

EXECUTIVE DECISION

made by a Council Officer



REPORT OF ACTION TAKEN UNDER DELEGATED AUTHORITY BY AN INDIVIDUAL COUNCIL OFFICER

Executive Decision Reference Number – COD31 21/22

Decision	
1	Title of decision: Setting up of the Plymouth and South Devon Freeport Company
2	Decision maker (Council Officer name and job title): Anthony Payne, Strategic Director for Place
3	Report author and contact details: Kevin McKenzie, Deputy SRO Plymouth and South Devon Freeport. T +441752304318 E kevin.mckenzie@plymouth.gov.uk
4a	Decision to be taken: With due diligence having been undertaken and with the agreement of the Section 151 officer and Head of Legal Services, to: - <ol style="list-style-type: none"> 1. To establish the Plymouth and South Devon Freeport Company as a Company Limited by Guarantee (“The Company”) with Plymouth City Council, Devon County Council and South Hams District Council as its founding members. 2. To agree the entering in to of the documents relating to the establishment of the Company. Such documents include, but are not limited to the Members Agreement, the Freeport landowner agreements, including those relating to Oceansgate and the South Yard Tax site, as may be required in pursuance of the Freeport Objectives and to discharge our obligations as the accountable body. 3. To note that Emma Jackman, Head of Legal Services, is authorised to sign the agreements as approved under 2 above, on behalf of the Council in the Council’s scheme of delegation and will therefore be the authorised signatory.
4b	Reference number of original executive decision or date of original committee meeting where delegation was made: L47 21/22
5	Reasons for decision: An executive decision delegating authority to the Strategic Director for Place was required so that we could: - <ul style="list-style-type: none"> • Meet timelines set by government linked to the lead in time for laying legislation.

	<ul style="list-style-type: none"> • Approve the key principles and allow the team to complete the legal work necessary to set up the Freeport Company. • Conclude negotiations with landowners and their legal representatives • Enable all three local authorities' partners to take decisions in common before the deadline. • Take a decision before the pre-election period • The conditions applied to the delegated authority are now met;- • The Full Business Case has now been submitted under delegated authority c/f COD25 21/22. • All three local authority partners have now taken democratic decisions • The S.151 Officer and Head of Legal Services are satisfied that due diligence has been given.
6	<p>Alternative options considered and rejected:</p> <ul style="list-style-type: none"> • Relevant alternative options considered and rejected in the Executive Decision included. • Various alternative company models were considered and advice taken both internally and through government appointed consultants. The Company Limited by Guarantee emerged as the most suitable model. This preference was stress tested by Womble Bond Dickinson, their report concluding that this model is fit for purpose was appended to the Leader's executive decision. • The Department of Levelling Up Homes and Communities have imposed a condition that we must deliver signed Landowner Agreements by the 23rd May 2022 to enable Statutory Instruments establishing our Freeport Tax sites to be laid before parliament.
7	<p>Financial implications and risks:</p> <p>1. Associated with this decision.</p> <ul style="list-style-type: none"> ▪ The legal costs associated with establishing the Freeport Company and transacting the Landowner Agreements will be met from our Freeport Revenue Support Grant. ▪ The Landowner Agreements will commit the Landowners to providing a revenue stream which is sufficient to meet the known and projected revenue requirements of the Freeport operating model for the first 5 years of its operation. <p>2. Associated with the Freeport and set out in the Executive Decision.</p> <p>The MTFP contains some resources in the initial years of the scheme both for revenue and capital. In the medium term there are proposals to engage in wider corporate borrowing, these to be funded from retained NNDR which will be received by The Council as Section 31 grant. Clearly The Council and Partners will need to ensure that available resources are not over committed at that point in the overall scheme.</p> <ul style="list-style-type: none"> ▪ The anticipated uplift in NNDR income from the areas designated as Freeport Tax and Customs sites in the Full Business Case will be retained and ring fenced for a period of 25 years, ▪ Retained NNDR and rental income and legacy from Oceansgate phase 1 and 2 will be directed in the first instance to service borrowing, and, only in the event of a surplus, for future investment in the Freeport as may be agreed by the Local Authority partners.

	<ul style="list-style-type: none"> ▪ The Medium Term Financial Plan already makes some provision for financial support. ▪ Revenue funding will be required to support the establishment of 4.5 new posts and other Freeport running costs. ▪ For the first five years this will be generated through fees and charges levied on landowners, supplemented with direct grant support from central government. ▪ A successful Levelling Up Fund to support the Freeport is anticipated. <p>There are risks but we have carefully assessed them and we are confident that they can be managed. The rewards are proportionately large, a vibrant economy delivering quality jobs, and new skills provision to ensure that residents in our most left behind wards can benefit.</p> <p>The governance arrangements are designed to deal effectively with these risks. The principle financial risks were set out in a high level risk assessment in the body of the report which accompanied the executive decision. All project related risks, including financial risks, are reviewed regularly by the Freeport development team to ensure they are appropriately mitigated.</p>																
<p>8</p>	<table border="1"> <thead> <tr> <th data-bbox="225 734 759 831">Is the decision a Key Decision? (please contact Democratic Support for further advice)</th> <th data-bbox="759 734 852 831">Yes</th> <th data-bbox="852 734 1007 831">No</th> <th data-bbox="1007 734 1489 831">Per the Constitution, a key decision is one which:</th> </tr> </thead> <tbody> <tr> <td data-bbox="225 831 759 996"></td> <td data-bbox="759 831 852 996"></td> <td data-bbox="852 831 1007 996" style="text-align: center;">x</td> <td data-bbox="1007 831 1489 996">in the case of capital projects and contract awards, results in a new commitment to spend and/or save in excess of £3million in total</td> </tr> <tr> <td data-bbox="225 996 759 1184"></td> <td data-bbox="759 996 852 1184"></td> <td data-bbox="852 996 1007 1184" style="text-align: center;">x</td> <td data-bbox="1007 996 1489 1184">in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1 million</td> </tr> <tr> <td data-bbox="225 1184 759 1323"></td> <td data-bbox="759 1184 852 1323"></td> <td data-bbox="852 1184 1007 1323" style="text-align: center;">x</td> <td data-bbox="1007 1184 1489 1323">is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.</td> </tr> </tbody> </table>	Is the decision a Key Decision? (please contact Democratic Support for further advice)	Yes	No	Per the Constitution, a key decision is one which:			x	in the case of capital projects and contract awards, results in a new commitment to spend and/or save in excess of £3million in total			x	in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1 million			x	is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority.
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<p>8b</p>	<p>If yes, date of publication of the notice in the Forward Plan of Key Decisions</p>																
<p>9</p>	<p>Please specify how this decision is linked to the Council's corporate plan/Plymouth Plan and/or the policy framework and/or the revenue/capital budget:</p> <p>We have set out a number of strategic objectives in the Plymouth Plan that a free port could help us to achieve.</p> <p>SO2 - Strengthening Plymouth's role in the region SO3 - Delivering the international city</p> <p>SO11 – Delivering high quality development SO12 – Delivering infrastructure and investment</p> <p>The Freeport could also assist us to deliver priorities in our Corporate Plan: -</p> <ul style="list-style-type: none"> ▪ Strongly supports the delivery of economic growth that benefits as many people as possible. <p>Strongly supports the delivery of quality jobs and skills.</p>																

10	Please specify any direct environmental implications of the decision (carbon impact)	Our Full Business Case sets out our ambitious plans to ensure that the Freeport contributes positively to our Climate Emergency Action Plan setting an overarching target that is consistent with our commitment to achieve a carbon net zero position by 2030.		
Urgent decisions				
11	Is the decision urgent and to be implemented immediately in the interests of the Council or the public?	Yes		(If yes, please contact Democratic Support for advice)
		No	x	(If no, go to section 13a)
12a	Reason for urgency:			
12b	Scrutiny Chair signature:		Date	
	Scrutiny Committee name:			
	Print Name:			
Consultation				
13a	Are any other Cabinet members' portfolios affected by the decision?	Yes	x	
		No		(If no go to section 14)
13b	Which other Cabinet member's portfolio is affected by the decision?	Freeport impacts will be wide ranging and are likely to affect all Cabinet member's portfolios.		
13c	Date Cabinet member consulted	The report underpinning the Executive Decision was discussed with all Cabinet members on 15 March 2022.		
14	Has any Cabinet member declared a conflict of interest in relation to the decision?	Yes		If yes, please discuss with the Monitoring Officer
		No	x	
15	Which Corporate Management Team member has been consulted?	Name	Anthony Payne	
		Job title	Strategic Director for Place	
		Date consulted	23 February 2022	
Sign-off				
16	Sign off codes from the relevant departments consulted:	Democratic Support (mandatory)	DS145 21/22	
		Finance (mandatory)	pl.22.23.26	
		Legal (mandatory)	MS/2/12.05.22/3607 2	

		Human Resources (if applicable)						
		Corporate property (if applicable)						
		Procurement (if applicable)						
Appendices								
17	Ref.	Title of appendix						
	A	Equalities Impact Assessment						
	B	Plymouth Freeport Company Ltd - Memorandum and Articles of Association						
	C	Plymouth Freeport Company Ltd – Members Agreement						
	D	Leaders Executive Decision L47 21/22 – Plymouth and South Devon Freeport						
Confidential/exempt information								
18a	Do you need to include any confidential/exempt information?	Yes						
		No	x					
		If yes, prepare a second, confidential ('Part II') briefing report and indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box in 18b below.						
		Exemption Paragraph Number						
		1	2	3	4	5	6	7
18b	Confidential/exempt briefing report title:							
Background Papers								
19	Please list all unpublished, background papers relevant to the decision in the table below. Background papers are <u>unpublished</u> works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based. If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.							
	Title of background paper(s)	Exemption Paragraph Number						
		1	2	3	4	5	6	7
	Plymouth and South Devon Freeport – Full Business Case			x	x			
	Landowner Agreements			x	x			
Council Officer Signature								
20	I agree the decision and confirm that it is not contrary to the Council's policy and budget framework, Corporate Plan or Budget. In taking this decision I have given due regard to the Council's duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not. For further							

details please see the EIA attached.			
Signature		Date of decision	20 May 2022
Print Name	Anthony Payne		

Plymouth and South Devon Freeport (Part I Report)

1. Plymouth and South Devon Freeport Company Ltd

- 1.1 The Plymouth and South Devon Freeport will be established as a Company Limited by Guarantee and will have the following features and principles: -
- A members steering group made up of each of the three local authority partners will provide strategic oversight and ensure alignment with the emerging County deal.
 - An independent board of directors with a chair from the private sector to provide clear evidence of private sector leadership, we will set out the process through which the chair will be appointed in the scheme of delegation.
- 1.2 The Freeport Company Key Governing Documents – include;-
- Memorandum and Articles of Association - setting out the remit and roles of the Directors, a scheme of delegation and matters reserved to the founding members;
 - A Members' Agreement – which will bind the three Local Authorities to perform their functions and roles, including the disbursement of seed capital from PCC as the Accountable Body to the Local Authority Partners, their engagement with the Freeport Company based on the key principle of a partnership of equals where decision making requires unanimous agreement;
 - Landowners' Agreements - binding the landowners to perform their functions and roles and their engagement with the Freeport Company;
 - An Annual Delivery Plan and budget – proposed by the Freeport Company, to be agreed and signed off by the Members in accordance with their reserved matters and approved by the Board of Directors the management of the Freeport, employment of staff, delivering the Freeport business case and providing agreed shared services.

2. Landowner Agreements

- 2.1 We are required by the Department of Levelling Up Homes and Communities to submit Landowners Agreements covering our proposed tax sites by the 23rd May 2022.
- 2.2 These agreements are designed to ensure we have adequate control to enable us to deliver the Freeport. As we have set out in our Full Business Case. They are highly commercially sensitive documents and not suitable for publication.

3. Recommendations

- 3.1 It is recommended that the Strategic Director for Place exercises the authority delegate to him by the Leader in the Executive Decision ref L47 21/22.
- 3.2 With due diligence having been undertaken and with the agreement of the Section 151 officer and Head of Legal Services, to: -
- To establish the Plymouth and South Devon Freeport Company as a Company Limited by Guarantee ("The Company") with Plymouth City Council, Devon County Council and South Hams District Council as its founding members.
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