

# Public Document Pack



**Helen Barrington**

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Ask for Alec Dubberley, Head of  
Democratic and Registration Services

PUBLIC

To: Members of Cabinet

Wednesday, 29 June 2022

Dear Councillor,

Please attend a meeting of the **Cabinet** to be held at **10.00 am** on **Thursday, 7 July 2022** in Committee Room 1, County Hall, Matlock, the agenda for which is set out below.

Yours faithfully

A handwritten signature in black ink that reads 'Helen E. Barrington'.

**Helen Barrington**  
**Director of Legal and Democratic Services**

## **A G E N D A**

1. To receive apologies for absence
2. To receive declarations of interest (if any)
3. To consider Minority Group Leader questions (if any)

Minority Group Leaders in attendance at the meeting are able to ask questions on agenda items. Any questions should be provided in writing no later than 12 noon on the day before the meeting.

4. To approve, as a correct record, the non-exempt minutes of the meeting held on 16 June 2022 (Pages 1 - 6)
5. Transitions (Early Help) Direction of Travel (Pages 7 - 18)
6. Proposal to become a Member of the Incorporated East Midlands Freeport (Pages 19 - 136)
7. Exclusion of the Public

To move "That under Regulation 4 (2)(b) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting for the following items of business on the grounds that in view of the nature of the items of business, that if members of the public were present, exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 would be disclosed to them."

## **PART II - EXEMPT ITEMS**

8. To approve, as a correct record, the exempt minutes of the meeting held on 16 June 2022 (Pages 137 - 138)
9. Protocol 8 Housing 21, Extra Care Service Contract Award (Pages 139 - 148)
10. Protocol 8 Together Housing Association, Extra Care Service Contract Award (Pages 149 - 158)
11. Urgent Decision taken by the Executive Director - Place to Procure a Contract for Highway Drainage Cleansing Contract (Pages 159 - 178)

PUBLIC

**MINUTES** of a meeting of **CABINET** held on Thursday, 16 June 2022 at Committee Room 1, County Hall, Matlock.

**PRESENT**

Councillor B Lewis (in the Chair)

Councillors A Dale, C Hart, N Hoy, T King, J Patten, K S Athwal and C Renwick.

Apologies for absence were submitted for Councillor S Spencer.

Officers present: Emma Alexander (Managing Director), Helen Barrington (Director - Legal and Democratic Services), Carol Cammiss (Executive Director - Children's Services), Paul Stone (Interim Director of Finance), Chris Henning (Executive Director - Place) and Helen Jones (Executive Director - Adult Care).

**112/22 TO RECEIVE DECLARATIONS OF INTEREST (IF ANY)**

None received.

**113/22 TO CONSIDER MINORITY GROUP LEADER QUESTIONS (IF ANY)**

None received.

**114/22 TO APPROVE, AS A CORRECT RECORD, THE NON-EXEMPT MINUTES OF THE MEETING HELD ON 5 MAY 2022**

**RESOLVED:**

To approve as a correct record, the minutes of the meeting held on 5 May 2022.

**115/22 TRANSFERRING INFANT AND TODDLER NUTRITION AND ORAL HEALTH PROMOTION CONTRACTS INTO SECTION 75**

Councillor C Hart introduced a report, which had been circulated in advance of the meeting, seeking agreement to transfer the Toddler Nutrition Service and Oral Health Promotion Services into the existing Section 75 Partnership Agreement with effect from 1 April 2023.

**RESOLVED to:**

- 1) Proceed with proposals to transfer the Infant and Toddler Nutrition Service and Oral Health Promotion Service delivered by DCHS

into the existing Section 75 Partnership Agreement with the same provider for the delivery of the 0-19 Public Health Nursing Service from 1 April 2023 for an indefinite period with an annual review; and

- 2) Delegate authority to the Director of Public Health to sign off the agreement to transfer both services into the existing Section 75 Partnership Agreement.

**116/22 SUSTAINABLE PROCUREMENT POLICY**

Councillor B Lewis introduced a report, which had been circulated in advance of the meeting, which presented the Council's Sustainable Procurement Policy for approval.

**RESOLVED to:**

Approve the Sustainable Procurement Policy, at Appendix 2 to the report, and the delivery of the actions within the Policy.

**117/22 CHILDRENS HOME REFURBISHMENT PROGRAMME**

Councillor J Patten introduced a report, which had been circulated in advance of the meeting, seeking Cabinet approval for an alternative method to deliver the refurbishment of some Childrens Homes to what had been previously agreed.

**RESOLVED to:**

- 1) Approve the additional Capital Budget requirement of £1.250m which will be funded by borrowing as set out in paragraph 4.14 of the report;
- 2) Approve the current identified revenue and capital totalling £4.686M to be utilised against the purchase, building and works of the proposed alternative assets to replace, Solomon, Fairview and Glenholme:
  - Solomon, replacement purchase and works - £1.3m
  - Fairview, replacement purchase and works - £1.85m
  - Glenholme, new builds - £2.03m;
- 3) Approve the purchase of a property to replace Solomon to a maximum amount of £0.7m;
- 4) Approve the purchase of a property to replace Fairview to a maximum amount of £0.5m;

- 5) Authorise spending on refurbishments works total estimate costs
  - Replacement Solomon works - £0.6m; and
- 6) Authorise spending on refurbishments works total estimate costs
  - Replacement Fairview works - £1.35m.

**118/22 REGENERATION PROGRAMME PIPELINE**

Councillor C Renwick introduced a report, which had been circulated in advance of the meeting, providing an overview of progress on key projects within the current Regeneration Programme, as well as seeking approval for critical requirements and revised funding on one of the projects.

**RESOLVED to:**

- 1) Note the current Regeneration Programme and likely future projects resulting from recent funding announcements;
- 2) Note the current review of governance arrangements for the Regeneration Programme and the proposed report for consideration by Cabinet members in due course.
- 3) Agree to the proposed role of the County Council as an agent and commissioner of works in support of the Long Eaton Town Deal programme; and
- 4) Agree to the reallocation of previously committed capital funding to the nominated projects as set out in the report and tabulated in Appendix 1 to the report.

**119/22 CORPORATE MAINTENANCE BUDGET PLANNED MAINTENANCE PROGRAMME 2022/23 (CORPORATE SERVICES)**

Councillor B Lewis introduced a report, which had been circulated in advance of the meeting, seeking approval of the planned maintenance programme for Council buildings during this financial year.

**RESOLVED to:**

- 1) Approve the Planned Maintenance Programme 2022-2023;
- 2) Approve all goods, works and services required to undertake the identified projects within the Planned Maintenance Programme

2022-2023 which will be procured and awarded in accordance with the Council's Financial Regulations;

- 3) Approve the procurement of the projects identified in the not for publication Appendix 2 to the report, which are included in the Council's forward plan in-line with the Council's Financial Regulations; and
- 4) Note that some awarding of contracts will be approved in accordance with the Council's Departmental Scheme of Delegation.

**120/22 FORWARD PLAN**

Councillor B Lewis introduced a report, which had been circulated in advance of the meeting that, presented the Executive's Forward Plan for the period 1 July to 31 October 2022.

**RESOLVED:**

To note the contents of the Forward Plan.

**121/22 EXCLUSION OF THE PUBLIC**

**RESOLVED:**

That under Regulation 4(2)(b) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting for the following items of business on the grounds that in view of the nature of the items of business, that if members of the public were present, exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 would be disclosed to them.

**122/22 TO APPROVE, AS A CORRECT RECORD, THE EXEMPT MINUTES OF THE MEETING HELD ON 5 MAY 2022**

**RESOLVED:**

To approve as a correct record, the exempt minutes of the meeting held on 5 May 2022.

**123/22 NHS HEALTH CHECKS - PERMISSION TO MAKE A DIRECT AWARD**

Councillor C Hart introduced a report, which had been circulated in advance of the meeting, seeking agreement to make a direct award for

the provision NHS Health Check Activity contract.

**RESOLVED:**

To approve the recommendation in the not for publication report.

The meeting finished at 2.30 pm

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**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**7 July 2022**

**Report of the Executive Director for Children's Services**

**TRANSITIONS (EARLY HELP) – DIRECTION OF TRAVEL**

**1 Divisions Affected**

1.1 County-wide Service

**2 Key Decision**

2.1 This is not a key decision

**3 Purpose**

3.1 This report seeks Cabinet support to extend the Transitions Service on a time-limited basis (for 22 months from 1<sup>st</sup> October 2022 to 31<sup>st</sup> July 2024), funded through the accumulated supporting families reserve; whilst a co-produced partnership Early Intervention and Prevention Strategy is designed and developed, and further work is undertaken to ascertain what the future partnership delivery model will be.

3.2 The Service have delivered some significant success, despite operating and delivery during the height of the pandemic. It is clear however, that the current model requires further development.

3.3. An Early Intervention and Prevention Strategy is required to strengthen and develop the current model of early help, build on successes and drive partnership working and accountability as a whole system.

3.4 We are recommending that the current model be extended whilst that strategy work is undertaken (to cease at this point would not be in the best interests of partners, children and young people and families)

- 3.5 A time-limited extension of the current service will enable:
- Continuity of support to strategic partners in relation to strengthening early help, while a new multi-agency partnership model is developed
  - Continuity of successful provision of support to young people aged 16-19 years in relation to employment, education and training
  - Early help advisers will continue to model 'Team around the child meetings'
  - Further work will continue to develop 'The Community Directory'

#### **4 Information and Analysis**

- 4.1 Cabinet agreed the original set up of the service on 31<sup>st</sup> January 2019 (see Appendix 2) as a result of a review and The Transition Service was established in September 2019 originally planned for a fixed term of 3 years. Some of the original remit has been met, however, largely due to the pandemic and the impact this had on the council delivering services and on partner agencies (particularly health) not all of the original areas of the plan have been delivered against.
- 4.2 Whilst there was a clear rationale for the service being developed the required outcomes need to be crystalised with an accountability framework secured via the design and development of a multi-agency co-produced Early Intervention and Prevention Partnership Strategy (which we will lead the development of).
- 4.3 The basis for developing the Early Intervention and Prevention Strategy is set out in The Working Together to Safeguard Children (2018), *'all agencies working with children and young people in Derbyshire are expected to provide early help at the earliest opportunity before requesting targeted support from frontline Children's Services'*. Our partnership protocol is set out in the Derby City and Derbyshire Safeguarding Children Partnership Threshold Document (see Appendix 9).
- 4.4 Please note: the Council continues to provide early help teams embedded into the early help and safeguarding service to provide targeted support to those children and families who need a higher level of support in the children's social system, and that are below the statutory social care threshold for social work involvement. This graduated response to vulnerability enables more children to have their needs met at the lowest level of intervention.

- 4.5 The Early Help Advisors support partners through modelling to convene and act as lead professionals in Team Around the Family meetings and offer advice on tools to use to elicit ‘the voice of the child’ when undertaking direct work, support with understanding and using assessments around children at risk of exploitation, and how to assess neglect or compromised parenting with the ‘Graded Care Profile’.
- 4.6 The Transition Team has also supported the development of sustainable communities. The Youth and Community Engagement Workers are able to support the setting up of community groups, support them to access funding, undertaking risk assessments etc. The staff have also worked on the development of the Community Directory.
- 4.7 The Community Directory has been developed by the Transition team and is a tool which partners can use to connect families to the appropriate support at the earliest opportunity without the need for them to refer on to specialist or targeted services. It is also designed to be used by families to access their own support - so it offers information which is easily accessible and leads to sustainable support.
- 4.8 Within the Transition Team sits the Employment and Education Team. They fulfil Derbyshire's statutory duty to monitor 16-18-year-olds who are not in education, employment or training, or whose educational provision is unknown (NEET).
- 5 The impact of COVID-19 on the Transitions Team and activities to build the sufficiency of Early Help**
- 5.1 It was agreed in the original cabinet paper of January 2019 to fund the Transition Team from the accumulated Supporting Families reserve for a period of 3 years to 30 September 2022.
- 5.2 The Transition Team was only operational for 6 months when the COVID-19 pandemic began, initially resulting in all team members working from home and being isolated from one another and their managers. Also, the work of the Transitions team was redirected to support the pandemic, including the work of partners also affected.
- 5.3 As the country began on the road to recovery from COVID, staff from the Transition Team were directed to work with frontline services in

supporting Derbyshire residents. Early Help Advisors and Youth and Community Engagement Workers were deployed to support the distribution of medication to vulnerable and shielding residents. Staff also worked closely with several food banks to provide hot meals to vulnerable families. Transition Team staff from across the localities engaged with newly developed forums to further support Derbyshire's COVID recovery including the District Forums and Wellness Hubs.

- 5.4 In the autumn of 2020, the government provided local authorities with the Emergency Assistance Grant to support COVID recovery. Staff from the Transition Team played an essential part in the distribution of this to vulnerable children, young people and families in Derbyshire with the Back to School and Learning Grant (to support children who had not yet returned to education).
- 5.5 Staff from the Transition Team worked at short notice to ensure the effective distribution of the COVID Winter Grant Scheme in December 2020 which resulted in around 29,000 vouchers being issued to vulnerable families.
- 5.6 Winter 2020 and Spring 2021 saw further disruption caused by the pandemic which meant that the briefing sessions and interventions planned to support partner agencies by the Early Help Advisors were not able to proceed or went ahead with reduced partner engagement.
- 5.7 Summer 2021 saw the development and delivery of the Holiday Activities and Food programme (HAF) with the Youth and Community Engagement Workers playing a significant role in supporting community organisations with the planning, preparation, implementation and evaluation of activities during the school holidays. The HAF continued into the winter of 2021 with Transition Team staff supporting the Christmas programme of activities.
- 5.8 The cumulative effect of the issues set out in paragraphs 6.2 – 6.7 mean that 22 months of planned work to develop a future model for the Transitions Team as part of our Early Intervention and Prevention approach have been significantly disrupted, largely due to the direct and indirect effects of the COVID-19 pandemic. The Team's efforts during the pandemic period have been directed at making a significant positive contribution to provision of support to partners, children and families.
- 6 Funding for time-limited extension of the Transitions Team: the Supporting Families Programme**

- 6.1 The Supporting Families (formerly Troubled Families) Programme is a programme of targeted interventions for families with multiple problems, including crime, anti-social behaviour, truancy, unemployment, mental health problems and domestic abuse. One aim of the Programme is to tackle issues before they require costlier interventions from public services. Supporting Families was introduced to local authorities in response to the civil unrest from the riots which were seen across the UK in 2011. The Department for Levelling Up, Communities and Housing (DLUCH) oversee the performance from each local authority.
- 6.2 Over the past three years, the Supporting Families programme has brought in just under £5.5m of funding to Derbyshire through either payment by results or from Service Transformation Grants which has gone into the Supporting Families reserves. There has been a significant upwards trajectory in performance over the lifetime of the programme in Derbyshire. The Transitions Team are the primary agents in successfully delivery against the requirements of the Supporting Families Programme and have an exemplary record in maximising Derbyshire's income from the scheme. Workers from across Early Help and Safeguarding engage with the Supporting Families programme to ensure that evidence of progression and improvements in family outcomes is gathered in order to make a payment by results claim.
- 6.3 The annual cost of the Transition Team is £1.595m. The Supporting Families reserve of £3.007m, generated through success in delivery of this programme, therefore holds sufficient resources to fund the team from October 2022 to the end of July 2024 (22 months). Any remaining income from the Supporting Families programme is available to support other priority areas across all DCC Departments as required.

## **7. Developing an Early Intervention and Prevention Strategy**

- 7.1 Over the next 12 months, the Executive Director for Children's Services will lead development of an Early Intervention and Prevention Strategy. This work will be undertaken as part of the process of developing and implementing an overarching Children's Services Strategy (2022-25).
- 7.2 The Early Intervention and Prevention Strategy will be co-produced with partners and stakeholders, including children, young people, families and elected members, to set out a partnership vision for the future of Early Intervention and Prevention support.
- 7.3 The Strategy will set out how all partners, including the Early Help Development Service, can support the Council's priority of developing Thriving Communities leading to improved and sustainable outcomes for children, young people, families and communities.
- 7.4 The Strategy will address the future direction of Early Intervention and Prevention activities, including the future model of Early Help and future shape and direction of the Early Help Development Service, and within that, the future for the functions currently provided by the Transitions Team beyond 2024.

## **8 Consultation**

- 8.1 At this stage, and following advice from Legal Services, there is no requirement for a formal consultation with staff and residents due to the exercise to date being focused on evaluation which is set out in section 4 above. If the decision is taken not to extend funding for the service, then a HR timetable will be implemented.

## **9 Alternative Option Considered**

- 9.1 This report has been prepared in the context of the original timeline set out in the Cabinet Report of 31 January 2019, which stated that the Transition Team will cease on 31 August 2022.
- 9.2 The option to cease the Transitions Team would result in lack of support for partnerships to develop and deliver earlier help interventions to children and families, resulting in partner agencies being more reactive rather than proactive in their approach to providing support offering a much-reduced early help offer. The impact of this will be more referrals to frontline teams to support

children, young people and families with intensive and specialist needs.

- 9.3 The option would also mean that the department's in-house Employment and Education Team would not be available to support the council's statutory duties around monitoring young people who are NEET risking the council's ability to maintain the significant progress made. This service would need to be commissioned from a third party.

## **10 Implications**

- 10.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **11 Background Papers**

- 11.1 None identified

## **12 Recommendation(s)**

- 12.1 That Cabinet:

Support the extension of the current Transitions Service on a time-limited basis (for 22 months from 1st October 2022 to 31st July 2024), funded through the accumulated Supporting Families reserve; whilst a co-produced partnership Early Intervention and Prevention Strategy is designed and developed, and further work is undertaken to ascertain what the future partnership delivery model will be.

## **13 Reasons for Recommendation(s)**

- 13.1 Providing a time-limited extension to the Transitions Team will enable the Early Help Development Service to develop and embed a more sustainable approach to Early Help. This will provide continuity of effective support for children, young people and families, and prevent increasing needs from escalation through the Children's Social Care system whilst an Early Intervention and Prevention Strategy is developed. The Strategy will set out the future direction of a more sustainable model of early intervention and prevention partnership support.

**14** Is it necessary to waive the call-in period?

14.1 No

**Report Author: Carol Cammiss, Executive Director, Children's Services**



## Appendix 1

### Implications

#### **1 Financial**

- 1.1 There is £3.007m in the Supporting Families reserve, which has not been committed. The current annual cost of the Transition Team is £1.595m per annum, as such there are sufficient resources within current reserve to continue to fund the transition team for a further 22 months October 2022 to the end of July 2024.

#### **2 Legal**

- 2.1 Services to protect children, prevent children coming into care or to enable a sustained return home, or to support children in need (including disabled children) are provided under Sections 47 and 17 of the Children Act 1989

Under the Education and Skills Act 2008 (as amended) local authorities have a duty to monitor the education, training, and employment of 16 to 18 year old young people and this monitoring obligation is being fulfilled by the Transition Team.

Elected Members will have regard to the content of this Report demonstrating that the Transitions Team are fulfilling the Council's statutory obligations in this respect, and what alternative provision would be available in the event that the service was not extended as proposed.

An Equality Impact Analysis (EIA) was developed in parallel with the consultation exercise undertaken in 2018. As the proposals in this Report provided for the extension of the service and therefore the continuation of service provision in identical terms, there is no requirement to further consult at this time

#### **3 Human Resources**

- 3.1 To support the extension of the Transitions Service until 31 July 2024 dictates that staff in the team (where applicable) need their fixed-term contracts extended until this date, thus committing to existing staffing costs until 31 July 2024 whilst providing stability to the workforce and service. Section 6.3 of the report provides detail of the funding stream. Once a future workforce model has been

designed, consulted and agreed, implications for staff will be considered in line with Council approved organisational change processes.

If approved, the extension to the tenure of the team will mean that those who have been in post from the creation of the team will have sufficient service (four years) in the role to be able to be considered permanent employees despite having a fixed term contract. In practice the policies of the Council and employment legislation mean that they will have the same entitlement to redundancy and redeployment as those with over two years' service, which they currently have.

#### **4 Information Technology**

- 4.1 The recommendation will mean that we continue to realise the economies of scale associated with the Core+ system which supports the work of the work of the Education and Employment and the Youth Offending Service and is integral to the statutory reporting of NEET and EET performance.

#### **5 Equalities Impact**

- 5.1 N/A



#### **6 Corporate objectives and priorities for change**

- 6.1 The proposal set out in section 12 above aligns with the corporate priorities within the Derbyshire Council Plan 2021-2025 around:

- effective early help for individuals and communities
- a prosperous and green Derbyshire
- developing resilient healthy and safe communities.

- 6.1.2 Under the corporate priority of effective early help for individuals and communities, there is a commitment set out that within one year the Council will have “undertaken an evaluation of the early help support and training offered to partner agencies and developed measures to monitor the effectiveness of early interventions for children and families”. Within four years, there is a commitment to support “more people to manage their own physical and mental health and wellbeing”, and to have “embedded effective early help provision for children and families across the county to ensure support is targeted at the most appropriate level”.

- 6.1.3 Under the corporate priority of a prosperous and green Derbyshire, there is a commitment set out that within four years the Council will have “ensured children, young people and adults are empowered to realise their ambitions and maximise their potential”.
- 6.1.3 Under the corporate priority of delivering resilient, health and safe communities, there is a commitment set out that within four years the Council will have “ensured individuals and communities most in need are supported and protected”.
- 7 Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**
- 7.1 In preparing this report the relevance of the above factors was considered but no implication identified, or no action required.

<b>Appendix 2 – Cabinet report on the Early Help Review from January 2019</b>	 Cabinet report - Early Help Review 31
<b>Appendix 3 – Derby City and Derbyshire Safeguarding Children Partnership Threshold Document 2019</b>	 Threshold 2019.pdf



**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**7 July 2022**

**Report of the Director - Economy & Regeneration**

**Proposal to become a Member of the Incorporated East Midlands  
Freeport Company and to Nominate a Company Director**

(Cabinet Member for Strategic Leadership, Culture, Tourism and Climate  
Change)

**1. Divisions Affected**

1.1 County-wide.

**2. Key Decision**

2.1 This is a Key Decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising two or more electoral areas in the County.

**3. Purpose**

3.1 The purpose of this report is to seek approval for Derbyshire County Council to become a member of the East Midlands Freeport (EMF) Company and to appoint a Director to the Company and a representative of the Council to act in its role as a member of the company.

**4. Information and Analysis**

**Background**

- 4.1 Cabinet and Cabinet Members have received a number of reports over the past two years which chronicle the development of proposals to create an East Midlands Freeport (EMF) and sought approval to: submit an expression of interest to Government on 4 February 2021 (Minute No. 09/21 refers); submit an outline business case (3 September 2021, Minute No.13/21 refers); and more latterly, to submit the Full Business Case (FBC) to Government (Cabinet report 15 February 2022, Minute No 49/22 refers and subsequent delegated officer approval on 13 April 2022).
- 4.2 At the February meeting, Cabinet duly considered the range of benefits, opportunities and risks associated with the East Midlands Freeport proposals and on balance, approved in principle to support submission of the FBC to Government.
- 4.3 In approving submission of the FBC in principle, Cabinet was advised that some matters had not been fully resolved and that further work was required by all partner organisations; these were:
- Confirmation and finalisation of the proposed inclusion of the extended tax site at East Midlands Airport.
  - Confirmation of all geographies, including outer boundaries, site maps and travel to work areas within which development projects would be eligible for funding.
  - Completion of the Articles of Association and Members' Agreement to ensure all the necessary safeguards are in place to protect the Council's interest (e.g. voting, quoracy etc) and level of risk exposure, including assessing whether any retained risks can be mitigated by appropriate controls.
  - Considering the draft Liability Sharing Agreement and ensuring risks to the Council were mitigated.
  - Finalisation of the governance arrangements – particularly the roles and responsibilities allocated to sub committees such as the Sites and Infrastructure Group and the S151 Group.
  - Finalisation of the 'no detriment clause' on retained business rates.
  - Confirmation of the nature of the EMF's relationship with the East Midlands Development Corporation and commitment to progress to alignment over an agreed timescale.
  - Details around custom and tax sites operation and management.
  - Finalisation of seed funding allocations.
  - Limits to subsidy control for off-site works.
- 4.4 Final approval to support submission of the FBC was delegated to the Managing Director, in consultation with the Leader of the Council, S151

Officer and Monitoring Officer, subject to the following conditions having been met:

- Satisfaction that the final version of the Final Business Case did not increase the risk of financial exposure of the Council beyond the parameters set out in the Cabinet report; and
- Sufficient detail of the governance structure for the Freeport company and associated safeguards being agreed between the parties to protect the Council's interests, prior to incorporation of the company, including setting the amount of any contributions to a contingency reserve for the Freeport or its general funding.

4.5 During the period February 2022 to April 2022, work was undertaken through officer working groups (led by Leicestershire County Council as the Lead Authority and supported by Ernst & Young) to address the above issues and bring development of the FBC and governance proposals to a satisfactory conclusion. This work also involved regular liaison with Government officials, particularly in relation to levels of retained business rates and the 'no detriment clause'.

4.6 The officer delegated report of 13 April 2022 confirmed which issues had been fully resolved and which risks had been mitigated. It also set out additional issues which had emerged over the three month period and their potential impact on the Council's exposure to financial and other risks.

4.7 Having regard to the update presented in the report, the Managing Director approved the final Full Business Case and approved, in principle, the Articles of Association and Members' Agreement for submission to Government.

4.8 Since this time, work has continued to be progressed through officer working groups and new sub-committees on matters around seed funding and project development; retained business rates Memorandum of Understanding; and finalising governance proposals.

### **Governance arrangements**

4.9 The governance of the Freeport Company is prescribed in the Articles of Association, and the Members' Agreement, copies of which are set out in the appendices to this report. The Articles of Association is the legal constitutional document of the Company which sets out the basic rules around how the EMF Company will operate - effectively, its Constitution. The Members' Agreement is a "private" contract between the Limited Company and its Members, of which the Council will be one. These two

key documents will be supported by additional operational documentation.

- 4.10 By virtue of Paragraph 3 of the Schedule 12A of the Local Government Act 1972, Appendices 2 and 3 are considered exempt as they contain information relating to the financial and business affairs of partners collaborating with Derbyshire County Council to develop the East Midlands Freeport Company.
- 4.11 Having regard to all the circumstances, on balance, the public interest in disclosing the information does not outweigh the reason for exemption because the information would add a limited amount to the public understanding of the issues but would significantly damage the Council's and partners' commercial position. The version of the Members' Agreement and Articles of Association contained in the Exempt Appendices are subject to approval and final sign off at the East Midlands Freeport Board on 7 July 2022, ahead of submission to Government later in July 2022.
- 4.14 Officers from the Council have contributed to the drafting of these key governance documents through the Governance Group and have concluded they are acceptable. Cabinet is asked to approve the Members' Agreement and Articles of Association and agree the Council should become a member of the East Midlands Freeport Company. Points to note from the documents are set out below:

A) Articles of Association:

- The Company will be established as a company limited by guarantee, which means that the Council will only be liable for the amount of the guarantee (being £1) should the Company be wound up. Although should the Council decide to guarantee any obligations of the Company directly or loan it some money, it would be at risk under any such agreements. At this point, the Council has not been asked to provide this.
- The Board of Directors shall be 13, made up of six public sector directors (one from each council that is a member), six private sector directors (one from each private sector member) and an independent Chair. Each founding member has the right to appoint a director and remove that director. The independent Chair will be an independent director and will not have a casting vote.
- The quorum for Board meetings requires the Lead Authority's (Leicestershire County Council) director to be present, along with two public sector directors and three private sector directors.



- The Board will endeavour to make decisions on a unanimous basis. Where unanimity is not achieved, it will be decided on a 'Public/ Private Sector Majority', which requires a majority of the public sector directors agreeing and a majority of the private sector directors agreeing.
- Member decisions will be made at Company general meetings or potentially in writing. The quorum for those general meetings mirrors the board meeting requirements and requires the Lead Authority to be present, along with two public sector members and three private sector members.
- The situation for Billing Authorities and Principal Ports is different but for the Council, it may exit the Company by giving not less than six months' notice. Although it may have made commitments for specific projects etc. which may have a practical effect on the ability to utilise this right.

B) Members' Agreement:

- The Agreement confirms the Company's day to day working capital and expenditure is to be funded by: capacity funding provided by DHLUC; a member loan from LCC as Lead Authority; and retained business rates. There is no requirement for other members to contribute to the day to day working capital and/or expenditure of the Company.
- Capital projects and infrastructure projects may be funded by the Company but the Agreement is clear that the entity or public sector body that will ultimately own or have responsibility for the capital asset or infrastructure will be primarily responsible for procuring, commissioning and funding that project.
- The Company's Board will set the strategy for retained business rates. There will be a 'Public Sector Directors Group' which consists of all the directors of the public sector members and that Group will be responsible for making decisions on the use and allocation of retained business rates.
- Certain decisions are reserved to Members (rather than the Board of Directors) and those are contained in the Reserved Matters Schedule. Some of those decisions require all of the Members to agree and some decisions require only a Public Private Majority. The Reserved Matters Schedule also contains some decisions that are reserved to the Board of Directors and some decisions that require the consent of the Lead Authority.

## **Role of Directors and the Council as Member of the Company**

- 4.15 Subject to Cabinet agreeing the Council should become a member of the Freeport Company, the Council will be entitled to appoint one director to the Board. It is proposed the Leader of the Council is appointed as the Director. The Council's nominated Director will represent the County Council at the Board and at the Public Sector sub group/ sub committee, which will have responsibility for the allocation of Retained Business Rates. Further information about the role of a director of a company is contained in the Guidance to Councillors appointed to Outside bodies at Appendix 19 to the Constitution. As Director, the Leader is permitted, with the approval of the Chair (in his or her discretion), to appoint a person to be his or her Alternate at a specified Board meeting, if they are unable to attend. The Alternate must be another member of the same Public Sector Member, holding an appropriate portfolio.
- 4.16 An officer will be permitted to attend the EMF Board as an observer in support of the Leader. The County Council will also have officer representation on the various EMF sub committees and subgroups.
- 4.17 As a Member of the Freeport Company, the Council will also have a role in decisions reserved to Members of the Company. Such decisions may be taken at a Members' meeting or by written resolution. It is proposed that the Managing Director is appointed to represent the Council in its role as a Member of the Company, in relation to decisions reserved to Members of the Company whether at a Member meeting or by written resolution, when necessary. Any decisions should be taken after taking legal, technical and financial advice as appropriate.

## **Funding**

- 4.19 The work being undertaken to set up and establish the EMF effectively is incurring significant expenditure. These costs are being cash flowed by the Accountable Body (Leicestershire County Council). The costs incurred by Leicestershire County Council could be in the region of £2m by the point that EMF is operational and would be recognised as a loan to EMF. A term loan facility has been arranged with a principal amount of £2.5m comprising £2m 'pre-designation loan' and a working capital loan of £0.5m to support the set-up costs and expenses as outlined in the Full Business Case.

4.20 The Council's S151 Officer is a member of the Freeport Section 151 Sub Group which has responsibility for advising on a range of financial matters, including retained business rates policy and reviewing business cases for investment. The Group has continued to ensure the appropriate financial processes and procedures are developed such as business case reviews, modelling of business rates income and policy for business rates relief. The Group will ensure there is robust scrutiny of any submitted business cases and that projects are sufficiently financed to address infrastructure requirements, utilising retained business rates accordingly.

## **5. Consultation**

5.1 Not applicable. Public consultation on the documents and proposals subject of this report is not required.

## **6. Alternative Options Considered**

6.1 Do nothing – doing nothing is not considered an option as the Full Business Case has already been submitted with the Council's approval and is currently subject to active discussion and feedback from Government. The key decision now required of the Council is whether to agree to join the EMF Company and who to nominate as company director.

6.2 Do not agree to the Council joining the East Midlands Freeport company and nominating a company director – Derbyshire County Council is a key partner in the EMF arrangements, being the relevant transport and highway authority for the East Midlands Intermodal Park site in South Derbyshire. The work that has taken place over the course of business case preparation and drafting of the Articles and Association and Members' Agreement has helped identify, consider and mitigate risks to Council – see Appendix 1. On balance, it is considered that such risks are outweighed by the significant opportunities presented by the Freeport in helping the County to level up and facilitate greater prosperity in the local economy.

## **7. Implications**

7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

- a) Proposals to Submit Outline Business Case to Create a Freeport: Cabinet member meeting 3 September 2021.
- b) Proposals to Submit Full Business Case to Create a Freeport: Cabinet meeting 15 February 2022.
- c) Proposal to Submit Final Full Business Case to Government to Create an East Midlands Freeport: delegated officer decision, 13 April 2022.

## **9. Appendices**

- a) Appendix 1 – Implications
- b) Appendix 2 – Final East Midlands Freeport, Members' Agreement (exempt)
- c) Appendix 3 – Final East Midlands Freeport, Articles of Association (exempt)

## **10. Recommendations**

That Cabinet:

- a) Agrees the Articles of Association and Members' Agreement for the East Midlands Freeport Company;
- b) Approves the Council becoming a member of the East Midlands Freeport Company on the basis of the approved Articles of Association and Members' Agreement and authorises the Director of Legal and Democratic Services to agree any documentation necessary to facilitate incorporation of the Company;
- c) Agrees to nominate the Leader of the Council as the East Midlands Freeport Company Director on behalf of Derbyshire County Council;
- d) Notes that the Leader of the Council, as a Director, will have the power under the Articles of Association to appoint an Alternate to attend a Board meeting in their absence; and
- e) Authorises the Managing Director (or their authorised representative) to cast a vote as a Member of the Company, in relation to decisions reserved to members of the Company whether at a member meeting or by written resolution, when necessary, having taken legal, technical and financial advice as appropriate.

## **11. Reasons for Recommendations**

- 11.1 All partners are required to affirm support for joining the Freeport Board and incorporated Company to meet a key Government criterion for the Freeport to be designated. Whilst there are known and accepted costs

to the development of the East Midlands Freeport, in the case of the County Council, there are also clear synergies between the benefits offered and the stated priorities of Derbyshire County Council in the Council Plan to drive economic prosperity across the county in support of the levelling up agenda and commitments expressed in the COVID-19 Economic Development Recovery Strategy.

- 11.2 To enable the Council to formally commit to joining the incorporated EMF Company at the EMF Board meeting on 7th July 2022..
- 11.3 To ensure the Council has appropriate representation on the Board of Directors and as a Member of the Company.

**12. Is it necessary to waive the call in period?**

- a. Yes, it is necessary to waive the call-in period as the decision is urgent and any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public interest. Councillor Tony Kemp, Chair of Place Improvement and Scrutiny Committee has approved the waiver of the call-in period and agreed both the decision proposed is reasonable in all the circumstances and that it should be dealt with as a matter of urgency.

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## Implications

### **Financial**

- 1.1 During the set-up phase and the first year of operation Leicestershire County Council, as Lead Authority/Accountable Body, will incur operating costs estimated to be approximately £2m. These costs will be funded in the form of a commercial loan to EMF, which will be paid back to Leicestershire County Council from the retained business rates. The Freeport is expected to generate retained business rates income of approximately £0.9bn over the 25-year life of the Freeport.
- 1.2 The loan facility, as set out in paragraph 4.19, will be coordinated by Leicestershire County Council and will be subject to its Treasury and Investment Strategy and considerations of the Chartered Institute of Public Finance and Accountancy's Prudential Code.

### **Legal**

- 2.1 The EMF is currently in set up phase and the County Council is represented by the Leader of the Council on the EMF Board. The Board has agreed to move to an incorporated governance structure and establish a Freeport Company limited by guarantee. The governance of the Freeport is therefore now transitioning from strategy and development into implementation and delivery. Approval is sought from Cabinet for the Council to join the Company. A company limited by guarantee is a company that does not have shareholders. Instead, it is owned by a group of members known as 'guarantors' who all agree to pay a certain amount of money should the company be wound up. Such guarantee has been agreed at a nominal amount and because of this, and the concept of limited liability, this in the ordinary course would be the full exposure of the Council. Inter-Member liabilities are also limited. Therefore, the County Council's exposure to debts and liabilities associated with its membership of the EMF will be limited; however, there is a small risk that the cap on liability for breaches of the Members' Agreement by other members is exceeded and the Council is unable to recover losses.
- 2.2 As with any company, the proposed Freeport Company will have a board of directors and these individuals will be responsible for the day to day decisions and owe their duty to the Company and not the Council. Company Directors have various duties to the Company, including those codified in the Companies Act 2006. They include ensuring the Company follows its constitution, acting in good faith and

in the interests of the Company, exercising independent judgement and avoiding any conflicts of interest, promoting the success of the Company, exercising skill and care, ensuring company compliance and having oversight of the work of the Executive Team. The Council, as a founding Member, has the right to appoint a director to the Board with voting rights. Certain important decisions are reserved to Members (e.g. the Council in its corporate capacity) and some require unanimous consent. These are set out in the Members Agreement. The Council will also be represented on the S151 Group and Public Sector Directors Group that will play a key role in reviewing and approving business cases for funding approval.

- 2.3 The EMF will need to be approved and designated by Government and in order to mitigate and manage the risk to the Council, the Freeport Company should be incorporated prior to the Government granting the Freeport status. On incorporation, the Freeport governing body will be accountable to Government for delivery of the proposals as set out in the final Full Business Case.
- 2.4 The Council has the power to join a company limited by guarantee under the General Power of Competence in Section 1 of the Localism Act 2011 (“the 2011 Act”). This gives the Council the power to do anything that an individual might do. The Power is restricted by Section 4 of the 2011 Act which requires that: a thing done for a commercial purpose must be something that the Council may also do for a non-commercial purpose; it must not be something that the Council is required to do by statute; and if done for a commercial purpose, then it must be done through a company.
- 2.5 The aim of the Freeport is to attract investment and spur local and regional economic growth as well as enhancing international trade, by simplifying the customs procedures for firms within the Freeport zone and reducing administrative costs of trading goods with the rest of the world thereby increasing competitiveness. These are not activities that the Council is required to do by statute and are activities that can be done for a non-commercial purpose, therefore, the General Power of Competence is engaged and can be relied upon to join the Freeport Company.
- 2.6 It is not intended that Derbyshire County Council cedes any power or responsibility to the Freeport Board, as it is currently proposed, and will retain decision making responsibility over relevant statutory powers, including that of Highway Authority.

### **3 Human Resources**

- 3.1 There are no direct human resource implications associated with this report. DCC officer input into the EMF working groups has been provided through the Economy and Regeneration Service, Legal and Finance Service on a project basis. The Council's financial contributions to the Freeport arrangements, along with those of other partners and capacity funding from Government, will support funding for the proposed Executive Delivery Team and other associated human resources. Additional officer input is likely to be required, primarily from the Place Directorate and corporate services such as Finance and Legal to support the final stages of EMF set up and the subsequent implementation of the programme.
- 3.2 There is potential, in due course, for the Council to assume the role of project sponsor for infrastructure associated with the Freeport, which would require officers to be identified as Senior Responsible Owner and supporting roles. This has the potential to require additional posts to be added to the establishment on a temporary basis, depending upon the scale and complexity of the projects.

### **4 Information Technology**

- 4.1 None directly associated with this report.

### **5 Equalities Impact**

- 5.1 None directly as a result of this report but the EMF proposal seeks to positively impact on levelling up and opportunities for skills development and employment for all local residents.

### **6 Corporate objectives and priorities for change**

- 6.1 The Freeport proposal is fully in line with the Council's priority to secure a green and prosperous economy as confirmed in the Council Plan.

### **Other**

#### **7.1 Summary of Risks**

There is a range of legal, financial, legal, delivery and reputational risks. These risks are summarised below (but not limited to):



- That all parties do not formally commit to joining the incorporated EMF Company or the Government refuses to grant Freeport status;
- That the level of retained business rates has been over-stated and/or isn't fully realised;
- That sufficient retained business rates are not received in time to fund infrastructure or other mitigation works and that there is an expectation or obligation for DCC to cashflow, loan or take responsibility for such funding;
- That majority voting at EMF Board results in a decision that is contrary to that of DCC;
- That given the untested nature of the Freeport, there is insufficient capacity in the Executive Delivery Team and wider governance arrangements to mobilise and deliver for the business plan at pace or on time;
- That there is insufficient capacity within Derbyshire County Council to actively support the operational delivery of the Freeport, to the detriment of the Council and its residents;
- That the cap on liability for breaches of the Members Agreement by other members is exceeded and the Council is unable to recover losses.

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