

EXECUTIVE DECISION

made by a Council Officer



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

Executive Decision Reference Number – *COD33 22/23*

Decision	
1	Title of decision: Plymouth and South Devon Freeport – Memorandum of Understanding
2	Decision maker (Council Officer name and job title): Anthony Payne, Strategic Director for Place
3	Report author and contact details: Kevin McKenzie, Policy and Intelligence Advisor. E: kevin.mckenzie@plymouth.gov.uk T: 01752 304318
4a	Decision to be taken: To sign the Freeport Memorandum of Understanding (which will also be countersigned by the Section 151 Officer).
4b	Reference number of original executive decision or date of original committee meeting where delegation was made: L47 21/22
5	<p>Reasons for decision:</p> <p>The decision is necessary as the £25m Seed Capital Grant from the Government is an essential component of the Freeport funding package which will deliver:-</p> <ul style="list-style-type: none"> • Land assembly and remediation; • Essential transport infrastructure; • A Marine Innovation Centre and Mobility Hub. <p>If the decision is not taken now payment of our capital grant could be delayed. This could have some potential knock on impacts on our delivery schedule that would have potentially serious consequences for the programme, i.e. a shorter window for businesses on our Freeport tax sites to claim tax benefits.</p> <p>Leader's executive decision dated 3/03/2022 delegated authority to Strategic Director for Place to sign the Freeport Memorandum of Understanding and associated agreements with Government and partners - setting out government expectations, funding arrangements, outputs and partner obligations.</p>
6	<p>Alternative options considered and rejected:</p> <p>Alternatives considered - The terms under which the Seed Capital grant are made are set by the Government so no alternative arrangement was considered.</p>
7	<p>Financial implications and risks:</p> <p>I. Associated with this decision.</p> <p>The risks associated with the decision were considered in detail in the Leader's Executive decision taken in March 2022.</p> <p>Since this decision was taken market conditions have been volatile. Inflation and base interest rates have increased significantly and are considered likely to continue to do so over the short to medium term.</p> <p>Borrowing requirements have increased from £10.2m to £10.7m in our latest forecast as part of an</p>

overall programme cost plan of £27.998m. This is still subject to grant funding award from Department for Levelling Up, Housing & Communities.

The Authority's treasury management adviser Arlingclose forecasts that Bank Rate will continue to rise in 2022 and 2023. Arlingclose expects Bank Rate to rise to 4.25% by June 2023 from current 3% position in November 2022.

Sensitivity testing undertaken on our Full Business Case (FBC) financial model and based on a 10% increase in costs indicated that a significant level of price inflation could be absorbed.

However programme viability is marginal at current interest rates and whilst there is some scope for rate increases it may not be sufficient to absorb borrowing costs if rates were to rise as predicted and that was sustained over the long term.

Current modelling assumes a rate of 4.35% with annual repayment £0.530m funded from retained business rates and/or eligible Section 31 funding through award of freeports business rate relief so is dependent on achieving the required occupancy levels within cost plan.

The risk to borrowing costs for 1% rate increase is £0.090m and £0.025m for additional borrowing requirement £0.500m for 50 years.

Both combined risk with increasing interest rates, collectible business rates and occupancy levels within Oceansgate and South Yard tax site would require financial resources to be identified within Councils Medium Term Financial Plan.

Several of the capital programmes envisaged in our Full Business Case (FBC) have not yet reached a level of maturity where costs are wholly predictable

Each programme will be subject to an individual Business Case and appraisal by Plymouth City Council as the accountable body. Where a programme is not considered viable the partners can agree to put forward an alternative through the programme change request route provided in the MOU.

2. Associated with the Freeport and set out in the Executive Decision.

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.

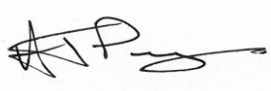
- The anticipated uplift in NNDR income from the areas designated as Freeport Tax and Customs sites in the Full Business Case will be retained and ring fenced for a period of 25 years,
- Retained NNDR and rental income and legacy from Oceansgate phase 1 and 2 will be directed in the first instance to 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.
- 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.

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.

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 to ensure they are appropriately mitigated.

8	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 £1million
		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.
8b	If yes, date of publication of the notice in the Forward Plan of Key Decisions	10/11/2022 Issue details - Plymouth and South Devon Freeport - Modern Council		
9	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>We have set out a number of strategic objectives in the Plymouth Plan that a freeport 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</p> <p>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			
I3a	Are any other Cabinet members' portfolios affected by the decision?	Yes	<input checked="" type="checkbox"/>
		No	<input type="checkbox"/>
		(If no go to section I4)	
I3b	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.	
I3c	Date Cabinet member consulted	The report underpinning the Executive Decision was discussed with all Cabinet members on 15/03/2022.	
I4	Has any Cabinet member declared a conflict of interest in relation to the decision?	Yes	<input type="checkbox"/>
		No	<input checked="" type="checkbox"/>
		If yes, please discuss with the Monitoring Officer	
I5	Which Corporate Management Team member has been consulted?	Name	Anthony Payne
		Job title	Strategic Director for People
		Date consulted	23/02/2022
Sign-off			
I6	Sign off codes from the relevant departments consulted:	Democratic Support (mandatory)	DS84 22/23
		Finance (mandatory)	DJN.22.23.319
		Legal (mandatory)	MS/14.12.22/394 61
		Human Resources (if applicable)	
		Corporate property (if applicable)	
		Procurement (if applicable)	
Appendices			
I7	Ref.	Title of appendix	
	A	Briefing report	
	B	Memorandum Of Understanding	
Confidential/exempt information			
I8a	Do you need to include any confidential/exempt information?	Yes	<input type="checkbox"/>
		If yes, prepare a second, confidential ('Part II') briefing report and indicate why it is not for	

		No	<input checked="" type="checkbox"/>	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
Leader Executive Decision – PASD Freeport								
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		16.12.22		
Print Name	Anthony Payne							

Briefing Report – Plymouth and South Devon Freeport, Memorandum of Understanding.

INTRODUCTION AND BACKGROUND

In March the Leader signed an Executive Decision which enabled work to continue to establish the Plymouth and South Devon Freeport. Over the summer this has enabled a number of key milestones to be achieved.

- The Plymouth and South Devon Freeport Company Ltd has been established with an Interim Chair and Board of Directors.
- Statutory instruments have been laid giving legal force to our Tax Site boundaries.
- Our Outline Business Case was signed off and HMRC have authorised our Primary Customs Site.
- Our Full Business Case was signed off on 7th December 2022.

The next step is to agree a Memorandum of Understanding with Government on which basis they will release seed capital funding to enable us to being to deliver capital works.

KEY POINTS

The Memorandum of Understanding is not a legally enforceable contract. It sets out Government expectations of what we will deliver and how they will support us. These expectations are based on our Full Business Case and the associated strategies for Investment and Trade, Innovation and Skill.

We have been given an opportunity to amend the document and the current form has been agreed by the Freeport members following consultation and legal opinion from lawyers for each of the three Local Authority partners.

The position for Plymouth is that we are required to indicate our acceptance on two levels.

- As the accountable body for the Freeport
- As the relevant billing authority for Plymouth

As a Member of the Freeport Company we will also be a party to the agreement by virtue of our membership of the Governing Body. It is proposed that the Chair of the Board of Directors will sign the agreement on behalf of the governing body. As the document is not legally binding this is not a reserved matter for the members.

Accountable Body

The Leader's executive decision accepted the relevant recommendation and gave authority for Plymouth City Council to accept the role of Accountable Body for the Freeport.

“Agree the role of Plymouth City Council as the accountable body for the Plymouth and South Freeport with responsibility for administering the £25m government seed funding”

To serve as the Accountable Body Plymouth City Council will need to discharge certain functions for which we will be held to account by government.

These will include: -

- oversight over funding;
- governance and Nolan principles;
- accept and distributing the funding and the use freedoms and flexibilities.

A further Leader's Executive Decision will be required to accept the grant offer when it is in hand, and it is proposed that this will provide an opportunity to clarify the operation of the Accountable Body functions.

RECOMENDATION

The Leader's executive decision delegated authority to the Strategic Director for Place to sign the Freeport Memorandum of Understanding and associated legal agreements with Government and partners, setting out government expectations, funding arrangements, outputs and partner obligations.

It is recommended that Strategic Director of Place gives authority for the Memorandum of Understanding to be signed.