

<b>24 September 2024</b>		ITEM: n/a
<b>Urgent Decision</b>		
<b>Thames Freeport Ltd Grant Funding Agreement Deed of Variation</b>		
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> Key	
<b>Report of:</b> Stephen Taylor, Head of Freeport		
<b>Accountable Assistant Director:</b> Mark Bradbury, Chief Officer - Economic Growth Partnerships and Special Projects		
<b>Accountable Director:</b> Alex Powell, Assistant Chief Executive		
<b>This report is public with exempt appendices</b>		
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.		

## **Executive Summary**

Thames Freeport Limited (TFL) is the delivery arm of the Freeport and is funded from the S31 grant relating retained business rates reliefs. TFL has no other assets and requires funding to remain a going concern delivering the Freeport while longer term legally binding agreements are completed and executed.

This report seeks approval to sign a Deed of Variation that extends the existing grant funding agreement with TFL to cover the period to the end of October 2024 while negotiation on longer term legally binding agreements continue.

- 1. Recommendation(s)**
  - 1.1 That in accordance with the Council's Constitution (Part 1, Chapter 6, paragraph 4.7) the Assistant Chief Executive approves execution of the Deed of Variation to fund Thames Freeport Limited eligible operating expenses for the delivery of Thames Freeport objectives to 31 October 2024.**
  - 1.2 To note that the Chief Executive has delegated decision making on Freeport related matters to the Assistant Chief Executive**

**1.3 To note that once the Deed of Variation is executed the Council will be required to make a payment of £995,500 to Thames Freeport Limited funded from s31 grants.**

## **2. Introduction and Background**

2.1 Thames Freeport Limited (TFL) is responsible for delivery of the Freeport. It is wholly funded by public funds relating to retained business rates reliefs in the Freeport area and which are paid to the Council as Accountable Body for the Freeport by Section 31 grant from MHCLG. The Council then pays the funds on to TFL via a grant funding agreement based upon forecast spend in the Finance and Business Plan for 2024/25.

2.2 In February 2024, following the signing of the Memorandum of Understanding with MHCLG, the parties agreed that three legally binding agreements should be prepared to secure delivery of the Freeport, and the Council as Accountable Body has been working with the owners of TFL and members of the Freeport Board to put in place the appropriate legal agreements. The Council's commissioners require that these agreements are put in place, in order to secure good governance.

2.4 On 18 April 2024 the Assistant Chief Executive took the decision to execute a Grant Funding Agreement and fund Thames Freeport Limited (TFL) for the first quarter of 2024-5. The purpose was to fund TFL while negotiations continued on the package of longer term legally binding agreements. The Grant Funding Agreement ended on 30 June 2024 but was extended by Deed of Variation dated 9 September 2024 to finish on 30 September 2024.

2.5 Without a decision to extend the Grant Funding Agreement by Deed of Variation to 31 October 2024 Thames Freeport Ltd will not be able to continue to operate with serious implications for the delivery of the Freeport initiative including the commitments made in the Memorandum of Understanding with MHCLG, compromising the Council's interests and necessitating an urgent decision to provide further support.

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

3.1 The Grant Funding Agreement for the period April to June 2024 forms **exempt Appendix 1** to this report and the Deed of Variation agreed to extend the Grant Funding Agreement to 30 September 2024 forms **exempt Appendix 2**. The Grant Funding Agreement included a payment mechanism that sought to ensure TFL always had sufficient funding in the bank to meet its obligations.

3.2 The Council has agreed to extend the April to June 2024 Grant Funding Agreement on a month-by-month basis while negotiations continue on the longer term legally binding agreements. The last extension to the Grant Funding Agreement finishes on 30 September 2024 and if TFL is to continue to operate it requires a further extension and payment of funds from the S31 grant relating to retained business rates paid by the Government to the Council as Accountable Body.

3.3 A draft Deed of Variation to extend the grant funding period to 31 October has been prepared and forms **exempt Appendix 3** to this report. It makes minor changes to the Grant Funding Agreement and has now been agreed by all sides.

- 3.4 Once the Deed of Variation has been signed by all parties then an urgent payment can be made to TFL enabling them to continue to operate. TFL are reviewing their financial forecast for the year and on 12 September informed the Council that they will require £995,500 in October 2024. This is significantly higher than the previous financial forecast and as a result the decision to extend the Grant Funding Agreement is above the key decision threshold. This can be contained within the £3.757m budget agreed by the Freeport Board through the Business and Financial Plan for 2024-5 and within the S31 grant of £7.5m due to the Council this financial year from MHCLG which is ring-fenced to support the Freeport. It does not have any implications for the Council's general finances. The funding to be paid to TFL is set out in **Exempt Appendix 4** to this report.
- 3.5 Key decisions normally require formal notification through the Forward Plan or through the urgent decision-making process. Given the Council was only notified of the money required on 12 September and the Deed of Variation was only agreed 1 October the Council now needs to follow a very urgent decision-making process as set out in the Constitution.
- 3.6 The longer term legally binding agreements are progressing however there is further work to do before there are a package of agreements ready for all parties to sign. The Council is working towards concluding all the agreements by the end of December 2024. In the meantime further Deeds of Variation will be required to continue to fund TFL. Given decisions to sign further agreements could be key decisions they have been added to the Forward Plan and the decisions will be taken in line with the Council's formal decision making process

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

- 4.1 For TFL to be able to continue to function it requires funding from the S31 grant relating to retained business rates reliefs. Extending the funding agreement for the first quarter of 2024-5 to finish on 31 October 2024 will enable TFL to continue functioning while the longer term legal agreements finalised, including a funding agreement for the rest of the 2024-5 financial year.

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

- 5.1 The Chair of Corporate Overview and Scrutiny Committee has been consulted on urgency of the decision
- 5.2 The Leader has been consulted on the decision

#### **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**

The funding agreement is funded from s31 grant from MHCLG. The extension of the quarter 1 funding agreement requires the Council to make a payment of £995,500 in line with the Finance & Business Plan 2024/25 approved by the Section151 Officer on 16<sup>th</sup> April 2024. The

funding can be contained within the £7.5m s31 grant received by the Council from MHCLG for 2024/25 which relates to retained business rates and is ring-fenced to support the Freeport.

## 7.2 Legal

The Council's general power of competence under the Localism Act 2011, empowers the Council to enter into a Deed of Variation to extend the Grant Funding Agreement with Thames Freeport Limited until the 31 October 2024.

### Governance

The decision is being taken by the Chief Executive under their powers to take a key decision where urgency dictates. Paragraph 4.7 of Chapter 6 of the Constitution provides that the Chief Executive may take a key decision where the matter is so urgent that it is appropriate, for the protection of the interests of the authority or its area. The reasons for the urgency of entering into the Deed of Variation for funding to 31 October 2024 are set out within this report.

This is a key decision and there is a 28 day notification requirement of key decisions to be taken. Due to the urgency of this decision, it is not possible to comply with notification requirements. Paragraph 15 of Chapter 8 of the Constitution provides that a key decision that cannot meet standard notification requirements, or provisions within paragraph 14 of Chapter 8 (decision giving 5 days notice and allowing a call in period), can only be taken with the permission of the Chair of the relevant Overview and Scrutiny Committee. For the reasons already set out neither of those notification requirements can be met. It should be noted that there is a requirement under the provisions of the Constitution to publish a notice of the decision as soon as reasonably practicable after the decision has been taken.

### Subsidy control

The Council is under a legal obligation to consider whether the proposed grant funding could fall within the subsidy control regime under the Subsidy Control Act 2022.

External legal and financial advice was previously obtained in relation to the Grant Funding Agreement on whether the proposed funding falls within the definition of a subsidy. There were grounds to conclude that the funding does not fall within the subsidy control regime.

This is because the proposed funding will be used to fund non-economic activity undertaken by Thames Freeport Limited. Therefore Thames Freeport Limited is unlikely to fall within the definition of an enterprise engaging in economic activity offering goods or services on the market. Therefore there continues to be grounds to conclude that the additional funding falls outside of the subsidy regime.

## 7.3 Diversity and Equality

n/a

## 7.4 Risks

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

- Business Rates, MHCLG are paying s31 grant on a monthly basis. The forecast shows there is more than sufficient funding available to support the Freeport for the full financial year however the situation will continue to be monitored. If required adjustment will be made to the grant funding available to TFL for the remaining months of the year such that there is sufficient s31 grant available to meet the funding requirement for the Freeport.
- Assurance Framework. For 2024-5 the Council requires the TFL to enact the approved financial procedures and to put in place systems and processes to ensure compliance. The financial procedures framework has now been adopted by the Freeport Governing Board and TFL are focussed on implementation. The Council check 100% of actual expenditure on a month by month basis for the term of this agreement. Any underspend at the end of the funding agreement will be taken into account in the agreement for the funding requirements for the rest of 2024-5 or repaid to the Council.
- Appropriate legally binding agreements. The Council still requires appropriate legally binding agreements to be put in place for delivery of the Freeport. While negotiations continue the Council has been clear it will fund Thames Freeport Limited on a month by month basis depending on significant progress negotiating the longer term legal agreements .

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

n/a

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](#)
- Cabinet Report – 21 February 2024 [Thames Freeport Accountable Body Decisions](#)
- Thames Freeport Full Business Case [Delivering the Thames Freeport](#)

9. **Appendices to the report**

- Exempt Appendix 1: Grant Funding Agreement April to June 2024
- Exempt Appendix 2: Deed of Variation to September 2024
- Exempt Appendix 3: Draft deed of variation
- Exempt Appendix 4: Financial Calculations

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**Report Author:**

Stephen Taylor

Head of Freeport