

Thurrock - An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future

Cabinet

The meeting will be held at **7.00 pm** on **21 February 2024**

Council Chamber, Civic Offices, New Road, Grays, Essex, RM17 6SL

Membership:

Councillors Andrew Jefferies (Chair), Deborah Arnold (Deputy Chair), Adam Carter, George Coxshall, Barry Johnson, Ben Maney and Graham Snell

Agenda

Open to Public and Press

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3 Items of Urgent Business	
To receive additional items that the Chair is of the opinion should be considered as a matter of urgency, in accordance with Section 100B (4) (b) of the Local Government Act 1972.	
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Exclusion of the Public and Press

Members are asked to consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

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Queries regarding this Agenda or notification of apologies:

Please contact Rhiannon Whiteley, Senior Democratic Services Officer by sending an email to Direct.Democracy@thurrock.gov.uk

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DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF

Breaching those parts identified as a pecuniary interest is potentially a criminal offence

Helpful Reminders for Members

- *Is your register of interests up to date?*
- *In particular have you declared to the Monitoring Officer all disclosable pecuniary interests?*
- *Have you checked the register to ensure that they have been recorded correctly?*

When should you declare an interest *at a meeting*?

- **What matters are being discussed at the meeting?** (including Council, Cabinet, Committees, Subs, Joint Committees and Joint Subs); or
- If you are a Cabinet Member making decisions other than in Cabinet **what matter is before you for single member decision?**



Does the business to be transacted at the meeting

- relate to; or
- likely to affect

any of your registered interests and in particular any of your Disclosable Pecuniary Interests?

Disclosable Pecuniary Interests shall include your interests or those of:

- your spouse or civil partner's
- a person you are living with as husband/ wife
- a person you are living with as if you were civil partners

where you are aware that this other person has the interest.

A detailed description of a disclosable pecuniary interest is included in the Members Code of Conduct at Chapter 7 of the Constitution. **Please seek advice from the Monitoring Officer about disclosable pecuniary interests.**

What is a Non-Pecuniary interest? – this is an interest which is not pecuniary (as defined) but is nonetheless so significant that a member of the public with knowledge of the relevant facts, would reasonably regard to be so significant that it would materially impact upon your judgement of the public interest.

Pecuniary

If the interest is not already in the register you must (unless the interest has been agreed by the Monitoring Officer to be sensitive) disclose the existence and nature of the interest to the meeting

If the Interest is not entered in the register and is not the subject of a pending notification you must within 28 days notify the Monitoring Officer of the interest for inclusion in the register

Unless you have received dispensation upon previous application from the Monitoring Officer, you must:

- Not participate or participate further in any discussion of the matter at a meeting;
- Not participate in any vote or further vote taken at the meeting; and
- leave the room while the item is being considered/voted upon

If you are a Cabinet Member you may make arrangements for the matter to be dealt with by a third person but take no further steps

Non- pecuniary

Declare the nature and extent of your interest including enough detail to allow a member of the public to understand its nature



You may participate and vote in the usual way but you should seek advice on Predetermination and Bias from the Monitoring Officer.

Our Vision and Priorities for Thurrock

An ambitious and collaborative community which is proud of its heritage and excited by its diverse opportunities and future.

1. **People** – a borough where people of all ages are proud to work and play, live and stay
 - High quality, consistent and accessible public services which are right first time
 - Build on our partnerships with statutory, community, voluntary and faith groups to work together to improve health and wellbeing
 - Communities are empowered to make choices and be safer and stronger together

2. **Place** – a heritage-rich borough which is ambitious for its future
 - Roads, houses and public spaces that connect people and places
 - Clean environments that everyone has reason to take pride in
 - Fewer public buildings with better services

3. **Prosperity** – a borough which enables everyone to achieve their aspirations
 - Attractive opportunities for businesses and investors to enhance the local economy
 - Vocational and academic education, skills and job opportunities for all
 - Commercial, entrepreneurial and connected public services

Minutes of the Meeting of the Cabinet held on 7 February 2024 at 7.00 pm

The deadline for call-ins is Monday 19 February 2024 at 5.00pm

Present: Councillors Andrew Jefferies (Chair), Deborah Arnold (Deputy Chair), Adam Carter, George Coxshall, Barry Johnson, Ben Maney and Graham Snell

Apologies:

In attendance:

Asmat Hussain, Director of Legal and Governance and Monitoring Officer
Patrick McDermott, Chief of Staff to the Thurrock Commissioners
Ewelina Sorbjan, Assistant Director Housing and Development
Dave Smith, Chief Executive and Managing Director
Commissioner
Rhiannon Whiteley, Senior Democratic Services Officer

Before the start of the Meeting, all present were advised that the meeting may be filmed and was being recorded, with the audio recording to be made available on the Council's website.

230. Minutes

The minutes of the Cabinet meeting held on 10 January 2024 were approved as a correct record.

231. Items of Urgent Business

There were no items of urgent business.

232. Declaration of Interests

No interests were declared.

233. Statements by the Leader

The Leader stated that since the last Cabinet meeting the Council has divested Toucan energy and this is a great leap forward in the steps to stabilising and recovering the Council's financial position. The Leader thanked everyone involved in the negotiations and the sale of Toucan energy.

The Leader stated that residents will have noted that the budget proposals have been announced and include a proposal to raise Council Tax by 7.99% this year, reduced from 10% last year. The Leader stated that he looked forward to discussing this at the extraordinary Overview and Scrutiny meeting next week and at Budget Council and he sincerely hopes all 49 councillors will agree to the proposals.

The Leader confirmed that the SEND and Focus week will begin on the 18th of this month which will shine a light on the fantastic work being done to support Special Educational Needs and he encouraged all members to engage with this.

234. Briefings on Policy, Budget and Other Issues

There were no briefings on policy, budget or other issues.

235. Petitions submitted by Members of the Public

There were no petitions submitted by members of the public.

236. Questions from Non-Executive Members

There were no questions from Non-Executive Members.

237. Matters Referred to the Cabinet for Consideration by an Overview and Scrutiny Committee

There were no matters referred to Cabinet for consideration by an Overview and Scrutiny Committee.

238. Delegated Decisions taken since the last meeting

The Leader explained that a separate table of delegated decisions taken since the last meeting had been provided and this sets out that two decisions have been made: -

- The Lower Thames Crossing S106 Agreement on 19.12.23
- Toucan Group request to release the Council's security over assets to facilitate the sale by the Administrator taken on the 15.1.24.

239. Update on Procurement of Strategic Delivery Partner for Housing Works

Councillor Johnson introduced the report and explained that it is to provide Members with a further update on the progress of procurement activities since January 2024. Councillor Johnson stated that they have re-started the clock, clarified the role, changed the KPI / profit allocation and expanded the Thurrock team in conjunction with holding an additional bidder meeting. Whilst the response from the market was broadly positive, some clarification was

requested from the Thurrock team. The queries were around the planning of capital works and the managing of demand for repairs, they were also seeking clarification around the risk profile and sharing, the decision-making and governance of the contract and the Council's client functions and resourcing. These queries were addressed in the Tender Briefing note which is an appendix to the report. This is a normal part of the procurement process and bidders often have queries before submitting a formal tender. On Friday 31st January 2024 a briefing session was held with interested bidders. The Council has extended the timescales for submission of the initial tender. Following the meeting attending bidders expressed an even more positive outlook on their opportunity to bid for the delivery of this partner model.

Councillor Coxshall stated that he was reassured by the process. It is an important re-procurement process and it was good that a briefing session had taken place. It is a long-life contract and an important service. He noted it was good to see the Council's interaction with providers and he is looking forward to the further updates.

Councillor D Arnold stated that in the current times we are doing our utmost to improve our own accountability and governance over the public purse and it was good to hear that those tendering wanted the same thing.

Councillor Maney stated that the providers' concerns were well founded given the council's position. He queried whether the meeting on the 31st January had allayed concerns and kept providers interested.

Councillor Johnson responded that they were relatively positive anyway but stated that in his view it had made them happier.

RESOLVED:

1.1 Members are requested to note and comment on the contents of this report.

240. Commissioning Report - Domiciliary Care (Decision: 110692)

Councillor Coxshall introduced the report and confirmed it concerns going out to tender for the contract for Domiciliary care. The current contract expires on 31st March 2025. It is for a 10 year long contract with a contract value of nearly 115 million pounds. In quarter 1 in 2023, nearly 9000 hours of service were provided. In comparison, in 2013 only 5100 hours were provided. Demand for the service will increase as demographic data shows that Thurrock's population is ageing. Wellbeing teams are being introduced in Thurrock to provide bespoke and more personalised solutions for residents. The Domiciliary care market is quite fragile. Option 1 in the report is keeping the traditional time and task care. Councillor Coxshall stated that this method doesn't work and doesn't provide bespoke services to residents. Whilst Thurrock has piloted the wellbeing team model, it has only been a pilot in a small area and is not ready to be rolled out. The Council is looking to work

with providers to build and learn and evolve the model to move to our end goal without the risk of destabilising things and to support the market to create much better solutions for residents.

The Leader raised the issue of recruiting carers and queried if this could help.

Councillor Coxshall stated that it has been noticed that staff retention has increased with the Wellbeing teams. Staff have the freedom to create and co-produce with residents. They are upskilling staff so they can administer insulin. This means residents don't have to wait for a Community Nurse to do it as a social worker can.

Councillor Coxshall explained that going forward they need to make sure social worker's feel valued and give them the freedom and power to make impactful change in Thurrock's communities and this model is the way to do it.

Councillor Carter commented that he had worked in the care industry for close to a decade and he is of the view the report is positive and the right step to take, he queried how this will help rural communities.

Councillor Coxshall referred to the appendix to the report which breaks down the locations of home care provided. Rural communities are harder to reach. Councillor Coxshall stated as they build the model it will be built around primary care networks so you can have a provider in each community. Thurrock has supported the creations of micro enterprises who may offer services residents want and with direct payments residents can choose the services they buy into. Councillor Coxshall reassured the meeting that they are looking to provide the same level of care to rural communities as those in urban communities.

Councillor D Arnold commented that when she was Portfolio Holder for Adult Social Care she always hoped this would move along. Building a connection with the person you are looking after is a real honour. For those receiving care they don't have to repeat themselves and the person knows and understands them already. Having smaller enterprises more local would be better.

Councillor Coxshall responded that the time and task model is archaic. It creates a barrier. Others want to copy the model Thurrock have created.

Councillor D Arnold stated that her one worry with this is it is difficult to quantify all the wellbeing elements up the chain to the accountant level and it is something that needs to be looked at in corporate performance and measuring outcomes to safeguard those services.

Councillor Johnson welcomed the report and stated that although the bespoke care for the receiver is paramount, if relationships can be built and staff can be retained through this model then it can only go from strength to strength. It is important the people giving the care are happy in their job. The Leader agreed that to those receiving care having their likes and dislikes considered is really important.

Councillor Snell queried what is the fallback position if they are not able to procure micro enterprises in time.

Councillor Coxshall stated that the priority is microenterprises. The market is fragile and they are trying to develop it with micro enterprises or larger providers. They are hoping that they can work with microenterprises.

RESOLVED:

- 1.1 To approve the tender of domiciliary care services to meet our statutory requirements under the Care Act (2014). This includes both the core domiciliary care service, reablement and the Out of Hours service.**
- 1.2 Delegate the award of the contract to the Executive Director for Adults, Housing and Health in consultation with the Portfolio Holder for Health, Adult's Health, Community and Public Protection**

*Reason for the decision: as outlined in the report
This decision is subject to call-in*

241. Domestic Abuse Services Reprourement (Decision: 110693)

Councillor Johnson introduced the report and explained it is a statutory service of the Local Authority. By seeking the procurement as a regionally commissioned services it is hoped this will improve consistency and accessibility to the service. The newly commissioned contract will have built in focus KPI's.

Councillor Johnson stated that working with Essex County Council, Southend-On-Sea City Council and Essex Police Fire and Crime Commissioners we should be able to secure a first class victim and perpetrator domestic abuse service.

Councillor Coxshall commented that it is important to work across the county as it is a wider issue and it is sensible to pool the budget to deliver better outcomes.

Recommendation(s)

- 1.1 That Cabinet agree the pooling of budgets with Essex County Council, Southend City Council, and the Essex Police, Fire, and Crime Commissioners Office to jointly procure domestic abuse victim and perpetrator services as follows:**
 - 1.1.1 Childrens Services (General Fund) - £73,100.00 p.a. for a total contract period of 7 years – total value £511,700.**

- 1.1.2 Adults, Housing, and Health (Housing General Fund) - £29,750 p.a. for a total contract period of 7 years – total value £208,250.**
- 1.1.3 Adults, Housing, and Health (Grant funding to Housing via the Department for Levelling Up Housing and Communities ‘New Burdens Fund’) - £221,990 p.a. for a total contract period of 7 years – total value £1,553,930.**
- 1.2 That the power to award the contract be delegated to the Executive Director of Childrens Services and the Executive Director of Adults, Housing, and Health, in consultation with the Portfolio Holder for Childrens Services and Housing.**
- 1.3 That the power to agree decisions on the allocation of funds from the ‘Safe Accommodation New Burdens’ funding to any joint procurement arrangements and expenditure committed internally, be delegated to the Executive Director of Adults, Housing, and Health, in consultation with the Portfolio Holder for Childrens Services and Housing.**

*Reason for the decision: as outlined in the report
This decision is subject to call-in*

The Leader commented that it is the current S151 Officer’s last cabinet meeting and thanked him for all his hard work and commitment to Thurrock. Due to his hard work and dedication we have divested Toucan and got a budget to take to Council.

The meeting finished at 7.26 pm

Approved as a true and correct record

CHAIR

DATE

Any queries regarding these Minutes, please contact
Democratic Services at Direct.Democracy@thurrock.gov.uk

21 February 2024		ITEM: 10 Decision: 110694
Cabinet		
Annual fee consultation outcome and uplift recommendations – Adult Social Care		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor George Coxshall, Portfolio Holder for Heath, Adults Heath and Community		
Accountable Assistant Director: Les Billingham – Assistant Director, Adult Social Care and Community Development		
Accountable Director: Ian Wake – Director for Adults, Health and Housing		
This report is Public		
Version: Cabinet		

Executive Summary

The report sets out the proposed uplifts for adult social care service for 2024/25, the financial impact of which has been reflected in the Medium Term Financial Strategy

In recent years there have been a number of legal challenges from care providers against local authorities for the process used to set care provider fees. Councils cannot be challenged legally on the level and fairness of the fee itself, but on whether the process behind it has complied with specific legal duties. Providers have claimed that many councils have failed to have due regard to the cost of care in their decision-making process. These cases have made it clear that there must be transparent and real consultation before fees are agreed - whatever the contractual arrangements are.

Government Intervention & Section 114

On 2 September 2022, the then Secretary of State for Levelling-up, Housing and Communities made directions under section 15(5) and (6) of the Local Government Act 1999 to implement an intervention package for Thurrock Council.

On 16 March 2023 the Secretary of State confirmed the expanded recommendations and the appointment of Managing Director Commissioner replacing the original directions from 2 September 2022.

The updated directions set out the actions to be taken by the Council. The actions relating to the Improvement and Recovery Plan are:

- an action plan to achieve financial sustainability and to close any short and long-term budget gaps identified by the Authority across the period of its Medium-Term Financial Plan (MTFP), including a robust multi-year savings plan.
- an action plan to ensure the Authority’s capital, investment and treasury management strategies are sustainable and affordable.
- a strict debt reduction plan, and an updated Minimum Revenue Provision (MRP) policy in line with all relevant rules and guidelines.
- an action plan to ensure the Authority is complying with all relevant rules and guidelines relating to the financial management of the Authority.
- a suitable scheme of delegations for financial decision-making.
- an action plan to reconfigure the Authority’s services commensurate with the Authority’s available financial resources.
- a plan to ensure that the Authority has personnel with sufficient skills, capabilities, and capacity to deliver the Improvement and Recovery Plan, within a robust officer structure.
- an action plan to strengthen the Authority’s governance function, to secure improvements in transparency and formal decision making. This should include measures to improve the Authority’s scrutiny function, including the taking and recording of formal decisions.
- arrangements to secure the proper resourcing and functioning of the system of internal controls, including risk management and internal audit.

The 2024/25 budget has been set in the context of the above directions with the key priorities and objectives shown below:

Table 1:

Priorities	Workstreams	Objectives
Improving Leadership to Accelerate Change	Leading with purpose and direction	A long-term purpose and direction for the Council
		Develop a medium-term Corporate Plan that continues the change and improvement programme of the Council.
		Strategy-led business planning
	Building our corporate capability	Develop, consult, and approve a new operating model for the Council
		Redesign and restructure the Council
		Stand-up a Programme and Project Management Office
Improving Governance and Controls	Establishing the foundations for governance excellence	Review and refresh all of our governing policies
		Build a capable and effective scrutiny function
		Undertake a governance review for all external companies or partnership bodies that the Council has an interest in

Priorities	Workstreams	Objectives
	Creating an exemplary control environment	Create a Council-wide strong risk managed operating environment
		The Council's assurance and audit functions are re-set
		Proportionate processes that maximise transparency and accountability are developed
Improving Financial Sustainability	Divestment of the Council's investments	Dispose of investments
	Improving our stability through budgetary savings and maximisation of income	Through implementing a savings programme, alongside a programme to maximise income over each of the next five years and beyond, the Council's budget moves towards achieving a balanced position.
		Detailed plan to generate capital receipts
		Develop a Capital Programme which leads to General Fund borrowing which is significantly smaller and aligned to the Corporate Plan.
	Improving our financial management capability and practice	We will demonstrate exemplary corporate financial leadership
		We will redesign and restructure the Council's financial service
		Corporate Financial Capability

These Directions shall remain in force until 1 September 2025 unless the Secretary of State considers it appropriate to amend or revoke them earlier.

Commissioner Comment:

None.

1. Recommendation(s)

- 1.1 That the Committee comment on the proposed 8.87% increase on the weekly rates paid to Thurrock care home providers for older people**
- 1.2 That the Committee comment on the proposed 8.87% increase on the rates paid to CQC regulated domiciliary home care providers.**
- 1.3 That the Committee comment on the proposed 8.87% increase on the core fee rates paid to Thurrock care home providers for adults of a working age.**
- 1.4 That the Committee comment on the proposed 8.87% increase on the core fee rates paid to Thurrock supported living providers.**
- 1.5 That the Committee comment on the proposal to negotiate with out of Borough providers for adults of a working age and supported accommodation providers on a case-by-case basis, and to award up to an 8.87% increase to the core fee rates.**

1.6 That the Committee comment on the proposed 8.87% increase in the Direct Payments rates

1.7 That the Committee comment on the proposal to delegate the decision making for agreeing care provider fee uplifts to the Executive Director of Adults Housing and Health, in consultation with the PFH for Health, Adults Health and Community

2. Introduction and Background

2.1 The 2024/25 fee consultation ran from the 9th November until 15th December 2023. The Council held consultation meetings with care providers to detail the 2024/25 fee setting process and gave the opportunity to raise pertinent issues. Providers were asked to submit supporting documentation to evidence the financial challenges they are currently experiencing in the delivery of care services for Thurrock Council clients. This was done by either submitting their own documentation in a format of their choice, or alternatively they could complete and return the Council's pro-forma template, detailing their business and finances.

2.2 Providers were asked to consider, and brought forward a number of relevant factors, including, but not limited to the following:

- Work based pension schemes
- Voids rates
- Increased cost of utilities
- Local competition for staff recruitment such as The Port of Tilbury, Amazon warehouse and Lakeside shopping Centre
- Economies of scale for larger providers
- Challenges facing smaller providers
- Increased National Living Wage (NLW) rates
- Increased cost of insurance
- Increased mortgage/rental costs as a result of changes in interest rates
- Increased cost of fuel

3. Issues, Options and Analysis of Options

3.1 The result of the consultation concluded that the Council needs to offer providers the recommended uplifts in order to support the local care sector. Failure to do so could result a judicial review of the Council's process, and in light of continuing increases in cost of living, it would be difficult to justify offering any lower than the recommended 8.87%

3.2 The proposed uplift of 8.87% was formulated through a combination of the consultation with care providers, as well as consideration of external inflationary factors and key indicators

3.3 The summary of the basis of the formula is detailed as follows:

- National living wage increase from £10.42 to £11.44, equal to a 9.8% increase, as announced in the government Autumn Statement.
- CPI (as per September 2023 detailed in the Government Autumn Statement) of 6.7%

- The methodology is to apply the NLW increase to 70% of the contract value for direct staffing costs, and 6.7% to the remaining 30% of the contract value.

This results in the recommendation blended increase of 8.87%

4. Reasons for Recommendation

- 4.1 It has been recognised nationally that life expectancy has increased, and as a result, people are living for longer, and therefore a likely to develop far more complex care and support needs. Local authorities try to support people to remain living in their own homes for as long as possible, which consequently means that when people need to be admitted into residential and nursing care, they have far more complex care and support requirements. This has been further exacerbated as a result of the COVID 19 pandemic, where people have been more reluctant to be placed in a residential care setting, or to permit a relative to be admitted. This is mainly due to concerns regarding contracting the virus or visiting restrictions that could prohibit relatives and friends from being able to visit.

In addition, there has been a change in the hospital discharge criteria from medically fit, to medically optimised, which remains in place. This means that care homes for older adults are now supporting people with far more complex needs.

Home Care Providers

- 4.2 Staffing ratios and training requirements have also increased at a time when recruitment and retention has become much more challenging. The issue is further compounded through the increase in agencies rates charged for the provision of temporary staff, which is often essential to be able to provide adequate staffing levels to ensure people are cared for safely, whilst also respecting the cared for person's dignity.
- 4.3 Insurance premiums increased exponentially during since the pandemic, which has resulted in many insurers exiting the market, or no longer indemnifying care providers. Furthermore, there continues to be significant inflationary increases in the cost of utilities, food, fuel, and interest rates, which have a direct impact on the financial viability of care providers. This is most prevalent for residential care homes for older adults in particular, as they tend to be larger establishments offering greater levels of provision.
- 4.4 Providers continue to subsidise local authority rates though the higher rates charged to private clients (those who are not placed through the Local Authority). They are able to continue to do so as the implementation of S18 (3) of The Care Act has been postponed. In short, the change will mean that privately paying care home residents will be able to ask their upper-tier council to arrange care for them, at the usual council rate

However, the Council has a lower-than-average number of self-funders (e.g., those that both fund and arrange their own care directly with the provider), and a higher-than-average number of people who pay full cost contributions for placements commissioned by the local authority. This limits the opportunity for local providers to subsidise their businesses through self-funder revenue.

- 4.5 The ability to be able to recruit and retain care staff has and continues to be increasingly problematic within the sector. This is a nationally recognised issue but is more prevalent in

Thurrock though local competition for staff recruitment, namely in the retail sector which offer a similar rate of pay.

Working Age Adults Providers

- 4.6 Over the last four years, the Council has seen more than a 20% increase in demand for domiciliary home care services. The demand is currently being managed well, and there is not currently an operating waiting lists for home care. As a result of initiatives to support people to remain living safely in their own homes, the care needs of the clients are being increasingly complex.
- 4.7 The ability to be able to recruit and retain staff is difficult for the home care provider group and has led to the need to employ staff at increased agency rate. This in turn has a significant impact on home care providers operating costs, where they are often having to pay hourly staff rates which are in excess of the hourly rates, they receive from the Council to deliver support services, leading to a financial deficit. This is coupled with an increased cost of fuel and has been cited as a reason for people leaving the sector.
- 4.8 Since the introduction of the requirement to undertake annual fee setting consultations in 2011, the Council has only ever awarded two blanket uplifts to in borough providers that operate care homes for adults of a working age, one increase of 3% and one increase of 8.74% to core services only.

The Council has maintained the stance that fees for working age adults are negotiated individually, so a blanket uplift was not applied. However, some of these fees had remained stagnant for over 10 years prior to the award of the 3% uplift.

With the current economic factors within the sector, this is no longer a realistic approach. As with the other provider groups, working age care providers, are faced with the same inflationary costs pressure, and are not exempt to these drivers. Recruitment and retention difficulties is also prevalent for these providers, as are the significant increase in the rates that agencies are charging for staff. The sector faces local competition for recruitment from companies such as Lakeside, Amazon, and Uber and Deliveroo drivers.

Supporting Accommodation Providers

- 4.9 Supported living accommodation offers independent living, with care and support.
- As with working age adults, Supported Accommodation providers have also only ever received two blanket uplifts, also of 3% and 8.74% since the introduction of the requirement to conduct annual fee setting consultations.
- 4.10 Many out of borough placement fees will only have been negotiated within the last year so any increase requests can be negotiated on a case-by-case basis.

Direct Payments

- 4.11 Direct payments allow people to receive a Personal Budget to allow them to arrange and fund their own care needs. This can be through employing a personal assistant or purchasing their own care directly from a registered care provider.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 This year's consultation ran from the 9th November until 15th December 2023. As part of this process the Council held a consultation meeting with providers to discuss the 2024/25 fee setting consultation process and to raise any pertinent issues. Providers were also asked to submit documentation to evidence what financial challenges they are currently experiencing as a provider of care services for Thurrock Council. They could do this by either submitting their own documentation in a format of their choice, or alternatively they could complete and return the Council's template documentation concerning their business and finances.

5.2 Providers were asked to consider a number of relevant factors including, but not limited to the following:

- the work based pension scheme.
- any voids
- increased cost of utilities
- local competition for staff recruitment such as The Port of Tilbury, Amazon warehouse and Lakeside shopping Centre
- economies of scale for larger providers
- challenges facing smaller providers.
- increased NLW/NMW rates
- increased cost of insurance
- increased mortgage/rental costs due to increased interest rates
- increased cost of fuel

5.3 Consultation meetings were arranged on the 11th December with the invitation extended to all provider groups. This gave providers an opportunity to discuss the current fees paid and the main financial challenges they were currently facing.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The Community Strategy, the Corporate Plan and the Medium Term Financial Strategy (MTFS) require the Council to commission services at the highest possible standard whilst delivering value for money for the Council.

7. Implications

7.1 Financial

Implications verified by: **Mike Jones**
Interim Assistant Director for Strategic and Corporate Finance

The financial implications are detailed below.

The proposed fees in increase have a direct financial implication of £4.671m. This is detailed as follows across the care provision and client groups:

£'000s

Residential Homes		
Older People	983	
Learning Disabilities	742	
Mental Health	105	
Physical Disabilities	172	
Respite	46	
		2,048
Nursing Homes		
Older People	183	
Physical Disabilities	6	
		189
Homecare		
Older People	731	
Learning Disabilities	12	
Mental Health	9	
Physical Disabilities	102	
		854
Supported Living		
Older People	34	
Learning Disabilities	449	
Mental Health	231	
Physical Disabilities	113	
		826
Direct Payments		
Older People	210	
Learning Disabilities	294	
Mental Health	19	
Physical Disabilities	232	
		754
Total		4,671

The increase will be funded through the following sources:

Growth Requirements - Adult Social Care Provider Uplifts		
	£000's	£000's
National Living Wage @ 9.8%	3,613	
Inflation @ 6.7%	1,059	
		4,671
<i>Financed by:</i>		
ASC Precept	(1,679)	
Social Care Grant	(1,838)	
MTFS Corporate Growth	(281)	
Market Sustainability Grant	(872)	
		(4,671)

Providers that operate outside of the Borough are able to make representation to apply for the fee uplift. This is due to the different contracting arrangement which are in place, and in many instances, care packages for working ages clients are negotiated on an individual basis and have varying fees.

An estimate for the cost of this have been made in the financial projects and will awarded as agreements are reached.

The table below details the current and proposed rates of care upon application of the uplifts:

Thurrock	2023/24 Rate	2024/25 rate after uplift
Nursing (weekly)	£ 688.32	£748.20
Residential (weekly)	£ 621.99	£676.10
Home Care (hourly)	£ 20.58	£ 22.37

7.2 Legal

Implications verified by: **Kevin Molloy**
Principal Solicitor, Contracts Team

The Council is obliged to follow the Care Act 2014 in the setting of the fees above referred to. Section 5 of the Care Act 2014 is titled “Promoting diversity and quality in the provision of services” and is part of the section titled “general responsibilities of local authorities”. The duty is mandatory in nature, but it is to “promote the efficient and effective operation of the market in services” to enable a variety of provision, that are high quality (s5(1)). Various matters are required under s5(2), which include the need to ensure the sustainability of the market (under s5(2)(d)) and fostering continuous improvement, and fostering a workforce that can deliver high quality services.

Section 5(3) provides that the Council must also have regard to the need to ensure that sufficient services are available for meeting the needs for care and support of all adults in its area, and that services must promote wellbeing. It is for the Council to determine how these duties are discharged, and a degree of latitude is allowed in this regard including being able to take account of the budgetary and resources considerations outlined above. What the Council must do, however, is to ensure that it does comply with the obligations set out in any guidance issued by central government as to fee setting and market review in order to have the evidence to be able to rebut any potential challenges relating to fee setting.

The requested price reviews were made pursuant to the terms of the contracts the Council has with its providers. When considering such a review the Council will need to have regard to the general level of competitiveness of the market and the claims made by any provider in any specific request’.

There have been a number of legal challenges against several local authorities by care providers about the process setting for care fees. Case law highlights the tension between the Council’s obligation to provide statutory care services that it is required to do and its fiduciary duty towards those who provide public funds.

As a result of this there are certain requirements that Directors Board must be satisfied have been met before a final decision is made in relation to setting fees, to minimise the risk of a potential successful legal challenge by providers.

These are:

- whether the Council's process for setting fees has been consulted on properly and adequate time has been given to providers to respond, taking into account the consultation period was 4 weeks.
- whether the Council has a robust methodology in place to calculate the fees to be paid to care providers setting care
- Whether due regard has been given to the relevant government care and support and market sustainability guidance.
- Whether there is sufficient and relevant information available in the report setting out the relevant considerations to be taken into account before a decision is reached

Relevant considerations arising from case law include but are not exhaustive.

- The consultation responses received.
- the Council's budget.
- the factors it has to consider in care and support and market sustainability government guidance.
- The actual cost of providing care.
- use appropriate local data.
- the residents who require nursing care, who require more non-nursing care.
- all care homes in the area, having based its calculations on data homes in the area.
- The legitimate current and future costs faced by providers, as well as the factors affecting those costs.
- inflation. cost of living costs
- the impact that decision would have on the quality of care provided to residents and the effect of rising costs on the care providers.

The Council is entitled to take into account its own financial position when determining the level fees However in doing so it must properly take into account all other relevant considerations, including the potential adverse consequences of the decision for providers and residents, which the Council required to balance against the constraints on its own resources. Compelling reasons for the decision taken would be required.

To comply with the Council's equalities duties an equalities analysis will need to be completed as the outcome of the analysis is a matter which the is required to have due regard to as part of the decision-making process.

7.3 Diversity and Equality

Implications verified by: **Becky Lee**
**Team Manager – Community Development and Equalities,
Adults, Housing & Health**

Services to vulnerable adults are likely to be at risk if providers are not in a position to meet inflationary cost pressures.

All information regarding Community Equality Impact Assessments can be found here:
<https://intranet.thurrock.gov.uk/services/diversity-and-equality/ceia/>

7.4 **Risks**

The risk associated with not increasing provider fees are centred around failures in the provider market, and in inability to provide essential services to vulnerable people. This also presents a significant financial risk of bring service back in-house as the Council has a statutory duty to provide care

7.5 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, or Impact on Looked After Children

None

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Data submitted by providers as part of the annual fee consultation (commercially sensitive so individual submissions cannot be included)
- Benchmarking data of current fees and uplift proposal across the Eastern region (included in the financial implications in the report)

9. **Appendices to the report**

- Community & Equality Impact Assessment

Report Author:

Louise Brosnan
Service Manager – Contracts & Brokerage
Adults, Housing and Health

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Thurrock Council

Community Equality Impact Assessment

Service area and lead officer

Name of service	Adults Housing and Health
CEIA Lead Officer	Louise Brosnan
CEIA Lead Officer job title	Service Manager
CEIA Lead Officer email address	lbrosnan@thurrock.gov.uk

Subject of this assessment

What specific policy, strategy, function or service is the subject of this assessment?
Annual fee uplifts
Borough-wide or location-specific?
<input checked="" type="checkbox"/> Borough-wide <input type="checkbox"/> Location-specific – please state locations below.
Click or tap here to enter text.
Why is this policy, strategy, function or service development or review needed?

We have a legal obligation to undertake an annual fee consultation

1. Engagement, consultation and supporting information

- 1.1. What steps you have taken, or do you plan to take, to engage or consult (where applicable) the whole community or specific groups affected by this development or review? **This is a vital step.**

Steps you have taken, or plan to take, to engage or consult

This 2024/25 fee consultation ran from the 9th November until 15th December 2023. As part of the process, the Council held consultation meetings with care providers to detail the 2024/25 fee setting process and gave the opportunity to raise pertinent issues. Providers were asked to submit supporting documentation to evidence the financial challenges they are currently experiencing in the delivery of care services for Thurrock Council clients. This was done by submitting their own documentation in a format of their choice, or alternatively they could complete and return the Council's pro-forma template, detailing their business and finances.

2.2 Providers were asked to consider a number of relevant factors including, but not limited to the following:

- work based pension schemes
- voids rates
- increased cost of utilities
- local competition for staff recruitment such as The Port of Tilbury, Amazon warehouse and Lakeside shopping Centre
- economies of scale for larger providers
- challenges facing smaller providers
- increased Nation Living Wage (NLW) rates
- increased cost of insurance
- increased mortgage/rental costs as a result of changes in interest rates
- increased cost of fuel

1.2. What data or intelligence sources have you used to inform your assessment of the impact? How have these helped you understand who will be affected by the development or review?

Sources of data or intelligence, and how they have been used

The summary of the basis of the formula is detailed as follows:

National living wage increase from £10.42 to £11.44, equal to a 9.8% increase

CPI (as per September 2023 detailed in the Government Autumn Statement) of 6.7%

The methodology is to apply the NLW increase to 70% of the contract value for direct staffing costs, and 6.7% to the remaining 30% of the contract value.

2. Community and workforce impact

2.1. What impacts will this development or review have on communities, workforce and the health and wellbeing of local residents?

Communities and groups	Positive	Neutral	Negative	Summary of positive and negative impacts	How will positives be maximised, and negatives minimised or eliminated?
Local communities in general	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Local people will be in receipt of an acceptable standard of care	By robust contract management and having a continuous improvement approach to service delivery
Age	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Many of the services are in place to support this age group	By robust contract management and having a continuous improvement approach to service delivery
Disability	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Many of the services are in place to support people with a disability	By robust contract management and having a continuous improvement approach to service delivery
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Marriage and civil partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.

Communities and groups	Positive	Neutral	Negative	Summary of positive and negative impacts	How will positives be maximised, and negatives minimised or eliminated?
Location-specific impact, if any	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Workforce	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	increasing what we pay providers allows providers to increase rates of pay for care staff	This will ensure staffing levels are safe and will also improve outcomes for people receiving a service as consistency of staff is an important factor to consider when dealing with care services
Health and wellbeing of residents	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Local people will be in receipt of care which is delivered to a good standard	By robust contract management and having a continuous improvement approach to service delivery
Socio-economic outcomes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Most care workers are local residents and paying them a decent rate of pay will improve their socio economic outcomes	Click or tap here to enter text.
Veterans and serving members of the armed forces	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	There are no specific disproportionate impacts.	There are no specific disproportionate impacts.
Unpaid carers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Having good care provision locally reduces the burden on unpaid carers, which reduces likelihood of unpaid carers no longer being able to fulfil their role as unpaid carers	There are no specific actions required.

3. Monitoring and review

- 3.1. How will you review community and equality impact once the policy, strategy, function or service has been implemented? These actions should be developed using the information gathered in sections 1 and 2 and included in your service area's business plans.

Action	By when	By who
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By PAMMS quality monitoring/contract compliance visits	A minimum of an annual visit will be undertaken	The contract compliance team
By monitoring of quarterly information returns	Quarterly	By PQBI and the contract compliance team
Monitoring of complaints/compliments	Ongoing	Complaints team and contract compliance
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Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

4. Next steps

- 4.1. The information gathered must be used to inform reports presented to Cabinet or overview and scrutiny committees. This will give members a necessary understanding of the impact their decisions will have on different groups and the whole community.

Summarise the implications and customer impact below. This summary should be added to the committee reports template in the Diversity and Equality Implications section for review and sign-off at the consultation stage of the report preparation cycle.

Summary of implications and customer impact
--

For a number of years now it has been recognised that life expectancy has increased, and as a result, people are living for longer, and therefore have far more complex care and support needs. Local authorities try to support people to remain living in their own homes for as long as possible, which consequently means that when people need to be admitted into residential and nursing care, they have far more complex care and support requirements. This was further exacerbated during the COVID 19 pandemic where people were more reluctant to be placed in a care home, or to permit a relative to be admitted. This was mainly due to concerns regarding contracting the virus or visiting restrictions that could prohibit relatives and friends from being able to visit.

In addition, there was a change in hospital discharge criteria from medically fit, to medically optimised, which remains in place. This means that our care homes for older adults are now supporting people with far more complex needs.

Staffing ratios and training requirements have also increased at a time when recruitment and retention has become much more challenging. The issue has been further compounded through the increase in agencies rates charged for the provision of temporary staff, which is often essential to be able to provide adequate staffing levels to ensure people are cared for safely, whilst also respecting the cared for person's dignity.

Insurance premiums increased exponentially during the pandemic, which resulted in many insurers existing the market, or no longer indemnifying care providers. Furthermore, there continues to be significant inflationary increases in the cost of utilities, food, fuel and borrowing rates, which has a direct impact on the financial viability of care providers. This is more prevalent for residential care homes for older adults in particular, as they tend to be larger establishments offering greater levels of provision.

Providers continue to subsidise local authority rates though the higher rates charged to private clients (those who are not placed through the Local Authority). They are able to continue to do so as the implementation of S18 (3) of The Care Act has been postponed. However, the Council has a lower-than-average number of self-funders (e.g. those that both fund and arrange their own care directly with the provider), and a higher than average number of people who pay full cost contributions for placements commissioned by the local authority. This limits the opportunity for local providers to subsidise their businesses through self-funder revenue.

The ability to be able to recruit and retain care staff has, and continues to be increasingly problematic within the care sector. This is a nationally recognised issue but is more prevalent in Thurrock though local competition for staff recruitment, namely in the retail sector which offer a similar rate of pay.

Over the last 4 years, the Council has seen more than a 20% increase in demand for domiciliary home care services, we are currently managing this increase in demand well and are not currently operating waiting lists for home care. These providers are also supporting people with far more complex requirements, this is also largely due to our initiatives to support people to remain living in their own homes for as long as they can safely, and the change to hospital discharge criteria.

The ability to be able to recruit and retain staff is also difficult for this provider group. The need to employ staff at increased rates from an agency has a significant impact on home care providers operating costs, where they are often having to pay hourly rates which are in excess of the hourly rates they receive to deliver support services, leading to financial deficit. The increased cost of fuel has also had an impact on recruitment as many care workers have cited this as their reason for leaving the sector.

Since the introduction of the requirement to undertake annual fee setting consultations the Council has only ever awarded two blanket uplifts to in borough providers that operate care homes for adults of a working age, one increase of 3% and one increase of 8.74% to core services only.

The Council has maintained the stance that fees are negotiated individually, so a blanket uplift was not necessary. However, some of these fees had remained stagnant for over 10 years prior to the award of the 3% uplift. With current cost of living increases, this is no longer a realistic response. As with the other provider groups this group are also facing the same inflationary costs pressure and are not immune to these drivers. Recruitment and retention difficulties is also prevalent for these providers, as is the significant increase in the rates that agencies are charging for staff. The sector faces local competition for recruitment from companies such as Lakeside, Amazon and Uber and Deliveroo drivers.

Insurance premium increases are also an issue for these care homes, as are inflationary increases in the cost of utilities, food, fuel and borrowing rates.

Supported Accommodation providers have also only ever received two blanket uplifts, also of 3% and 8.74% since the introduction of the requirement to conduct annual fee setting consultations. The Council has always maintained the same stance as it has for care homes for adults of a working age - that these fees are negotiated individually so a blanket uplift was not necessary. However, some of these fees have also remained the same for a number of years and therefore maintaining this stance is becoming increasingly unfeasible.

Many out of borough placement fees will only have been negotiated within the last year so any increase requests can be negotiated on a case by case basis.

5. Sign off

5.1. This Community Equality Impact Assessment must be authorised by the relevant project sponsor, strategic lead, or assistant director. This should not be the CEIA Lead Officer. Officers authorising this assessment are responsible for:

- the accuracy of the information
- making sure actions are undertaken

Name	Role	Date
Les Billingham	Assistant Director	08/01/24

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21 February 2024	ITEM: 11 Decision: 110695
Cabinet	
Thames Freeport Accountable Body Decisions	
Wards and communities affected: All	Key Decision: Key
Report of: Cllr D Arnold, Deputy Leader and Cabinet Member for Transformational Change, Communications and Governance Cllr G Snell, Cabinet Member for Finance, Human Resources and Payroll	
Accountable Assistant Director: N/a	
Accountable Director: Asmat Hussain, Interim Director Law and Governance Steven Mair, Interim Chief Financial Officer and Section 151 Officer	
This report is Public with exempt appendices. Three appendices are not to be published by virtue of part 1 of Schedule 12A of the Local Government Act 1972 because they contain exempt information as set out in category 3 because the report contains information relating to the financial or business affairs of any particular person	
<i>If the report, or a part of this, has been classified as being either confidential or exempt by reference to the descriptions in Schedule 12A of the Local Government Act 1972, it is hereby marked as being not for publication. The press and public are likely to be excluded from the meeting during consideration of any confidential or exempt items of business to which the report relates.</i>	
Date of notice given of exempt or confidential report: 14 February 2024	
Version Cabinet	

Executive Summary

Thames Freeport is forecast to generate 21,000 jobs, £4.6bn of public and private sector investment together with funding to support the delivery of Freeport objectives including regeneration and levelling up priorities. The Council is the Accountable Body (AB) for Thames Freeport, accountable to the Department for Housing, Levelling Up and Communities (DLUHC) for the use of Seed Capital Funding, Capacity Funding and for the good functioning of the Thames Freeport Governing Body. As a billing authority the Council also has responsibility for the use of retained business rates.

This report enables the Council to discharge two of its duties relating to the Freeport – on the use of the £25million Seed Capital Funding and approval of the Thames Freeport Operating Company Business and Financial Plan. The report summarises the Council’s responsibilities relating to Seed Capital Funding, progress made by project promoters developing Outline Business Cases and the

due diligence checks carried out by the Council as AB. The report seeks approval for the Outline Business Cases that are complete and have passed due diligence checks to be submitted to DLUHC.

It is important to minimise any delays in the development and approval of projects as the Government has set a deadline for projects to be delivered and funding spent by March 2026. To enable the Council to discharge its functions as the AB effectively and efficiently and as set out in the Memorandum of Understanding with DLUHC and the Freeport partners, this report seeks delegated authority to the Section 151 Officer in consultation with the Leader, Portfolio Holder for Governance, Portfolio Holder for Finance, Chief Executive and Monitoring Officer to approve the remaining Outline Business Cases, not attached to this report, subject to the satisfactory completion of financial and governance due diligence checks, to approve Full Business Cases, for all Seed Capital Outline Business Cases, and for the Council to enter into contracts for the delivery of the projects themselves once DLUHC release funding.

The second part of the report focuses on the approval to release funding for the operation of the Thames Freeport Operating Company for 2024-5. The Operating Company prepare an annual Business and Financial Plan to be approved by the Thames Freeport Governing Board and the Council as AB. Once approved and subject to the necessary legal agreements, the funding to support the Operating Company can then be released from a Government Section 31 Grant via the Council. The report sets out the timeframe for completing the diligence and subsidy control checks and seeks delegated authority for the Section 151 Officer in consultation with the Leader, Portfolio Holder for Governance, Portfolio Holder for Finance, Chief Executive and Monitoring Officer to approve the Business and Financial Plan and enter into a funding agreement with the Operating Company.

Commissioner Comment:

Commissioners have been consulted on the content of this report and agree with the recommendations made.

1. Recommendation(s)

Cabinet is asked to:

- 1.1 Approve the Outline Business Cases for Seed Capital Funding which have been completed and passed due diligence checks set out in exempt Appendices 1 and 2 for their submission to DLUHC.**
- 1.2 Agree that authority is delegated to the Section 151 Officer in consultation with the Leader, Portfolio Holder for Governance, Portfolio Holder for Finance, Chief Executive and Monitoring Officer to approve**
 - a) the remaining Outline Business Cases for Seed Capital Funding set out in exempt Appendix 3 once due diligence checks are complete and it has been confirmed by Officers projects align with the Thames Freeport Full Business Case or have otherwise been agreed by DLUHC through formal change control processes**
 - b) the release of initial Seed Capital Funding to project promoters to develop Business Cases if funding is requested, approved then released by DLUHC to the Council as Accountable Body subject to approval of the Thames Freeport Memorandum of**

Understanding and once relevant funding agreements are in place.

- c) the Full Business Cases (FBCs) for Seed Capital Projects and to enter into funding agreements and release the funding as set out in the FBCs for the delivery of the projects subject to approval of the Thames Freeport Memorandum of Understanding, satisfactory completion of procurement processes, completion of checks and determination of the subsidy control position by the Accountable Body**
- d) the Thames Freeport Operating Company Business and Finance Plan for 2024-5 and enter into a legally binding funding agreement subject to approval of the Business Plan by the General Purposes and Resources Committee of the Thames Freeport Governing Board, satisfactory completion of due diligence checks, establishment of the subsidy control position, approving the Thames Freeport Memorandum of Understanding and signing the appropriate legal agreements and to confirmation of the funding available through retained business rates section 31 grant.**

2. Introduction and Background

- 2.1 Thames Freeport will drive economic growth across the Thames Estuary. Forecast to deliver 21,000 jobs and £4.6bn of public and private investment and to generate retained business rates to support delivery of Freeport objectives including regeneration and levelling up priorities over the next 25 years.
- 2.2 The Council has three roles in relation to Thames Freeport:
 - as a partner supporting delivery of the Freeport and seeking to maximise benefits for local people and businesses,
 - as a billing authority responsible for the business rates on Freeport sites in Thurrock
 - as AB for the Freeport, accountable to DLUHC for the use of Seed Capital Funding, Capacity Funding and for ensuring the good functioning of the Thames Freeport Governing Body.
- 2.3 Seed Capital funding is the Government contribution towards capital investment for the delivery of the Freeport Proposal. Thames Freeport has been allocated up to £25million Seed Capital funding. The Full Business Case for the Freeport sets out seed capital project proposals that were approved by DLUHC and by Cabinet on 13 September 2023. Any significant changes to the projects listed in the Thames Freeport Full Business Case need to be approved by the Freeport Governing Board and then by DLUHC through a change control process.
- 2.4 As AB the Council is responsible for ensuring that Seed Capital projects are developed and delivered in accordance with the rules set out in Freeport guidance and in the draft Memorandum of Understanding (MOU) between DLUHC, the Thames Freeport Governing Board, the Billing Authorities and the AB which sets out the terms, principles and practices for the delivery and administration of the Freeport.
- 2.5 Project promoters (the lead organisations for each project) have been working with the Thames Freeport Operating Company to develop Outline Business Cases (OBCs) for the Seed Capital funding. The Council as AB has been conducting due diligence checks to ensure

that they comply with the requirements set out in the Thames Freeport MOU. This report seeks approval to submit to DLUHC only those Outline Business Cases that have been reviewed by Officers and assessed as compliant with HM Treasury and DLUHC guidance.

- 2.6 A number of OBCs are still being prepared however the deadline for spending Seed Capital Funding and completing projects is March 2026. Given the short timeframe for delivery of these capital schemes it is important that projects can progress as quickly as possible. This report seeks delegated authority as set out in the recommendations. Once approved the OBCs will be submitted to DLUHC for approval to move onto the development of the Full Business Cases.
- 2.7 The AB is also responsible for conducting due diligence checks and, alongside the Thames Freeport Governing Board, approving the Thames Freeport annual Business and Financial Plan. The outline plan for 2024-5 was presented to the Thames Freeport Governing Board on 23 January 2024 for their strategic direction and support for further development. This report seeks delegated authority to the Section 151 Officer to approve the final plan once it is complete and subject to the satisfactory completion of checks by Officers. Furthermore, it seeks delegated authority to enter into a formal funding agreement with the Freeport Operating Company when the subsidy control position is resolved and the Section 31 grant has been confirmed by DLUHC.
- 2.8 All decisions are subject to approval of the Thames Freeport Memorandum of Understanding and to appropriate legal agreements being put in place. The draft Thames Freeport Memorandum of Understanding has been released for review by the Thames Freeport partners and work continues to finalise appropriate legally binding agreements.

3. Issues, Options and Analysis of Options

Seed Capital Projects

- 3.1 The MOU requires the Council as AB to work with the Thames Freeport Governing Body to oversee the development of individual business cases for projects in accordance with best practice principles, namely those outlined in the HMT Green Book (2020), IPA Cost Estimating Guidance and Cabinet Office -The Construction Playbook.
- 3.2 The Thames Freeport Operating Company has been working with the project promoters to develop the Seed Capital project proposals summarised in the Thames Freeport Full Business Case into project OBCs. The Council has worked collaboratively with the other parties on OBCs and assisted project promoters to reach the standards required as set out in the best practice principles and the additional financial checks required of the Section 151 Officer.
- 3.3 Each Outline Business Case is assessed against the Green Book five-case model. The five-case model is based on assessment against:
- Strategic Case: The purpose of the strategic dimension is to make the case for change made and to demonstrate how it provides strategic fit.
 - Economic Case: The purpose of the economic dimension of the OBC is to identify the proposal that delivers best public value to society, including wider social and environmental effects.

- Commercial Case: The purpose of the commercial dimension of the business case is to demonstrate that the preferred option will result in a viable procurement and a well-structured deal between the AB, Freeport and its Service Providers.
- Financial Case: The purpose of the financial dimension of the business case is to demonstrate the affordability and funding of the preferred option, including the support of strategic stakeholders and customers as required.
- Management Case: The purpose of the management dimension is to outline how the project will be delivered.

3.4 The IPA Cost Estimating Guidance requires that OBCs have a mathematical probability driven position for estimating costs – including base cost, uncertainty and risk. The Construction Playbook has seven steps the first four of which are relevant to Outline Business Case stage:

- Develop a clear definition of business need
- Articulate value drivers and desired outcomes
- Assess the market
- Pre procurement consultation of the market

The additional financial checks required by the Section 151 officer include the completeness, robustness, and accuracy of the costings, demonstrating value for money and the validation of supporting documentation. A summary of the checks carried out forms **exempt Appendix 1** of this report.

3.5 Checks have been completed on a number of Outline Business Cases that are ready to be approved by the Council as AB. A summary of the checks carried out forms **exempt Appendix 1** to this report and the OBCs are included at **exempt Appendix 2**. The Council as AB continues to work with the project promoters on the Outline Business Cases that require further work. These projects are summarised in **exempt Appendix 3**.

3.6 Should any project not be able to proceed the Thames Freeport Governing Board can agree a change in the project portfolio and submit a change request to DLUHC for approval. If approved by DLUHC then the newly proposed projects are required to prepare OBCs. As AB the Council's role remains the same, to ensure that Seed Capital projects are developed and delivered in accordance with the Freeport guidance and the draft MOU.

3.7 Once OBCs have been approved by DLUHC project promoters will be invited to complete Full Business Cases which revisit the OBC, incorporate the procurement phase of the project and finalise the costings. The Freeport Operating Company will continue to work collaboratively with the project promoters at Full Business Case stage and the Council as AB will need to complete further checks, assess projects in accordance with the Subsidy Control Act 2022 and against Government guidance before giving final approval.

3.8 If requested by the project promoters DLUHC may release an initial payment to the AB to support the development of the Seed Capital project Business Cases. In such cases the Council as AB will enter into formal legal agreements to release initial payments to support development of a Business Case once appropriate checks have been carried out. One of the Business Cases is requesting funding for further development of the OBC. Appropriate checks have been carried out but, should DLUHC approve the release of funding for development costs, further due diligence would be required prior to release.

- 3.9 When Full Business Cases have been approved by all parties the Council will need to enter into appropriate legal agreements for delivery. The Council as AB will be accountable and responsible to DLUHC and will manage Seed Capital funding in line with the first line of defence in the DLUHC assurance framework and the requirements set out in the Memorandum of Understanding for Thames Freeport.

Annual Business and Financial Plan

- 3.10 As AB the Council is responsible for undertaking the appropriate checks and giving approval for the Thames Freeport operating Company Business and Financial Plan, alongside the Thames Freeport Governing Body.
- 3.11 The outline Business and Financial Plan for 2024-5 was presented to the Thames Freeport Governing Body for discussion and strategic direction on 23 January 2024. It was presented in outline form still subject to further work by the Freeport Operating Company, confirmation of the funding available, further due diligence checks and approval by the AB. The Governing Body agreed that the final Business and Financial Plan should be presented to the Freeport General Purposes and Resources sub-committee and that the committee would receive a report from the AB summarising the results of the due diligence work and setting out whether the Business and Financial Plan for 2024/25 is approved from an AB perspective.
- 3.12 As the Thames Freeport Operating Company is a private entity any funding must be assessed in accordance with the Subsidy Control Act 2022, which controls the provision of subsidies given by public authorities to prevent unfair competition or effects on trade and investments. The Council has appointed expert external advice to substantiate compliance of the subsidy position with the Subsidy Control Act 2022, in providing operational funding to the Freeport Operating Company.
- 3.13 The Council will continue to work with the Freeport Operating Company to develop the Business and Financial Plan for 2024/25 and report findings to the Freeport General Purposes and Resources sub-committee at the scheduled meeting before they are asked to approve the final version.
- 3.14 The costs of the Thames Freeport Operating Company are met from the retained business rates generated by the Freeport and paid to the Council by DLUHC via Section 31 grant. The grant is specific to the Freeport and can be used to fund operating costs of the Freeport, AB costs associated with the Freeport and then support projects associated with delivery of Freeport objectives.
- 3.15 The Council will continue to work with the Thames Freeport Operating Company and Private Sector partners to provide the necessary information for DLUHC to determine how much funding will be available in 2024-5, this will be submitted to DLUHC in the NNDR 1 return by 31 January 2024. The funding available will be included in the AB report to the Freeport General Purposes and Resources Committee.

4. Reasons for Recommendation

- 4.1 The AB for the Thames Freeport the Council is responsible for the delivery and administration of funding received by the Freeport including Seed Capital Funding.

4.2 The requirement to meet obligations set out in the MOU and discharge its duties as AB to support delivery of the Freeport, the Council needs to take decisions on a number of matters in a timely manner.

4.3 The decisions set out in this report will enable the Council to discharge its responsibilities in relation to Seed Capital Funding and the Thames Freeport Business and Financial Plan effectively and efficiently.

5. Consultation (including Overview and Scrutiny, if applicable)

5.1 The Seed Capital project concepts have been approved by the Freeport Partners and by DLUHC. Relevant parties including the Lead Partner organisations, have been consulted to prepare the Outline Business Cases

5.2 The Thames Freeport Outline Business and Financial Plan has been discussed by the Governing Body and will be considered by the Thames Freeport General Purposes and Resources Committee.

5.3 The report recommendations have been discussed with relevant portfolio holders.

6. Impact on corporate policies, priorities, performance and community impact

6.1 Delivery of Thames Freeport is referenced as a key action in the Improvement Recovery Plan and through the generation of jobs, investment and income to fund regeneration priorities it will support delivery of a number of Council Place and Prosperity priorities.

7. Implications

7.1 Financial

Implications verified by: **Mike Jones**
Assistant Director for Strategic and Corporate Finance

24 January 2024

The due diligence carried out on the Outline Business Cases is set out in **exempt Appendix 1** to assure the Council as Accountable Body that the costings have been verified to meet the Treasury Green Book guidance, the Infrastructure Authority guidance and the Construction Playbook government guidance. This gives assurance that costings take account of uncertainty, risk, value for money and Best Value as well as best practice in sourcing and contracting where these are relevant to OBCs.

The approval of the Outline Business Cases, for recommendation to DLUHC for their approval, subject to that approval, will lead to the development of these OBCs into Final Business Cases.

Once DLUHC have approved the FBCs then funding will be released to the Project Leads for each of the FBCs. This will only be done once all formal legal funding agreements are in place with both the Freeport Operating company and the grant recipients.

The summary of the funding for the OBCs for approval is set out in the appendices.

The funding to support the operating company is generated from the estimate made in the 2024/25 NNDR1 return and paid on account. The actual level of funding that the Council will be able to retain is subject to the final NNDR 3 submission at the end of the financial year. Therefore, this will be required to be monitored throughout the year, and the level of funding that can be committed may be adjusted accordingly.

7.2 Legal

Implications verified by: **Gina Clarke**
Governance Lawyer and Deputy Monitoring Officer
24 January 2024

The structure for delivery of Thames Freeport, creates potential for subsidies to Project Promoters, third parties and Thames Freeport Operating Company. The Council as the AB to Thames Freeport is responsible for approving financial assistance to third parties, and is required to comply with the Subsidy Control regime under the Subsidy Control Act 2022.

Financial assistance is defined widely by the Act, and includes a direct transfer of funds, such as a grant. Funding for Seed Capital Projects and financial support in relation to the Thames Freeport Business Plan 2024/25 is financial assistance for the purposes of the Act.

Prior to taking decisions to approve the Final Business Cases for Seed Capital Projects and for the Thames Freeport Business Plan for 24/25, the Council will be required to properly assess whether the financial assistance to be awarded to third parties following entering into grant/ funding agreements, are subsidies as defined by the Act. The potential for subsidies to third parties in respect of each Seed Capital Project will need to be assessed on a project-by-project basis.

As to the Thames Freeport Business Plan for 24/25 and entering into a funding agreement, key questions and analysis of the Op Co's activities and its owners' activities will need to be explored with the Council's external economic and/or financial advisers to establish the subsidy position.

If it is determined that the proposed financial support for Seed Capital Projects and the Business Plan are subsidies, the Council would be required to carry out a Subsidy Principles assessment. Further advice and support would be required at that stage.

The Government are currently considering implementing a national scheme for all freeports which, would allow public money flowing through Thames Freeport to be distributed in a subsidy compliant manner with greater ease. If implemented the Council would be required to satisfy itself that the award of Seed Capital to projects and financial support for Thames Freeport Op Co's Business Plan met the relevant criteria under the scheme.

As highlighted in previous cabinet reports relating to Thames Freeport, ensuring that appropriate legal agreements are in place between the Council and Freeport partners will be important in establishing additional controls over Thames Freeport OpCo to ensure it acts in accordance with the Business Plan. Funding/ grant agreements with Thames Freeport OpCo, Project Promoters/relevant third parties will ensure that public money is used efficiently and

effectively, and will enable the Council to effectively discharge its role and responsibilities as the AB.

7.3 Diversity and Equality

Implications verified by: **Rebecca Lee**
Team Manager – Community Development and Equalities
22 January 2023

A full Equalities Impact Assessment (EQIA) was completed as part of the Full Business Case for Thames Freeport considered by Government and aligned with Council's Community Equality Impact Assessment process. This provided a focus on the extent to which Thames Freeport will positively impact on reducing inequalities overall, not least those related to employment, income, health, and well-being. The EQIA/CEIA is a live document owned by the council working both in its role as accountable body and with partners to maximise benefits for residents overall.

7.4 Risks

There are a number of risks associated with the delivery of the Freeport and the decisions set out in this report:

- Delivering the AB Role. The Council needs to operate in accordance with the requirements set out in the DLUHC Memorandum of Understanding including conducting due diligence checks on Seed Capital Projects and the Freeport Operating Company Business and Finance Plan for 2024/25. It needs to discharge its duties effectively and efficiently to support and not delay delivery of the Freeport. This report summarises the due diligence checks carried out on the Seed Capital Outline Business Cases and the approach to conducting checks on the Full Business Cases and on the Freeport Operating Company Business and Financial Plan.
- Meeting the timeframe for delivery. The Seed Capital projects are capital schemes that have to be fully developed, delivered and funding spent by March 2026. It is important that projects can progress as quickly as possible and for that reason this report seeks delegated authority to take decisions. The Freeport Operating Company Business and Financial Plan needs to be approved before the start of the new financial year on 1 April 2024. This report enables the Council to take decisions effectively and efficiently to support delivery of Seed Capital and the Freeport Business Plan.
- Managing Financial Risk. As the Seed Capital Funding and the Section 31 grant will be received by the Council this report explains that appropriate legally binding agreements will be required to protect the Council from financial risk of non-delivery, non-compliance and cost overruns.

7.5 Other implications (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, or Impact on Looked After Children

To deliver the Council's role as AB the Council will require staff resource to discharge responsibilities effectively and efficiently. The resources required for delivery of the AB function can be funded from the Freeport Section 31 grant subject to demonstrating value for

money, sufficient funding being available and completing the due diligence checks on the resource requested.

8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Cabinet Report – 13 September 2023
[Delivery of Thames Freeport as the Accountable Body](#)
- Cabinet Report – 10 January 2024 [Thames Freeport - Accountable Body Decisions](#)
- Draft Thames Freeport Memorandum of Understanding – Exempt
- HM Treasury Green Book - [The Green Book \(2022\) - GOV.UK \(www.gov.uk\)](#)
- Infrastructure and Projects Authority Cost Estimating Guidance
[IPA Cost Estimating Guidance.pdf \(publishing.service.gov.uk\)](#)
- HM Government Construction Playbook
[The Construction Playbook – September 2022 \(publishing.service.gov.uk\)](#)

9. Appendices to the report

- **Exempt Appendix 1** – Seed Capital Projects OBC Due Diligence Checks
- **Exempt Appendix 2** – Seed Capital Project OBCs
- **Exempt Appendix 3** – Seed Capital Projects OBCs requiring further work.

Report Author:

Stephen Taylor

Head of Freeport

Economic Development

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