

Forward Plan reference number: FP/282/01/22

Report title: Freeport East – Submission of Full Business Case to HM Government	
Report to: Cabinet	
Report author: Councillor Lesley Wagland, Cabinet Member for Economic Renewal, Infrastructure and Planning	
Date: 15 March 2022	For: Decision
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County Divisions affected: All Tendring Divisions	

1. Everyone's Essex

- 1.1 A strong and successful freeport in Essex will help achieve a Strong and Sustainable Economy, one of the strategic aims of 'Everyone's Essex'. Freeport East proposes the designation of sites in Felixstowe and Stowmarket in Suffolk and also in Harwich.
- 1.2 The proposed Freeport East programme includes new facilities to support clean energy generation at Harwich an enhanced Energy Skills Centre, both working towards ECC's climate change and net zero objectives.
- 1.3 Additionally, the proposed Freeport East programme supports Everyone's Essex commitments for green growth, levelling up the economy and good jobs which, through the wider investment, job creation and business rates income this could secure within Essex, would also help deliver high quality infrastructure and level up health in an area of severe multiple deprivation. The project potentially represents a once in a generation opportunity to deliver major economic growth and regeneration in Harwich, one of Essex County Council's priority places for levelling up.
- 1.4 There are two proposed Freeports in greater Essex: Freeport East, which includes proposed Tax and Customs Sites at Harwich and Horsley Cross in Tendring (as well as sites in Suffolk), and Thames Freeport, which comprises sites in Thurrock. Both Freeports could offer potentially significant economic benefits for the County. This report concerns Freeport East because, as the Upper Tier Authority, Essex County Council has been asked to provide letters of support for its Full Business Case, which is due to be submitted to HM Government in April 2022.
- 1.5 All local authorities covering the area of the proposed Freeport have been asked to provide support for the Final Business Case. This would be provided through a letter from the Leader which covers the principles for use of retained business rates income and direction of travel for decision making, both of which are detailed in this report.

- 1.6 It is important to note that there is a funding gap with the delivery of much of the Harwich part of the Freeport and the County Council's support needs to make it clear that whilst we support the delivery of the wider Freeport, the key benefit to Essex arises from the delivery of the clean energy hub on land to be reclaimed from the sea at Bathside Bay.

2. Recommendations

- 2.1 Agree that the Leader of the Council can sign a letter of support to accompany the Final Business Case ("Final Business Case") for Freeport East to HM Government, providing provisional support for the Freeport East programme, making it clear that our support is subject to it providing benefits to Essex.
- 2.2 Agree that the County Council is in principle prepared to participate in a company limited by guarantee.
- 2.3 Agree that the Cabinet Member for Economic Renewal, Infrastructure and Planning may make the final decision on participation in the Company as a member or by the appointment of a director or both, if she is satisfied that:
 - (a) Participating in the Company does not expose us to disproportionate risk of cost or to the council's reputation.
 - (b) The Company has a governance model which is considered likely to deliver economic benefits to Essex by the distribution of income.
 - (c) The Freeport is likely to result in the delivery of the green energy hub at Bathside Bay.

3. Background and Proposal

Background

- 3.1 The district of Tendring has several areas of severe multiple deprivation but is now the focus of regeneration through investments including a Freeport designation, Essex Pedal Power, UK Community Renewal Fund projects, Jaywick market and commercial workspace, and the proposed Tendring-Colchester Borders Garden Community which has attracted funding to construct a new A120 / A133 Link Road and provide a Rapid Transit System.
- 3.2 In the 2021 Budget, HM Government announced the intention to designate sites in Essex and Suffolk as 'Freeport East', offering wide-ranging economic development opportunities to support economic growth and shared prosperity. HM Government hopes that freeports will attract businesses that import, process and add value, and then re-export goods. At a freeport, imports can enter certain sites with simplified customs documentation and without paying tariffs. Businesses operating inside designated areas in and around the port can manufacture goods using the imports and add value, before exporting again without full tariffs or customs procedures. If the

goods move out of the freeport into another part of UK, they must go through the full import process, including paying any tariffs.

- 3.3 It is proposed that Freeports will be part funded by retained business rates, which is the share of business rates currently retained by central government. The business rate retention system was introduced in April 2013. Under this scheme, Councils retain up to half of the rates income raised from businesses in their local area, with the remainder retained centrally by the government and used to provide grant funding for local authorities. HM Government are proposing that for Freeports the retained business rate scheme will be different and offer the opportunity for billing authorities to retain more business rates than they otherwise would have. This is effectively extra funding for the area. Much of the money must be spent on the Freeport sites themselves, but some is available to improve infrastructure in the area surrounding the freeport.
- 3.4 Freeport East is based around the Port of Felixstowe and Harwich International Port, but includes sites in Stowmarket, Suffolk. It comprises 275 hectares of space and facilities across three sites eligible for tax relief ("Tax Sites") at Felixstowe dock, Bathside Bay in Harwich, and Gateway 14 in Stowmarket). There are also seven sites eligible for customs duty relief where goods are imported, worked upon and re-exported ("Customs Sites").
- 3.5 The Harwich Tax Site is intended to be developed as a Clean Energy Hub and create 1,900 jobs. However, the boundary of the tax site is largely comprised of areas which require to be reclaimed from the sea in order to provide a development platform, and a significant funding gap of c£80m remains even after the provisional allocation of £7m of seed capital funding by HM Government. In addition, two Customs Sites in Essex are proposed as part of Freeport East in Essex; however, the site at Horsley Cross includes land that is not currently allocated for employment use and planning permission would be required for any freeport use. It will be seen that much additional funding needs to be found if Essex is to benefit from the Freeport (and officers continue to work with partners on potential solutions to meet the identified funding gap). This is not the case with the sites in Suffolk which are ready for development.
- 3.6 In September 2021, the Leader of the Council provided a letter of support to accompany the submission of an Outline Business Case to HM Government by Freeport East. A letter from the Department of Levelling Up, Housing and Communities ("DLUHC") dated 10 December 2021 approved the Outline Business Case ("OBC") submitted by Freeport East, and provisionally allocated £7m of capital funding to deliver small scale site preparation works (no land reclamation) at the Harwich Tax Site. Effective from 30 December 2021, *The Designation of Freeport Tax Sites (Freeport East) Regulations 2021* designated "Tax Site 1: Harwich Tax Site Tendring" as a special area with enhanced capital allowances and relief from stamp duty land tax.
- 3.7 The ports of Harwich and Felixstowe are both owned and operated by companies owned by companies in the Hutchison group Ltd. The Gateway 14 site is owned by Mid Suffolk District Council which is also the billing authority for that site.

- 3.8 East Suffolk District Council, as the Lead Authority, is now required to submit a Full Business Case to HM Government by 15 April 2022. The Final Business Case will continue to be developed in consultation with the local authority partners and the landowners.
- 3.9 As part of the operation of the Freeport, the lead authority and the billing authorities have to work together to monitor the site (although responsibility for giving tax exemptions etc remains with HM Revenue and Customers). We also need a mechanism for the distribution of retained rates.

Redistribution of retained business rates

- 3.10 To accompany the Final Business Case being submitted to HM Government all partners have been asked to sign a letter of support on the high-level arrangements for business rates retention. The letter will need to confirm that ECC supports the proposed high-level arrangements, under which the retained business rate monies will be divided into three pots. The proposed pots are all funded from Retained Business Rates and are as follows:
- 3.10.1 **Pot A** is the existing rates funding calculated on the same basis as would currently apply to the distribution of rates. Pot A is distributed to local authorities and is effectively neutral of freeport.
- 3.10.2 **Pot B** provides funding from retained business rates to support or accelerate development of a Tax Site if it is required. An application for funding from Pot B by Hutchinson Group Ltd could assist with the development of Bathside Bay. At present the detailed approach to distributing Pot B is yet to be determined. ECC representatives will continue to press for any decisions on spend to involve Tendring District Council, Essex County Council, alongside other representatives of the Freeport East Board once it is constituted. It should be noted that pot B cannot provide enough funding to resolve the issues previously identified
- 3.10.3 **Pot C** provides a fund for economic development within the subregion, aligned to achieving the wider Freeport Policy objectives including investment in skills, innovation, levelling up, trade, investment, infrastructure, security and net zero carbon. Applications for funding from pot C by Essex partners could fund additional projects in the area beyond the Freeport sites themselves. As with pot B, ECC representatives will continue to press for any decisions on spend to involve Tendring District Council, Essex County Council, alongside other representatives of the Freeport East Board once it is constituted.
- 3.10.4 The size of pot C will depend on the requirements of Pot B and the time taken for the Tax Sites to be delivered and occupied.

Proposed decision making

3.11 East Suffolk District Council believes that the best vehicle for decision making is via the establishment of a company limited by guarantee. A shadow board is currently established and includes a number of partners including.

- Essex County Council,
- Suffolk County Council,
- East Suffolk District Council,
- Mid Suffolk District Council,
- Tendring District Council
- education and skills providers,
- Hutchison representative
- HM Government

3.12 Under the proposed company ECC will be invited to become a member of the company and during alternate years it will be able to appoint a director – meaning that 50% of the time it will have a voice on the board. This is the same as for Suffolk CC but not the same as the billing authorities since all three of them will have a permanent position on the board.

3.13 It should also be noted that East Suffolk District Council is proposing to retain the legal ability to overrule the company.

3.14 Even in years when ECC has a vote, under the proposed arrangements Suffolk-based members will always be able to outvote Essex members. This is in contrast to the position with the South East Local Enterprise Partnership (SELEP) where voting power between the geographical areas is carefully balanced. Therefore, whilst the potential benefits to Essex that could flow from the delivery of Freeport East and use of retained business rates could be significant, there are also risks and issues that need to be considered in the setting up the company or whatever alternative model is selected.

3.15 The recommendations set out above are intended to enable the partner authorities to continue discussion of the proposed governance model, and for the Cabinet Member for Economic Renewal, Infrastructure and Planning to consider the risks and issues before making a final decision on participation in the Company.

Funding requirement

3.16 It will be seen that ECC is **not** being asked to commit capital funding to the Freeport East programme. It is being asked to support a change to the redistribution of rates in a way which does not affect its current financial position but which reduces the amount of retained business rates which could in future be available under any rate retention scheme.

3.17 Work is ongoing with partners to address the identified funding gap for Bathside Bay, including the potential use of retained business rates to provide some of the funding , as well as wider 'Pot C' investment to deliver the economic development objectives of

Freeport East (see paragraphs 3.10 above in relation to retained business rates). As part of these ongoing discussions, the intention is that local authorities including ECC would not be asked to provide any direct funding or take on any financial/borrowing risk.

- 3.18 In relation to any funding requirements for transport or other infrastructure, the detailed investment needs arising from the proposed green energy hub at Bathside Bay will become known as further details regarding the proposed uses are developed. Infrastructure requirements directly related to the green energy hub could be addressed through developer contributions as part of the planning process to gain or vary the necessary planning consents. Wider infrastructure provision could be funded through 'Pot C' retained business rates (see paragraph 3.10 above).
- 3.19 Although the business case is likely to continue to be developed until the deadline for submission in April 2022, the shadow board is due to consider it for the final time during week commencing 14 March 2022.

4. Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision
- Develop our County sustainably
 - Share prosperity with everyone
- 4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:
- Increased chance of Government approving the Final Business Case leading to the development of new facilities to support clean energy production
 - An enhanced Energy Skills Centre in Essex
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
- A strong, inclusive and sustainable economy
 - A high quality environment

5. Options

Option 1: Recommended Option

- 5.1 Approval of the recommendations would see ECC providing a letter of support to accompany the Final Business Case for Freeport East to HM Government, providing support for the high-level arrangements for distribution of retained business rates income and for the proposed governance model.

- 5.2 This would increase the chance of the Final Business Case being accepted by HM Government. There is a greater probability that greater / accelerated social, economic and environmental benefits would be secured for Essex residents and businesses, if the funding gap can be closed.
- 5.3 There will be no reduction in the current level of business rates income to ECC compared to the normal treatment, due to pot A as described above.
- 5.4 The pooling of other business rates income into pots offers opportunities for Essex residents and businesses to benefit from more funding and earlier within the period of the arrangement (25 years) than having separate pots for the two Counties. However, the amount of retained business rates available over time would depend upon the timing of delivery and occupation on the Tax Sites compared to the current baseline, and the share of income used to benefit Essex residents and businesses would depend on the high-level arrangements for distribution of business rates income described above. The probability of this money benefitting Essex will depend on the voting arrangements.
- 5.5 If there was no new development at the Harwich Tax Site during the business rates retention period, ECC and its partners may still be able to access retained business rates income in pot C, to share prosperity from Freeport East more widely – including to areas of severe multiple deprivation within Essex. It must be remembered that Suffolk based representatives will always be able to outvote Essex representatives and ECC will only have a vote 50% of the time.
- 5.6 If the final business case submitted to HM Government by Freeport East proposes a company limited by guarantee, and ECC decides not to take part refuses to join this, then the Council would be less visible and have less influence over the distribution of some of the retained business rates income, although the extent of ECC's influence is set out more fully in section 3 of this report.

Option 2: Do nothing (not recommended)

- 5.7 This option would see ECC not sending a letter of support and not participating in the company. It is unclear whether this would affect the designation of the freeport. ECC is not the billing authority, it is not required to take part in the company and the letter of support is not a legal requirement for the establishment of the Freeport.
- 5.8 The Council would have less visibility or influence over the distribution of retained business rates income, but it would retain its existing income.
- 5.9 If ECC does not provide a letter of support then there is a slightly increased risk of the final Business Case being rejected by HM Government, although Freeport East has already been designated by law.

6. Issues for consideration

6.1 Financial implications

- 6.1.1 Full business rates relief will be granted to all new businesses, and certain existing businesses where they expand, at the Freeport East tax sites until 30 September 2026 (and may be applied up to 29 September 2031). Central Government will provide reimbursement for this, which ECC would receive via Pot A as referred to above.
- 6.1.2 The local councils will be able to retain business rates income from the Freeport East tax sites for a period of 25 years. The total amount of retained business rates income from across the Freeport East area is proposed to be split into pots as referred to in 3.10 above.
- 6.1.3 Further detail is being produced regarding the estimation of retained business rates income into the different funding pots over time based on the arrangements above, under different growth scenarios. To date the workings and assumptions behind the estimated retained business rates or the associated capital or revenue costs have yet to be shared with ECC finance therefore no level of assurance can be provided to these numbers.
- 6.1.4 Even if retained business rates income is lower than anticipated, there would be no loss of income to ECC compared to the normal treatment, due to Pot A referred to above. While the emerging business rates income modelling is yet to be verified by ECC officers, Essex as a whole could benefit significantly from the use of retained business rates through the potential investment of 'Pot B' in the delivery of a green energy hub at Bathside Bay and wider investment of economic development projects through retained rates 'Pot C'. However, depending on factors such as the level of development achieved at Bathside Bay and wider infrastructure investment needs in other parts of the Freeport East area, Essex could, in theory, receive no income from pots B and C – reducing the potential to achieve the objectives of Freeport East within Essex.
- 6.1.5 The £7m of seed capital funding from HM Government will be the subject of a funding agreement between East Suffolk Council, as the Lead Authority, and Hutchison Ports (UK) Limited. Therefore, there will be no risk to ECC of clawback of this funding.
- 6.1.6 The latest draft of the FBC sets out an annual revenue funding requirement of Freeport East of £400,000 for revenue projects to meet the freeport policy objectives, primarily skills, innovation, and net zero. These revenue projects will be proposed and agreed by the Freeport East supervisory board once the Freeport East entity is formed. In total the commitment may amount to £800,000 to £1m of revenue prior to rates income being received in 2024/25 to cover Freeport policy objectives. It is suggested that Local Authorities could potentially fund this in the short term on a simple one-fifth share for each authority, being repaid from Pot C allocations when this rating income is realised.

6.2 Legal implications

- 6.2.1 HM Government policy is still in a formative state and further legislation may be needed in order to fully implement Freeports. The designation under the Finance Act 2021

does not itself have any direct legal effect, but it is a clear statement of intent by the Government.

6.2.2 The proposals would not result in any reduction of income for ECC but would mean that there is less retained rates available for any future distribution by the government, for example as part of a future devolution deal.

6.2.3 Participating in a company would result in a number of risks to ECC:

- There is a risk that a company may seek to expand its brief and not perform as the commissioning organisations would wish. ECC will have little ability to control this risk other than to seek to influence partner organisations.
- There is a risk that ECC takes part in the company and a failure to deliver Bathside Bay and the ability of Suffolk based representatives to outvote Essex based representatives combine to mean that the income is spent largely in Suffolk or in the port of Harwich itself, resulting in ECC's commitment not delivering any benefit to the Essex economy or our residents. To manage this risk it is suggested that we should achieve as much influence as we can in the company and not support the proposals if we think it is unlikely that benefits will be delivered.
- Although there is an expressed intention on the part of the lead authority that the company is 'future proof', it remains likely that the company will need to change significantly if its role changes. There has been only a limited analysis of the company's role meaning that there is a medium to high probability that the company may not be effective or fit for the tasks which may ultimately be entrusted to it. The partners can of course change how the company operates, but it's much harder to change something once established.
- There are significant overheads with operating a company and keeping it up to date. No option appraisal has been undertaken to see whether this is the most appropriate model given the tasks that the company has to undertake. Whilst the council is not opposing the creation of a company

6.2.4 Whilst there are currently no proposals for ECC to provide capital funding to support the delivery of Freeport tax and customs sites, that may change given the significant funding gap. Even if the council were minded to support such a request, it would need to be carefully assessed to see whether it would amount to an unlawful subsidy.

7. Equality and Diversity implications

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- b) Advance equality of opportunity between people who share a protected characteristic and those who do not.

- c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a)
- 7.3 The proposals will not lead to a reduction in business rate income for ECC, due to pot A2 referred to in Option 1 above.
- 7.4 The objectives of Freeport East include sharing prosperity from the programme, particularly, with deprived coastal communities. The Final Business Case will propose high-level arrangements for monitoring and evaluation to ensure that distribution of retained business rates income from pot C contributes to achieving this objective. ECC intends to work alongside partners to promote investment in projects within Essex, particularly those improving skills and transport infrastructure. Overall, a positive impact is expected for groups with protected characteristics.
- 7.5 An equality impact assessment has been undertaken to inform this decision, and another equality impact assessment will be carried out as part of the Final Business Case submitted to HM Government.

8. List of appendices

- Appendix A - Equality impact assessment

9. List of background papers

None.