

<b>10 January 2024</b>		<b>ITEM: 13</b> <b>Decision:110689</b>
<b>Cabinet</b>		
<b>Thames Freeport - Accountable Body Decisions</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key	
<b>Report of:</b> Cllr D Arnold, Deputy Leader and Cabinet Member for Transformational Change, Communications and Governance		
<b>Accountable Assistant Director:</b> n/a		
<b>Accountable Director:</b> Asmat Hussain, Interim Director Law and Governance		
<b>This report is</b> Public with exempt appendices		
This report contains exempt information which falls within schedule 12A of the Local Government Act 1972 - Information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption outweighs the public interest in disclosing the information.		
<b>Date of notice given of exempt or confidential report: 2 January 2024</b>		

## Executive Summary

Thames Freeport will drive economic growth across the Thames Estuary, forecast to generate 21,000 jobs, £4.6billion of public and private investment and significant amounts of funding for levelling up priorities.

Thurrock Council is Accountable Body for the Thames Freeport. As Accountable Body the Council has a number of functions including responsibility to oversee the financial management of public money within the Freeport Programme.

The Thames Freeport Operating Company has prepared its business and financial plan for 2023/4. As Accountable Body the Council carried out due diligence on the Financial Plan to ensure best value and value for money. Validation and verification checks have also been carried out. The Freeport Governing Board approved the Business Plan and Financial Plan at its meeting on 26 September 2023.

The Freeport Operating Company is ultimately funded through retained business rates as set out in the Full Business Case for the Freeport. The arrangements mean that Thurrock Council is in receipt of s31 grant to the value of the retained business

rates forecast for this year, for 2023/24 the council have received £2.257m of s31 grant funding as reported to cabinet on 13 September 2023. This report asks Cabinet for approval to release funding of £1.651m to the Freeport Operating Company (subject to a signed funding agreement) in line with the Business and Financial Plan for 2023/4 and to delegate a decision on use of the remaining £0.606m to the Director of Legal and Governance to meet the costs incurred by the Accountable Body and to use on projects that support the Freeport.

In September 2023 Cabinet agreed to establish a Thames Freeport Sub-Committee to provide oversight and support Cabinet in its decision making. This report also seeks approval for the Terms of Reference for the sub-committee.

## **1. Recommendation(s)**

**Cabinet is asked to:**

- 1.1 subject to establishing the subsidy control position approve funding of £1,651,275 to enable the Thames Freeport Operating Company to deliver the Thames Freeport Business Plan 2023/4. Funding to be taken from the £2.257m s31 grant relating to Thames Freeport held by the Council**
- 1.2 delegate authority to the S151 Officer, in consultation with the Leader, Portfolio Holder for Governance, Chief Executive and Monitoring Officer to**
  - (a) to take all necessary action to establish the subsidy control position in relation to recommendation 1.1**
  - (b) subject to subsidy control requirements release funding to the Freeport Operating Company and once the appropriate legally binding agreements are in place between all parties to allow the Council to discharge its obligations as Accountable Body including a signed funding agreement between the Council and the Freeport Operating Company.**
- 1.3 delegate authority to the Director of Legal and Governance or Executive Director Corporate Services as appointment, in consultation with the Leader, Portfolio Holder for Governance, Chief Executive and S151 Officer to release the balance of funding from the remainder of the s31 grant of £0.606m to deliver the Accountable Body functions and to use on projects that support delivery of the Freeport.**
- 1.4 approve the Terms of Reference for the Thames Freeport Cabinet sub-committee established by Cabinet in September 2023.**

## **2. Introduction and Background**

- 2.1 Thames Freeport will drive economic growth across the Thames Estuary. Forecast to deliver 21,000 jobs, £4.6b of public and private investment and to**

support regeneration and levelling up activity in line with Freeport objectives over the next 25 years.

- 2.2 The Freeport is led by the private sector (Forth Ports, Dubai Ports World and Ford UK) and Thurrock Council. The Council is Accountable Body for the Freeport, an active partner driving delivery of the Freeport, and a billing authority for business rates on two of the Freeport sites.
- 2.3 As Accountable Body for the Freeport the Council is responsible for overseeing the proper use of public funds, ensuring value for money and compliance with the Nolan principles, National Assurance Framework, legal requirements, the principles of probity or sound financial practice, applicable funding terms and agreement on scrutiny arrangements.
- 2.4 The Council carries out its functions through ongoing monitoring and governance arrangements, preparing and providing an annual assurance statement to Government, and through annual approval of the Annual Business and Financial Plan.

### **3. Issues, Options and Analysis of Options**

#### **Freeport Operating Company Annual Business and Financial Plan**

- 3.1 The Freeport Operating Company Business and Financial Plan for 2023/4 forms **exempt Appendix 1** to this report. The business plan is formed around:
  - The three strategic objectives of the Freeport: Trade and investment, Regeneration and Skills, Innovation and Net Zero
  - The investment levers available to the Freeport including the tax incentives, Seed Capital and Retained Business Rates
  - Corporate responsibilities including monitoring and evaluation, programme and risk management, governance, financial management
  - Staffing and resources including appointment of the core team of seven including a Chief Executive, Head of Trade and Investment, Head of Marketing and Promotion, Director of Innovation and Net Zero, Head of Skills and Employment, Head of Programmes and a Project Manager
- 3.2 The financial plan sets out the income and expenditure relating to the Operating Company in 2023/4 and asks for £1,651,275 from the Accountable Body to fund operations.
- 3.3 The financial plan also references the skills levy which is funded by Forth Ports and DP World to support skills related activity.
- 3.4 The Council carried out due diligence on the Financial Business Plan. The Accountable Body report presented to the Thames Freeport Governing Board forms **exempt Appendix 2** to this report. The Council tested the Business Plan and concluded that it was fit to be considered by the Freeport Governing Board for approval.

- 3.5 There were three recommendations and a number of actions arising from the assessment of the business plan which are now being actioned by the Freeport Operating Company and the Council. It should be noted that the benchmarking of the size of the team has been completed.
- 3.6 The Council has received £2.257m s31 grant relating to the retained business rates forecast for 2023/4. The s31 grant is to pay for the Thames Freeport Operating Company operating expenditure, the costs incurred by the Accountable Body and any remainder to be used on projects that support the Freeport. This report seeks approval to fund the £1,651,275 operating expenditure of the Thames Freeport Operating Company from the s31 grant and delegation of the remaining £0.606m s31 grant as set out in recommendation 1.3 and paragraph 3.11.
- 3.7 The Thames Freeport Governing Board includes representation from the three private sector partners, the three Local Authorities, representation from the Thames Estuary Growth Board, the Port of London Authority, an independent chair and strategic advisors. The Governing Board met on 26<sup>th</sup> September and approved the Business and Financial Plan.
- 3.8 To date the Freeport Operating Company has been supported by the private sector while waiting for the first formal meeting of the Governing Board and approval of the business plan. Payments are forecast on a quarterly basis however by December 2023 three payments of up to £1,238,454 are due. The fourth payment of up to £412,821 is scheduled for March 2024.
- 3.9 A funding agreement is being prepared by the Council to be agreed and signed by the Freeport Operating Company. Funding is also subject to subsidy control requirements and appropriate legally binding agreements between all parties being in place.
- 3.10 The Subsidy Control Act controls the provision of subsidies given by public authorities to prevent unfair competition or effects on trade and investments. The Council has identified expert legal and economic advice to take a view on the subsidy position in providing operational grant to the Freeport OpCo.
- 3.11 The Freeport Governing Board will meet again in January 2024 and will consider the Financial Business Plan for 2024/5. A further report will be presented to Cabinet seeking permission to spend the funding should the Board approve the plan and subject to receipt of sufficient funding through s31 grant and a signed funding agreement.

### **Remaining s31 Grant**

- 3.12 The remaining s31 grant of £0.606m for 2023/4 is to pay for costs incurred by the Council in its role as Accountable Body and any remainder is for projects that support the Freeport. This report seeks approval to delegate authority to the Director of Legal and Governance in consultation with the Leader,

Portfolio Holder for Governance, Chief Executive and S151 Officer to release funding to deliver the Accountable Body functions and to use on projects that support the delivery of the Freeport.

### **Cabinet Sub-Committee Terms of Reference**

- 3.13 In September 2023 Cabinet agreed to establish a Cabinet Sub-Committee to provide oversight and support to Cabinet in its decision making relating to the Freeport. The committee was to include a minimum of three Members with attendance by key senior members of the Accountable Body Officer Group including the Chief Financial Officer and the Director of Law and Governance.
- 3.14 A draft terms of reference for the group have been prepared and form Appendix 3 to this report. The Terms of Reference summarise the membership and the role of the group. The group will not have decision making powers but will refer all recommendations direct to Cabinet.
- 3.15 Cabinet are asked to approve the terms of reference for the Thames Freeport Cabinet Sub-Committee.

### **4. Reasons for Recommendation**

- 4.1 Thurrock Council are Accountable Body for Thames Freeport and have received s31 grant from DLUHC which is to be used to pay for the operation of the Freeport Operating Company and the costs incurred by the Accountable Body. Any remaining funding is to be used to fund projects that support the Freeport.
- 4.2 As the Financial Business Plan for 2023/4 has been subject to due diligence and approved by the Freeport Governing Board, Cabinet is asked to approve spend of £1.651m to fund the Operating Company subject to the necessary legal agreements being put in place.
- 4.3 Cabinet are also asked to delegate authority to the Director of Legal and Governance in consultation with the Leader, Portfolio Holder for Governance, Chief Executive and S151 Officer to release funding to deliver the Accountable Body functions and to use on projects that support delivery of the Freeport in consultation.

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

- 5.1 The Thames Freeport Governing Board have reviewed and approved the Freeport Operating Company Financial Business Plan.

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

- 6.1 Deliver of Thames Freeport is referenced 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: **Jonathan Wilson**  
**Assistant Director Finance**

The funding of £1,651,275 will be funded from the s31 grant of £2.257m received by the Council as Accountable Body. The s31 Grant relates to the retained business rates forecast for 2023/4 and is used to pay the Freeport Operating Costs and the Council Accountable Body costs. Any remaining funding is to be spent on projects that support the Freeport

Financial Position	£m
S31 Grant	2.257
Operating Costs	1.651
<b>Balance</b>	<b>0.606</b>

### 7.2 Legal

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

Before any funds can be approved for release by the Council to the Thames Freeport Operating Company, the subsidy control position will need to be established.

The new domestic subsidy control regime brought in by the Subsidy Control Act 2022 came into full force and effect on 4 January 2023. The Act controls the provision of subsidies given by public authorities to prevent unfair competition or effects on trade and investments.

The Act requires public authorities to establish whether the support (known in the Act as 'financial assistance') they are proposing to provide amounts to a subsidy under the regime.

The subsidy control regime does not apply to all types of financial assistance given by public authorities. However, in the early stages of decision-making, it is key that the Council assesses whether the financial assistance that the Council is seeking to release to Thames Freeport Operating Company falls under the definition of a subsidy that is set out in the Act.

There are key questions which need to be explored to help determine the subsidy control position in respect of the proposed Operational Grant to Thames Freeport Operating Company:

- is the Operating Company an enterprise and is it receiving funding for economic activity?
- does the Operational Grant confer an economic advantage on the Operating Company?
- does the receipt of funding impact trade or investment?
- is there a subsidy to the private sector Freeport partners as owners of the Operating Company or other third parties?

The answers to these questions will be important in understanding whether the Operational Grant is or is not a subsidy. Further information needs to be secured from the Council's economic and/or financial advisers, and further advice, where required from external legal advisers. This will enable the Council to take a view on the subsidy position involved in providing the Operational Grant to Thames Freeport Operating Company.

The Government may decide to establish a national subsidy scheme for freeports and, if it is, this could afford an easier route for the Council to provide the Operational Grant in a subsidy compliant manner. However, currently no formal announcement has been made.

In addition, a funding agreement will need to be finalised and signed by the Council and the Freeport Operating Company before any funds are released. Work on the funding agreement can only commence once the subsidy control position has been established.

The September 2023 Cabinet meeting noted that various legally binding agreements will need to be established between the Council, Thames Freeport Governing Body, Thames Freeport Operating Company and recipients of grant funding. One of the legal agreements that will need to be established is a legally binding agreement relating to the governance arrangements for Thames Freeport to ensure that the Council's role as Accountable Body can be carried out effectively. A draft legally binding agreement has been prepared, but as yet has not been finalised. It is in the interest of the Council that such an agreement is put in place prior to entering into a funding agreement with Thames Freeport Operating Company to release the retained business rates funds.

The Council's responsibilities as Accountable Body to Thames Freeport is an executive function. The establishment of the Thames Freeport Cabinet Sub-Committee will provide oversight and advise Cabinet on the effectiveness of the Council's governance arrangements and the strategic risks faced by the Council. The terms of reference states that the Sub Committee will not have any executive decision-making powers.

### **7.3 Diversity and Equality**

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

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 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and 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):

Cabinet Report - 13 September 2023 [Freeport Cabinet Report](#)

9. **Appendices to the report**

- Appendix 1: Thames Freeport Business and Financial Plan – EXEMPT
- Appendix 2: Accountable Body Report on the Thames Freeport Business Plan– EXEMPT
- Appendix 3: Thames Freeport sub-committee Terms of Reference

**Report Author:**

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Economic Development