

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 Three appendices are not to be published by virtue of part 1 of Schedule 12A of the Local Government Act 1972 because they contain exempt information as set out in category 3 because the report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exempt by reference to the descriptions in Schedule 12A of the Local Government Act 1972, it is hereby marked as being not for publication.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 summaries the Council’s responsibilities relating to Seed Capital Funding, progress made by project promoters developing Outline Business Cases and the

Final Version ready for Cabinet / Executive decision

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:

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Head of Freeport

Economic Development