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(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

Title of meeting:	Cabinet
Subject:	European Union Exit – Provision of Border Control Points at Portsmouth International Port
Date of meeting:	02 February 2021
Report by:	David Williams, Chief Executive, Chris Ward, Finance and Resources Director, Mike Sellers, Port Director
Wards affected:	All

1. Requested by

The Leader of the Council, Councillor Gerald Vernon-Jackson.

2. Purpose

To update the Cabinet on Portsmouth International Port's infrastructure challenges and funding shortfall for handling European Union trade.

3. Information Requested

From 1st January 2021, the UK became a 3rd party country for trading with the European Union and will be subject to new regulations when exporting and importing live animals and products of plant or animal origin (Products of Animal Origin). Ports must have new infrastructure in place by July 2021 to meet the government's Border Operating Model.

This requires a Border Control Post to carry out government prescribed checks on specific imports and exports. This is a government inspection facility designated and approved for carrying out statutory checks on plants and plant products, products of animal origin, food not of an animal origin and live animals. The checks need to be at the gateway for the entrance of goods into a trade area and are to protect animal welfare, public health and environmental health.

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Through the Border Control Post, Portsmouth's Port Health Authority, part of Portsmouth City Council's regulatory services function, have a statutory requirement to enforce United Kingdom food laws at the border by carrying out checks on imported food and animal feed consignments in order to:

- ensure that only products that are safe to eat enter the food chain
- safeguard animal and public health
- check compliance with UK laws and international trading standards

In order to ensure the country was prepared for its Border Operating Model, the government created a Port Infrastructure Fund totalling £200m and invited Ports to bid to it by 30th October 2020. As a major United Kingdom port handling European Union trade with 'critical freight routes' and following discussions with Defra, Portsmouth International Port applied to the Port Infrastructure Fund for £32m to build two Border Control Posts - one for live animals and one for Products of Animal Origin as well as sub-projects to streamline the arrival of freight including the extension of the freight gates and integration of Port Information Technology to new HMRC systems for documentation checks. The Port's bid included a contingency (that follows the government's 'green book' guidance) as the 1st July 2021 timeframe for completion, testing and operation of these facilities was extremely tight. Civil engineering projects of this scale normally need a minimum of 18 months to complete, therefore the Port anticipated the need to scale up and accelerate the construction works to meet the deadline imposed by government.

The 'live animal' Border Control Post at Portsmouth International Port is the only planned facility in the United Kingdom for veterinarians to approve the import of live animals into the United Kingdom that are to be used for breeding (not for slaughter).

The Port Infrastructure Fund was substantially oversubscribed, therefore the port was one of a number of ports invited to a 'deep dive' meeting with consultants and Cabinet Office officials. Subsequently all bids were cut, contingencies reduced to just 10% (contrary to green book principles) and then allocated 66% of the reduced amount to each qualifying port to align to the nominal £200m fund.

Despite being informed that all of the projects within the port's bid were compliant and therefore necessary for the trade changes with the European Union, Portsmouth International Port have been allocated £17.1m which has left the port with a significant shortfall to implement the most critical changes as well as omitting significant parts of our proposals.

Resilience and National Importance

Portsmouth International Port has the capacity to provide United Kingdom with resilience against the pressures of physical checks, once they come into force later this year.

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It is considered the United Kingdom's best-connected port, uniquely positioned with direct motorway access so goods can flow easily to their destination. Coupled with its proximity to main shipping routes, it is also one of the most suitably placed ports to support efficient trade for British farming, food and medical imports. It is the second largest cross channel port with more destinations to Europe, via the Western Channel, than any other UK port.

The National Farmers' Union have been in contact with the port as they are concerned that necessary infrastructure will not go ahead at Portsmouth International Port due to the funding shortfall. They have advised the following economic value of their live animal breeding trade as (figures are approximate):

"Value of exports just under £1M • value of imports easily in excess of £10M. There are currently around 30,000 breeding animals (pigs, sheep and cattle) exported to mainland Europe each year from the UK, and similar numbers arriving. • The trade is important as it contributes to a high genetic pool in the UK and Europe, as well as yielding value to UK farmers. • The absence of BCP facilities in the EU channel facing port will mean that UK farmers are unable to export high value breeding material to the EU" (Olivia Seccombe, External Affairs, NFU).

Throughout the trade negotiations and the pandemic, specific ferry routes between Spain / Portsmouth and France / Portsmouth have been recognised as 'critical freight routes' and financially supported by the Department of Transport to ensure the resilience of priority imports such as food products and medical supplies due to concerns over the resilience of the short crossings to Kent. Department of Transport funded Portsmouth / Le Harve crossings which re-commenced on the 31st December to support this but without adequate funding for the necessary Border Control Posts, a large percentage of these imports will be unable to pass through Portsmouth, thereby impacting UK resilience.

During his visit to Portsmouth, the Transport Secretary, Rt Hon Grant Shapps, expressed the importance of Portsmouth International Port for providing an outlet to United Kingdom trade and resilience against the short crossings in Kent.

Inland facilities to support Dover, Channel Tunnel and Holyhead are being built and fully funded by government. Initial plans with the Cabinet Office infrastructure representatives, the Border Protocol Delivery Group, were for an inland facility at Portsmouth however the Border Protocol Delivery Group could only find one suitable location at Southampton port which was a significant deviation for freight. Discussions with the Border Protocol Delivery Group led to a Portsmouth port based alternative following site inspection by the Defra team, and it was this that the Portsmouth International Port team bid for.

The national importance of Portsmouth has been recognised within Defra and by the Department of Transport and we have been advised that a paper has been submitted to the Chancellor of the Duchy of Lancaster and the Secretary of State for Environment, Food and Rural Affairs for the additional funding support needed.

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The Member of Parliament for Portsmouth North and South have been lobbying in support of the funding bid and the need for the shortfall to be made good by government. The Leader of the Council has written to the Chancellor of the Duchy of Lancaster, the Secretary of State for Environment and Rural Affairs and the Transport Secretary to highlight the council's concerns expressing the disjointed approach within the government departments particularly towards the Port's resilience and critical freight routes and therefore seeking funding support. Whilst there has been 'sympathy and understanding' expressed by both of these departments, and a recognition of Portsmouth's special circumstances, unfortunately, at time of writing, no commitment to further funding support has been confirmed.

Port Industry challenges, delays and risk to supply of essential goods.

The projects are now well behind schedule due to delays from Cabinet Office on the funding decision and delayed sign-off from Defra on the detailed design of the buildings (formally approved in writing on the 15th January 2021). Additionally works cannot commence without additional capital funding. Contractors are now indicating completion by September 2021 and without confirmation of funding sufficient for the most critical changes required including contingency funding, the port is unable to accelerate the projects.

These challenges are being felt at most ports that trade with the European Union, which has resulted in the industry bodies that represent ports - UK Major Ports Group and the British Ports Association - to write to the Cabinet Office Minister, Julia Lopez highlighting the industries concerns and the need to delay the deadline of the 1st July 2021 for completion of the infrastructure. However, the circumstances in Portsmouth are more acute given that on the one hand Department of Transport are increasing flow whilst on the other government is not providing for this flow to be accommodated through Border Control Posts. Also, as the only municipally owned port, the circumstances at Portsmouth International Port are different to the other ports bidding to the fund - see section 6 below.

To facilitate the efficient organisation and performance of official controls and other official activities, the design of the Border Control Post has been split into different inspection centres, where the categories of animals and plants are to be controlled.

On the port health side to ensure food safety regulations are delivered, Portsmouth Port Health Authority has only received short term (3 month) government funding to support the establishment of the additional staff and systems necessary to operate the proposed facilities. This is a major undertaking, stepping up staffing from 2.2 Full Time Equivalent resource to 36 Full Time Equivalent staff required to ensure the Portsmouth Port Health Authority will operate effectively within the Border Control Post once constructed.

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The process of recruiting and training staff is underway for the full operation of the Border Control Post from 1st July 2021, however Members should be aware that there is a recognised national shortage of staff with the requisite skills as this function has not been required in volume for decades. Currently the service is supplying limited essential services from its existing establishment but this is clearly unsustainable.

DEFRA have confirmed that if the required Border Control Post criteria and infrastructure are not in place by 1st July 2021, imported products of animal origin from the European Union will not be allowed entry into the United Kingdom through the Portsmouth International Port. Should this occur there is likely to be significant detrimental consequences to the wider economy and to Portsmouth International Port.

Approximately two thirds of the Border Control Post facility is designed to deal with the governments Border Operating Model and its guidance for trade in plants and plant products delivered by Animal and Plant Health Agency. The impact of any delays in the construction of the facility will be highly relevant to these products.

Already, all regulated plants and plant products imported from the European Union need to be accompanied by a phytosanitary certificate and subject to checks upon entry into the Portsmouth International Port to certify that the material has been inspected, is considered free from quarantine and other pests, and that it conforms to the plant health importing regulations. As with the Portsmouth Port Health Authority responsibilities to help ease the transition the new import requirements on plants and plants products will be introduced in stages with all new processes expected to be fully operational by 1 July 2021. Any delay in the construction timetable will therefore materially significantly impact upon these prescriptive mechanisms.

Funding and financial implications.

Portsmouth International Port is a council-owned facility, unlike the other commercial ports securing Port Infrastructure Fund. Given the constraints on council funding and the shortfall due to the pandemic, it is not feasible to allocate Council funding to meet the government's new Border Control Post requirements.

Without the additional government funding Portsmouth International Port is therefore unable to continue with all of the projects submitted in the Port Infrastructure Fund bid, despite government recognition that all the sub projects meet the criteria for handling European Union goods under the new trading relationship and border operations.

The port will therefore not continue with the following projects without funding support:

- Live animal Border Control Post. This was forecast to cost £7m.
- Extension and automation of the freight gates to streamline the arrival of freight at the port. This was forecast to cost £1.7m.

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The main Products of Animal Origin Border Control Post, including the land acquisition and Information Technology system integration remain essential to port operations. These essential schemes are forecast to cost £22.3m. Portsmouth Infrastructure funding totals £17.1, which therefore leaves a funding gap of £5.2m.

The Border Control Post is a government requirement arising out of the exit from the European Union and is there to serve the United Kingdom as a whole. Under the current charging arrangements, any cost burden is not able to be passed on through the Council's charges to operators. Given the national significance and its function to the United Kingdom as a whole, it would be inequitable to pass that cost on to the local taxpayer of Portsmouth.

The short term Defra funding of the Portsmouth Port Health Authority will impact on the operational effectiveness of the Border Control Post and the shortfall in infrastructure funding will further increase these pressures.

Furthermore, if the infrastructure is not ready by 1st July 2021 this will result in a considerable loss of income and cost recovery income streams to the port and the Portsmouth Port Health Authority.

Grant Fund Agreement and Legal

The port, with the assistance of legal services, is engaging with the Cabinet Office over the terms of the Port Infrastructure Fund grant funding agreement (an initial draft of which has been provided) and the funding shortfall, with a view to the following being discussed/negotiated:

- 1) Owing to the reduction in contingency, government to take responsibility for cost overruns (the draft terms currently put this risk onto the Council).
- 2) Reduced project scope (as detailed above) to reflect the reduced grant funding (the draft terms are currently based upon the full initial bid).
- 3) Be given more time to carry out site investigation, which will reveal the condition of the ground to ascertain a more accurate cost of the building of the main Products of Animal Origin Border Control Post.
- 4) Given that current delays are due to government prevarication and the port being unable to accelerate construction, confirmation from government that the delays to the 1st July 2021 deadline do not materially impact on imports through the port with an agreed extension period against the Border Control Post designation.

The revised grant funding agreement issued by government has diluted the claw-back threat on 'late' delivery of the infrastructure after 1 July 2021 to allow some flexibility on the basis that an alternative date may be agreed with government. Whilst this is welcomed, given that Ministers are committed to 1 July 2021 for Border Control Posts, it would be preferable to provide the additional funding needed now to secure the delivery of the

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Border Control Posts and thus avoid the resilience and supply-side risks of all trade being diverted to the inland facilities.

Once the final scope of the project has been agreed, this will need to be reflected in the construction contract and any impact upon the tender exercise undertaken (for the construction contractor) will need to be reviewed.

Conclusion

From start to finish, this has been a frustrating process and precious time is being eaten up. The grant was underfunded from the start and its application has been inadequate, inequitable and ponderous. The Council will continue to engage with the various government departments and agencies involved but Members should be aware of the reasons why it has not been possible for the Council to progress at the speed it would wish with the provision of the Border Control Point infrastructure the government needs to be in place by 1 July 2021. The intelligence available to us points to Ministers across a variety of Departments wishing to see this resolved and the funding provided. The various regulatory bodies have signed off the design of the facilities and confirmed that the bid made by PIP is fully compliant. The proposed staffing regimes have been discussed and agreed, albeit facing recruitment pressures. Meanwhile, an impasse or status exists in government, delays are mounting and contractors, who need to order materials, are advising that completion dates are becoming unrealistic. All of this will impact on United Kingdom trade, the efficiency and effectiveness of our port operation and the resilience of the United Kingdom import capacity.

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Signed by (Director)

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
N/A	