

Council			
REPORT TITLE	London Business Rates Pilot Pool 2018-19		
KEY DECISION	Yes	ITEM No.	
WARD	All		
CONTRIBUTORS	Executive Director for Resources & Regeneration		
CLASS	Part 1	Date	17 January 2018

1. EXECUTIVE SUMMARY

- 1.1. The first London Business Rates Pilot Pool report was presented to Council on the 22 November 2017, where Council was asked to consider how the pool would work and to endorse the setting up of the London pool.
- 1.2. The Chancellor of the Exchequer in the Autumn Budget, confirmed the Government's commitment to establishing a 100% business rate retention pilot in London in April 2018. This report now presents Council with the proposal for Lewisham to support the creation of the pool and the framework for its operation.
- 1.3. Council is now asked to agree the Secretary of State's designation letter attached at Appendix 1, note the Memorandum of Understanding between London Government and the Secretary of State attached at Appendix 2, and agree the Memorandum of Understanding between the 33 London Boroughs and the GLA attached at Appendix 3.
- 1.4. London Councils sought Legal advice from Trowers and Hamlins on the various issues requiring clarification on these issues. The legal advice they received on Executive Functions is attached to this report at Appendix 4, and the advice they received on the legal framework and governance options is attached to this report at Appendix 5.
- 1.5. London Councils has issued the London Business Rates Pilot Pool 2018-19 Final Prospectus attached at Appendix 6, which gives a detailed explanation of how the pool will work.

2. PURPOSE OF THE REPORT

- 2.1. The purpose of this report is to ask Council:
- 2.2. To enter the pool (including accepting the Designation by the Secretary of State as an authority within the Pilot Pool and delegating authority over its

administration to the lead authority which, following consideration by the elected officers of London Councils, would be the City of London Corporation for the duration of the pilot);

- 2.3. To agree a Memorandum of Understanding between London authorities for the operation of the pilot pool as described in section 6 of this report and attached at Appendix 3; and
- 2.4. To delegate authority to Mayor and Cabinet to take decisions in relation to the Strategic Investment Pot.

3. RECOMMENDATIONS

- 3.1. That Council

Establishment of Governance Arrangements:

- 3.2. approve and accept the designation by the Secretary of State as an authority within the London Business Rates Pilot Pool pursuant to 34(7)(1) of Schedule 7B Local Government Finance Act 1988;
- 3.3. participate in the London Business Rates Pilot Pool with effect from 1 April 2018
- 3.4. delegate the authority's administrative functions as a billing authority pursuant to the Non-Domestic Rating (Rates Retention) Regulations 2013, to the City of London Corporation ("COLC") acting as the Lead Authority;
- 3.5. authorise the Lead Authority to sub-contract certain ancillary administrative functions [regarding the financial transactions [payment of tariffs and top-ups] within the Pool to the GLA as it considers expedient];

Entry into the Memorandum of Understanding:

- 3.6. delegate authority to the Executive Director of Resources and Regeneration to agree the operational details of the pooling arrangements with the participating authorities;
- 3.7. delegate authority to the Executive Director of Resources and Regeneration, in consultation with the Head of Legal Services, to enter into such Memorandum of Understanding with the 'participating authorities' as may be necessary, (including if and where appropriate) amending, finalising and executing the same on behalf of the authority.

Operation of the Pool:

- 3.8. authorise the Mayor to represent the authority in relation to consultations regarding the London Business Rates Pilot Pool consultative as may be

undertaken by the Lead Authority pursuant to the Memorandum of Understanding;

- 3.9. delegate to Mayor and Cabinet the authority to consider such consultative reports as the Lead Authority may circulate and to respond on behalf of the authority with regard to any recommendations and in particular, proposals for projects to be approved for funding from the Strategic Investment Pot.
- 3.10. delegate to the Lead Authority the functions of assessment, due consultation and approval of projects eligible for funding from the Pool's Strategic Investment Pot following consultation with the participating authorities (provided that at least two thirds of such participating London Boroughs are (including the City of London Corporation) in favour of the relevant recommendation as well as the Mayor of London, and that no entire sub-region is in disagreement with the decision) on such terms and conditions as shall ensure value for money and compliance with the law.

4. POLICY CONTEXT

- 4.1. The overarching policy and decision making framework for the discharge of the Council's many functions and duties is contained in Lewisham's Sustainable Community Strategy (SCS). The Strategy contains two overarching principles which are:
 - Reducing inequality – narrowing the gap in outcomes.
 - Delivering together efficiently, effectively and equitably – ensuring that all citizens have appropriate access to and choice of high quality services.
- 4.2. Also contained within the overarching policy framework are the Council's ten corporate priorities. These priorities describe the specific contribution that the Local Authority will make to the delivery of the SCS. The Council's priorities are as follows:
 - Community Leadership and Empowerment.
 - Young people achievement and involvement.
 - Clean, green and liveable.
 - Safety, security and visible presence.
 - Strengthening the local economy.
 - Decent Homes for all.
 - Protection of children.
 - Caring for adults and older people.
 - Active healthy citizens.
 - Inspiring efficiency, effectiveness and equity.
- 4.3. The National Non Domestic Rates (NNDR), or business rates regime is a nationally set tax collected by local authorities and pooled based on certain distribution arrangements. They are that the Local Authority retains a

proportion of the rates they collect and then receive a top-up or tariff from the nationally pooled element based on the fair funding formula. In London there is also a third element which is the proportion passed to the Greater London Authority (GLA).

- 4.4. Currently, of the amount Lewisham collects based on the Valuation Office Agency ratings and after applying the national rebates, the Council retains 30%, 37% goes to the GLA, and 33% into the national pool.
- 4.5. Lewisham currently has a low business rate base in London and is a top-up authority. Based on current regeneration and economic development plans this position is unlikely to change in the short to medium term.
- 4.6. Lewisham's 2017/18 budget for business rates income is £88.9m (against a safety net base of £82.2m); of which £19.7m (22%) is the retained element and £69.2m (78%) received via the top-up. The Council has a low cost of collection and good collection rate (>98% in year). Nonetheless, the Council does have to allow for some bad debts and the risk of valuation appeals, set at £3.0m for 2017/18.
- 4.7. The London wide 2017/18 forecast business rates income is £7.9bn of which the retained element is forecast at £5.3bn, with a £1bn tariff.
- 4.8. On 1st April 2017 the Government launched five pilots of 100% business rates retention. These pilots have retained 100% of business rates income and foregone some existing grants. Over the pilot period they will retain all of their growth in business rates income. The five current 100% pilots which launched on 1 April 2017 will be continuing through 2018/19, running alongside the new wave of 2018/19 pilots.
- 4.9. In London the Government established a pilot when the Greater London Authority (GLA) level of retained business rates increased from 20% to 37%, replacing TfL transport grant and Revenue Support Grant. An expanded London pilot in 2018-19, which requires all 33 London Boroughs and the Mayor of London to agree to pool, has now been proposed and agreed by central Government.

5. INTRODUCTION

- 5.1. The Government's stated policy objective is to move to 100% devolved business rates. This may require local authorities to assume additional responsibilities to match costs to the available business rates and enable the Treasury to reduce other sources of funding, in particular by phasing out Revenue Support Grant (RSG).
- 5.2. As part of this move the Government is looking to increase the number of pilots and encouraging pooling as a means for local areas to maximise their opportunities for growth.

- 5.3. London Councils put forward a proposal to establish a London wide pilot pool which would include all 33 London Boroughs and the GLA. A report outlining the proposed manner in which the pool would work was presented to Council in November 2017.
- 5.4. The Government formally confirmed its commitment to establishing a 100% business rate retention pilot in London in April 2018 in the Autumn Budget. The detail of the pilot has been formally agreed by a Memorandum of Understanding (MOU) (see Appendix 2) signed by the Chair of London Councils, the Mayor of London, the Minister for London and the Secretary of State for Communities and Local Government.

6. ESTABLISHING THE PILOT POOL

- 6.1. The full details relating to the setting up and running of the pool are contained in the MOU with the Government (see Appendix 2), London Councils final Prospectus (Appendix 6), and the Government's Designation Letter (see Appendix 1).

Pilot principles - MOU between London Government and Central Government

- 6.2. The MOU between London Government and the Government on the London 100% business rates retention pilot establishes the terms of the 100% retention pilot. It agrees that:
 - The 100% business rates retention pilot in London will be voluntary, but will be a pool comprising all 32 London boroughs, the Corporation of the City of London and the Greater London Authority.
 - From 1 April 2018 the London authorities will retain 100% of their non-domestic rating income. London will not retain 100% of total rates collected, as it will continue to pay an aggregate tariff to government. The overall level of collected rates that will be retained is around 64% after the tariff is paid.
 - London authorities will also receive section 31 grants in respect of Government changes to the business rates system which reduce the level of business rates income. Section 31 grant will amount to 100% of the value of the lost income. Tariffs and top-ups will be adjusted to ensure cost neutrality.
 - The London pool will retain 100% of any growth in business rate income above baselines, and will pay no levy on that growth.
 - In moving to 100% rates retention, the Department for Communities and Local Government will no longer pay Revenue Support Grant (RSG) to the London authorities in 2018/19. Funding baselines will be increased by the equivalent amount to reflect this transfer of RSG, which overall

amounts to £775 million in 2018/19 (the full boroughs breakdown can be found at Appendix 1 of Appendix 2).

- London authorities will not be subject to more onerous rules or constraints under the 100% rates retention pilot, than they would have been if they had remained subject to the existing “67% scheme” in place in 2017/18.
- No “new burdens” will be transferred to London and participation in the pilot will not affect the development or implementation of the Fair Funding Review.
- In the event that London’s business rates income fell, the pool will have a higher “safety net” threshold – 97% rather than 92.5% of the overall baseline funding level – than in the existing system, reflecting the greater reliance local authorities will have on business rates within the pilot.
- The piloted approach is to be without detriment to the resources that would have been available collectively to the 34 London authorities under the current local government finance regime, over the four year settlement period. This “no detriment” guarantee will ensure that the pool, as a whole, cannot be worse off than the participating authorities would have been collectively if they had not entered the pilot pool. In the unlikely event of this arising (the current forecast is for collected rates to 6% above baselines), the government would intervene to provide additional resources.

Pooling principles - MOU between the 34 pooling authorities

- 6.3. The London business rates pool must be set up following the same process as all other business rates pools. Following legal advice, the detailed pooling agreement that establishes the terms by which the pool will operate will be by an MOU between the 34 pooling authorities – as is the case for the vast majority of business rates pools. The MOU between the pooling authorities is attached at Appendix 3.
- 6.4. The key principles that underpin the London pooling agreement are that:
 - The pool in 2018-19 would not bind boroughs or the Mayor indefinitely – the founding agreement includes notice provisions for authorities to withdraw provided notice is given by 31 August each year. Were the pool to continue beyond 2018/19, unanimous agreement would be required to reconfirm a pool from 2020/21 onwards (the expected year in which funding baselines will be update as a result of the Fair Funding Review).
 - No authority can be worse off as a result of participating - where authorities anticipate a decline in business rates, the first call on any additional resources generated by the pool would be used to ensure

each borough and the GLA receives at least the same amount as it would have without entering the pool (this would include the equivalent of a safety net payment were it eligible for one individually under the current 67% system).

- All members will receive some share of any net benefits arising from the pilot pool – recognising that growing London’s economy is a collective endeavour in which all boroughs make some contribution to the success of the whole, all members of the pool will receive at least some financial benefit, were the pool to generate additional resources.

The Lead Authority

- 6.5. It is a statutory requirement that a “lead authority” acts as the accountable body to government and is responsible for the administration of the pooled fund. The City of London has agreed to be the lead authority for the London business rates pool.
- 6.6. The lead authority’s standard responsibilities will include, but not be limited, to:
 - all accounting for the finances of the pool including payments to and from the Government;
 - management of the pool's collection fund;
 - all audit requirements in relation to the pool;
 - production of an annual report of the pool's activity following final allocation of funds for the year;
 - the administration of the dissolution of the pool;
 - all communications with the DCLG including year-end reconciliations; and
 - the collation and submission of information required for planning and monitoring purposes.
- 6.7. It will be for the Lead Authority for the pool to determine the distribution of revenues between members of the pool and also pay the net tariff payment to the Government during the year.
- 6.8. Under a delegation arrangement, the GLA will manage treasury management issues and monetary transfers between billing authorities on behalf of the lead authority. The lead authority will have an additional role in formally taking decisions over the allocation of the Strategic Investment Pot following consultation with all participating authorities.

Distributing the benefits of pooling

- 6.9. The net financial benefit of pooling consists of retaining 100% of growth (rather than 67% across London under the current scheme), and in not paying a levy on that growth (which tariff authorities and tariff pools currently pay).
- 6.10. The Council report presented in November 2017, detailed the options available for distributing these benefits. There were four themes to consider and four options for how the growth could be allocated to these themes. The themes are:
1. incentivising growth
 2. recognising the contribution of all boroughs
 3. recognising need
 4. facilitating collective investment
- 6.11. The options were:
- A. An **even split** percentage between the four pots (25:25:25:25).
 - B. **Reducing the strategic investment** pot to 10% of the total, while the “reward”, “needs” and “population” pots are equally weighted (30:30:30:10).
 - C. **Greater “incentive weighting”** with equal weighting for the other three pots (40:20:20:20).
 - D. **Greater “needs” and “population” weightings** (each 30%) with equal remaining weightings of 20% for “incentives” and “investment” pots (20:30:30:20).
- 6.12. Officers recommended option ‘D’ which was thought to be more beneficial to Lewisham. This option has now been refined for the pilot overall and the final agreed distribution method will apply the following weightings: 15% incentives; 35% population; 35% SFA; 15% Strategic Investment Pot. The total forecasted growth for 2018/19 is £240m, Lewisham’s share is expected to be £4.3m.

The Strategic Investment Pot (SIP)

- 6.13. The joint Strategic Investment Pot (SIP) - representing 15% of the total additional net benefit - will be spent on projects that meet each of the following requirements:
- contribute to the sustainable growth of London’s economy and an increase in business rates income either directly or as a result of the wider economic benefits anticipated;
 - leverage additional investment funding from other private or public sources; and
 - have broad support across London government in accordance with the proposed governance process.

- 6.14. Decisions regarding the SIP will be taken formally by the City of London - as the lead authority - in consultation with all member authorities, reflecting voting principles set out in London Government's detailed proposition on 100% business rates in September 2016. These are that:
- both the Mayor and a clear majority of the boroughs would have to agree;
 - a majority would be defined as two-thirds of the 33 billing authorities (the 32 boroughs and the City of London), subject to the caveat that where all boroughs in a given sub-region disagreed, the decision would not be approved; and
 - If no decisions on allocation can be reached, the available resources would be rolled forward within the pot for future consideration at the next decision making round.
- 6.15. The MOU between London Government and the Government only commits to the pilot operating for one year. However, subject to the evaluation of the pilot, it also commits the Government to working with London authorities to explore: future options for grants including, but not limited to, Public Health Grant and the Improved Better Care Fund; the potential for transferring properties on the central list in London to the local list where appropriate; and legislative changes needed to develop a Joint Committee model for future governance of a London pool.

7. NEXT STEPS AND TIMELINE

- 7.1. Establishing the pilot pool will require two separate decisions to be made by each participating authority:
- the agreement to accept the designation order by government to form the pool; and
 - agreement between the boroughs, the City of London and the GLA, by which London Government collectively decides how to operate the pool and distribute the financial benefits (the pooling MOU).
- 7.2. This report is asking that Council agree the above.
- 7.3. The timeline to make the pool operational is as follows:
- Government publishing draft baseline figures in the provisional settlement (Mid-December 2017).
 - Boroughs taking formal decisions to participate in the pool and the framework for its operation within 28 days of the Provisional Settlement (by mid-January 2018).
 - Final baselines published in final LGF Settlement (February 2018).
 - Pool goes live (April 1 2018).

8. FINANCIAL IMPLICATIONS

- 8.1. This report proposes that Council agrees to enter the pool (including accepting the Designation by the Secretary of State as an authority within the Pilot Pool and delegating authority over its administration to the lead authority which, following consideration by the elected officers of London Councils, would be the City of London Corporation for the duration of the pilot), and agrees to a Memorandum of Understanding between London authorities for the operation of the pilot pool.
- 8.2. The Government has provided a no detriment guarantee for the pilot. This means that Lewisham will receive at least the equivalent amount to the 2018/19 Settlement Funding Assessment already determined under the four year settlement provided by the Government in 2016/17. The total 2018/19 Settlement is £128.7m along with specific grants for public health and the improved better care fund.
- 8.3. There is the advantage of Authorities keeping 100% of growth in Business Rates which in 2018/19 has been forecast at £240m across London. Agreement has been reached as to how this extra money will be divided between all the members of the pool, as stated in section 6, and Lewisham is forecast to receive a share of £4.3m in 2018/19. It is to be noted that this is a forecast only and therefore cannot be included in the Council's overall funding for 2018/19 until firm confirmation has been provided by the Pool's Lead Authority.
- 8.4. However, under the Council's current and ongoing financial situation, any additional funding would reduce the pressure to produce annual savings in an environment that has already faced unprecedented budget cuts over the last 10 years.

9. LEGAL IMPLICATIONS

- 9.1. The Department for Communities and Local Government published in September 2017 its 'Invitation to Local Authorities in England to pilot 100% Business Rates Retention in 2018/19 and to pioneer new pooling and tier-split models.'
- 9.2. "To be accepted as a pilot for 2018/19, agreement must be secured locally from all relevant authorities to be designated as a pool for 2018/19 (in accordance with Part 9 of Schedule 7B to the Local Government Finance Act 1988) and to put in place local arrangements to pool their additional business rates income" (para. 2.3 of the published Invitation).
- 9.3. "Authorities selected as pilots for 2018/19 will be expected to forego Revenue Support Grant and Rural Services Grant. The value of the grant foregone will be taken into account in setting revised tariffs and top-ups, which will be used to ensure that the changes are cost neutral, except for the value of any growth retained." (Para. 2.8 of the published Invitation).

- 9.4. “It is wholly at the discretion of authorities whether or not they choose to apply to the pilot scheme. Proposals for new pilots had to be received by the Department for Communities and Local Government by no later than Friday 27th October 2017.
- 9.5. At Appendix 4 to this report there is comprehensive legal clarification provided by Messrs Trowers & Hamblins LLP, which was sought by the London Councils.
- 9.6. Of the three relevant optional forms of governance for the business rates pooling arrangements, ‘Option 2’ , described as a “quasi-contractual approach involving a lead authority in consultation with participating authorities’ is deemed to be the most appropriate “...as it affords more flexibility...” and “...would be documented in a non-legally binding Memorandum of Understanding”. (Trowers & Hamblins LLP).
- 9.7. When making its decision regarding the various noted Options available, Members should pay due regard to any relevant considerations and disregard irrelevant considerations.
- 9.8. It is noted that “while the initial pooling agreement will be for 2018/19 only, there is a possibility that the pilot will be extended by government and the pool may therefore continue for a further year in 2019 / 20.” Further, that ...”each authority’s decision to participate in the Pool should confirm the allocation of business rates between the collecting authorities, the GLA and the SIP and [should] form part of the terms of reference for the Pool.”(Trowers & Hamblins LLP.)
- 9.9. It is further noted that ‘Option 2’ will afford opportunities for consultation with and consideration by the other participating authorities.
- 9.10. Local Authorities do have the express power to delegate decisions to other authorities, pursuant to sections 101 and 102 of the Local Government Act 1972 (“LGA 1972”),
- 9.11. Executive functions are similarly able to be delegated pursuant to sections 9E and 9EA of the LGA 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. The carrying out of relevant administrative functions as a billing authority are executive functions. Entry into the proposed Memorandum of Understanding, is deemed to be ancillary and incidental to those functions pursuant to s. 111 of the LGA 1972 and are therefore executive functions. Appointment of a representative for related consultative purposes is also deemed to be an executive function.
- 9.12. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 9.13. In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 9.14. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.
- 9.15. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 9.16. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 9.17. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- [The essential guide to the public sector equality duty](#)
 - [Meeting the equality duty in policy and decision-making](#)
 - [Engagement and the equality duty: A guide for public authorities](#)
 - [Objectives and the equality duty. A guide for public authorities](#)
 - [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

- 9.18. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

10. CRIME AND DISORDER IMPLICATIONS

- 10.1. There are no specific crime and disorder implications directly arising from this report.

11. EQUALITIES IMPLICATIONS

- 11.1 There are no specific equalities implications directly arising from this report.

12. ENVIRONMENTAL IMPLICATIONS

- 12.1 There are no specific environmental implications directly arising from this report.

13. CONCLUSION

- 13.1 All 33 London Authorities plus the GLA have to sign up to these agreements in order for the pilot pool to begin on the 1 April 2018. The deadline for the Council to approve these recommendations is mid-January 2018.

For further information on this report, please contact:

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APPENDICES

Appendix 1

Designation Letter

Appendix 2

Memorandum of Understanding between London Government and Central Government

Appendix 3

Memorandum of Understanding between the Participating Authorities

Appendix 4

Trowers and Hamblins – Legal Note on Executive Functions

Appendix 5

Trowers and Hamlins – Advice on the Legal Framework and Governance Options

Appendix 6

London Business Rates Pilot Pool 2018-19 Final Prospectus