council were not to join the EMF Company, the East Midlands Intermodal Park site would not have the potential to be part of the Freeport. This could limit the potential benefits for the District in terms of, for example, investment, international trade and job creation.

6.0 Community Impact

Consultation

- 6.1 The developer of the East Midlands Intermodal Park site would undertake public consultation as part of the planning process.

Equality and Diversity Impact

- 6.2 East Midlands Freeport prepared a diversity statement as part of the Full Business Case.

Social Value Impact

- 6.3 There are no social value impacts at this time.

Environmental Sustainability

6.4 The developer of the East Midlands Intermodal Park site would consider the environmental impact of the proposals as part of the planning process.

7.0 Conclusions

7.1 The East Midlands Freeport would bring additional powers and tools to develop the economy of the District and the region.

8.0 Background Papers

Freeport Bidding Prospectus – HM Treasury/HM Government (November 2020)

Draft East Midlands Freeport Members' Agreement - available on request to Elected Members of the Council

Draft East Midlands Freeport Articles of Association - available on request to Members of the Council

Appendices

Appendix 1 - Draft East Midlands Freeport Business Rate Relief Policy