

	Full Council 12th December 2017
Title	London Business Rates Pooling Pilot
Report of	Director of Resources
Wards	All
Status	Public
Urgent	Yes – the anticipated deadline for confirming the Council’s participation is mid-January which is before the next scheduled Council meeting
Key	Yes
Enclosures	Appendix A (Memorandum of Understanding)
Officer Contact Details	Paul Clarke – Head of Finance, Commissioning Group 020 8359 2800 paul.clarke@barnet.gov.uk
Summary	
<p>The Government has confirmed its support for developing a 100% business rate retention pilot pool in London for 2018/19, subject to London establishing robust governance arrangements for dedicating a significant share of the additional resources to promoting future economic growth.</p> <p>Initial modelling suggests there would be an immediate positive financial impact to the Council together with the goal of achieving long term London wide growth.</p> <p>In order for the London Borough of Barnet to join the pool a series of resolutions are required. These are reflected in the recommendations that follow.</p>	

Officer Recommendations

1. That Council agree and accept the designation by the Secretary of State as an authority within London Business Rates Pilot Pool pursuant to 34(7)(1) of Schedule 7B Local Government Finance Act 1988;
2. That Council participate in the London Business Rates Pilot Pool with effect from 1 April 2018 to 31 March 2019;

3. That Council 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;
4. That Council authorise the Lead Authority to sub-contract certain ancillary administrative functions (regarding the financial transactions such as payment of tariffs and top-ups within the Pool to the GLA as it considers expedient);

Entry into the Memorandum of Understanding

5. That Council agree to delegate authority to the Deputy Chief Executive, in consultation with the Chairman of the Policy and Resources Committee, to agree the operational details of the pooling arrangements with the participating authorities;
6. That Council agree to enter into such Memorandum of Understanding with the participating authorities as may be necessary to implement and/or regulate the pool and to delegate authority to the Deputy Chief Executive to negotiate, finalise and execute the same on behalf of Barnet council

Operation of the Pool

7. That Council authorise the Deputy Chief Executive to represent the authority in relation to consultations regarding the London Business Rates Pilot Pool as may be undertaken by the Lead Authority pursuant to the Memorandum of Understanding;
8. That Council delegate to Deputy Chief Executive 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.
9. That Council 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.

1. WHY THIS REPORT IS NEEDED

1.1 Background

- 1.1.1 The Government agreed on 22nd Nov 2017 to support for developing a 100% business rate retention pilot pool in London for 2018/19, subject to London establishing robust governance arrangements for dedicating a significant share of the additional resources to promoting future economic growth.
- 1.1.2 There are a number of legal decisions that need to be taken in order to join the London Business Rates Pooling Pilot. The deadline for all 34 London authorities (including the GLA) to have done this is anticipated to be mid-January 2018, no later than 28 days after the provisional Local Government Finance Settlement (expected to be mid-December).
- 1.1.3 As there are no further Council meetings between now and the deadline for agreement, several delegations are required in order to take decisions based on the final proposed details of the Pool.
- 1.1.4 London Councils have been seeking an agreement with Government that would cover the following areas:

Pool principles

- 1.1.5 The pool would be voluntary, but include all London authorities; London would retain a greater share of business rates in exchange for Revenue Support Grant; a “no detriment guarantee” would ensure that the pool could not be worse off than the participating authorities would have been collectively if they had not entered the pilot pool; no “new burdens” would be transferred to London and participation in the pilot would not affect the development or implementation of the Fair Funding review (currently anticipated in 2020/21).
- 1.1.6 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.

Distribution

- 1.1.7 All authorities would receive at least as much from the pool as they would have under the existing 50% retention scheme. Any additional net benefits of the pool – currently estimated to be approximately £240 million in 2018/19 – would be distributed on the following basis:
- 15% to reward growth
 - 35% to reflect population
 - 35% to reflect Settlement Funding Assessment
 - 15% set aside for a “Strategic Investment Pot” (see below)

The resources not top-sliced for the investment pot would be shared between the GLA and the boroughs in the ratio 36:64.

Governance of the strategic investment pot (SIP)

- 1.1.8 The pot would be dedicated to projects that contribute to the sustainable growth of London's economy, and which attract match funding from other private or public sources. Decisions regarding SIP projects will be made on the basis of three consultation tests:
- (i) the GLA and the London Boroughs agree;
 - (ii) London Boroughs' agreement will require two thirds support; and
 - (iii) support is subject to a sub-regional veto whereby, if all the London Boroughs in a sub-region were to oppose a proposal then it could not be agreed
- 1.1.9 The SIP projects will have been assessed by the Lead Authority against pre-agreed transparent and objective criteria.

Evaluation

- 1.1.10 Government has indicated that it would undertake a qualitative evaluation the progress of any pilot agreed, based on the current research programme for the existing business rate retention pilots, with additional focus on the governance and scale of resources dedicated to strategic investment.
- 1.1.11 If a final agreement is achieved, the Government would prepare a "designation order" establishing a London pilot pool and would reflect this in the Provisional Local Government Finance Settlement in December. If this happens, each authority is required to take the relevant decisions, through their own constitutional decision-making arrangements. Due to the timing of Council meetings this report is required, pre-empting this designation order being made.

1.2 Next Steps

Agree the designation by the Secretary of State

- 1.2.1 The Secretary of State has the power to designate two or more "relevant authorities" as a pool of authorities for the purposes of the provisions of Schedule 7B of the Local Government Finance Act 1988 (as amended by the Local Government Finance Act 2012).
- 1.2.2 Authorities can revoke the designation. If this was to happen the London Business Rates Pool would not come in to being in 2018/19. Recommendation 1 seeks Council's permission to agree and accept this designation.

Agreement of the Lead Authority

- 1.2.3 As part of the Memorandum of Understanding between the Secretary of State for Communities and Local Government, the Mayor of London, the Minister of London and London Council's, a lead authority must appoint a lead authority to exercise the following functions:

- To make and receive, on behalf of the Pilot pool members, payments in respect of any top ups and tariffs, levy and safety net and safety net on account payments to and from the Department.
- To make and receive payments between members of the Pilot pool as determined by the governance agreements.
- Administration (including the operation of the dissolution arrangements) of the Pilot pool, in accordance with the governance arrangements.

1.2.4 It is proposed that the Corporation of the City of London will be the Lead Authority. A resolution is also required in order to allow the Lead Authority to sub-contract ancillary administrative functions to other parties as appropriate.

Agreement of the Final Details

1.2.5 It is necessary for the Council to agree the final details of the Memorandum of Understanding (MOU) for the Pool. The draft document is attached as Appendix A.

1.2.6 The proposed MOU addresses:

- No additional or onerous rules or constraints will be placed on authorities
- No new burdens will be transferred as part of the move to a 100% pilot
- Calculations of levy and safety net payments will be unaffected
- 15% of the net financial benefit will be set aside for the Strategic Investment Pot (SIP)
- The remaining 85% will be split as per the agreement with London Councils (reflected in paragraph 1.3.4)
- The GLA share of net financial benefits from the Pool will be transferred directly to the SIP
- Decisions on the SIP will be taken by the Lead Authority in consultation with all member authorities
- The Government will undertake a qualitative review of the Pool focussing on governance and decision making
- The Pool will operate for one year

1.2.7 At the time of writing the final version of the MOU has not yet arrived and as the next Council meeting is on the 30th January 2018, it is not possible for Council to agree the final details prior to the deadline for all authorities to have signed up. It is therefore necessary to delegate responsibility to agree the final terms of the Pool to the Deputy Chief Executive in conjunction with the Chair of the Policy & Resources Committee. This is included as recommendations 5, and 6.

Operation of the Pool

1.2.8 In order to operate the Pool there is a requirement for the City of London to arrange financial transactions congruent with the effective dispensation of

their functions as Lead Authority. Recommendations 3 and 4 provide the Council's authority to undertake those.

1.2.9 In the operation of the SIP, the Council needs to delegate day to day decision making on proposed allocations to projects. This will involve receiving reports from the Lead Authority with recommendations as to the proposed allocations of the Strategic Investment Pot to projects and making a decision on how to respond with regard to the Lead Authority's recommendation. This is included within recommendations 7 and 8 of this report.

1.2.10 Following due consultation with all member authorities and provided that at least two thirds of such participating London Boroughs are 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, the Lead Authority will approve relevant projects within the SIP. The Council needs to approve the Lead Authority making those decisions on the Pool's behalf. This is included within the MOU and recommendation 9 seeks explicit authorisation for this to happen.

1.3 Timeline

1.3.1 Should all of the recommendations within this paper be agreed, the timeline to make the pool operational is as follows:

- Government to publish draft baseline figures in the provisional settlement (Mid-December).
- Boroughs to take 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).

2. REASONS FOR RECOMMENDATIONS

2.1 These recommendations are required in order to ensure the appropriate legal requirements are satisfied in order for the London Borough of Barnet to be in the London Business Rates Pooling Pilot.

2.2 Failure of a single authority to agree the required resolutions would mean that the London Business Rates Pooling Pilot would not start in 2018/19.

3.0 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED.

3.1 This report sets out the Business Rates pooling for London arrangements. The alternative would be not to participate in the pooling arrangement.

4.0 POST DECISION IMPLEMENTATION

4.1 If a final agreement is achieved, the Government would prepare a “designation order” establishing a London pilot pool and would reflect this in the Provisional Local Government Finance Settlement in December. If any authority were then to decide to opt out within the following 28 days – that is, by mid-January – the pool would not proceed.

4.2 An agreement will be required between the boroughs, City of London and the Mayor of London by which London Government collectively decides how to operate the pool and distribute the financial benefits.

5.0 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 This supports the Council’s corporate priorities as expressed through the Corporate Plan for 2015-20 which sets out the vision and strategy for the next five years based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place::

- Fairness: by seeking to balance the needs of different groups of residents and providing wider choices in modes of transport that provide access to essential services, education and employment.
- Of opportunity where people can further their quality of life.
- Where people are helped to help themselves, recognising prevention is better than cure
- Where responsibility is shared fairly;
- Where services are delivered efficiently to get value for money for the taxpayer

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 The benefit of being part of the pool is that 100% business rates are retained and any growth London wide is shared by all London authorities.

5.2.2 The Medium Term Financial Strategy for 2018-20 was presented to the Policy and Resources Committee on the 5th of December 2017. This included an anticipated benefit of £3m. Should Council not decide to join the London Business Rates Pool Pilot, Policy and Resources Committee will need to consider alternative options in order to balance the MTFS.

5.3 Social Value

5.3.1 None applicable to this report, however the council has to take into account the requirements of the Public Services (Social Value) Act 2012 to try to

maximise the social and local economic value it derives from its service delivery

5.4 Legal and Constitutional References

In relation to this project legal advice has been obtained from Trower's and Hamlins for London Council's

Powers to enter a MOU in relation to Business Rates Pooling

5.4.1 In relation to the project, the participating local authorities have implicit powers to enter into arrangements with each other for the purposes of fulfilling the requirements of Schedule 7B for obtaining an order of the Secretary of State authorising the establishment of a business rate pool. Article 8 of the Council's constitution states:

8.1 Joint Arrangements

The Council may establish joint arrangements with one or more Local Authorities. Such arrangements may involve the appointment of a Joint Committee with these other Local Authorities.

8.3 Delegation to and from other local authorities

(a) The Council may delegate functions to another Local Authority or, in certain circumstances, the Executive of another Local Authority.

(b) The decision whether or not to accept such a delegation from another Local Authority shall be reserved to the Council meeting.

5.4.2 A Memorandum of Understanding (**MOU**) is generally not contractually binding.

5.4.3 Local authorities have a power to enter into arrangements between them including under section 111 of the LGA 1972: "*Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions*". If the MOU is succeeded by a more detailed Inter Authority Agreement (**IAA**) this could be a legally binding contract. If so then the relevant power would be s111, LGA 1972 in conjunction with section 1(1) of the Local Government (Contracts) Act 1997 "*for the provision or making available of ... Services for the purposes of, or in connection with the discharge of the function of the local authority*". In the context of establishing a business rate pooling arrangement, the relevant "functions" are those of a billing authority or a major precepting authority.

Powers to enter a Pool

5.4.4 The Council has powers to enter into arrangements with other London Authorities for the purposes of fulfilling the requirements of Schedule 7B for

obtaining an order of the Secretary of State authorising the establishment of a business rate pool under Article 8 of the constitution.

- 5.4.5 Paragraph 45 (Interpretation) of Schedule 7B defines a "relevant authority" as a billing authority in England, or a major precepting authority in England. The list of billing authorities at Schedule 5, Part 1 of the Non-domestic Rating (Rates Retention) Regulations 2013/452 includes the GLA and the London Boroughs as billing authorities and the GLA is also a precepting authority pursuant to section 39 (1) of the Local Government Finance Act 1992.

Public Procurement Law

- 5.4.6 There are no Public Procurement Law considerations in the operation of the Pool. There is an exemption under Regulation 12 (7) of the Public Contracts Regulations 2015 for an MOU/IAA given that it is likely to comprise a contract which is concluded exclusively between two or more contracting authorities and which fulfils all of the following conditions:
- a) the contract establishes or implements the cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
 - b) the implementation of that co-operation is governed solely by considerations relating to the public interest; and
 - c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the corporation the cooperation- not applicable.

- 5.4.7 However, any works, services or supply contract executed in order to implement the individual projects using the funds in the SIP may well need to be competitively tendered under public procurement law depending on the nature and value of the contract. It is understood that such compliance will be a condition of allocation/project approval.

State Aid Implications

- 5.4.8 State aid is prohibited by Article 107(1) of the TFEU, which sets out that "*save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*", the pooling arrangement will not affect the amount of business rates that an undertaking will have to pay. However, any projects implemented through use of funds from the Strategic Investment Pot will need to comply with the then current principles of state aid which it is understood will be a condition of allocation/project approval.

Employment Law Implications

- 5.4.9 It is currently anticipated that only a minimal number of staff will need to service the administration of the business rates pooling arrangement within COLC, the lead authority who may sub-contract certain administrative

functions of the Pool to the GLA and who will be made available to COLC (as these are similar to activities the GLA already carries out as a precepting authority) to collect its share of retained rates from London Boroughs and the City of London Corporation subject to an arrangement under section 113 of the Local Government Act 1972.

5.4.10 On the basis of current estimates, in the order of one full-time equivalent member of staff is likely to be required to service the administration of the London business rates pooling arrangement within the City of London Corporation and the GLA.

5.5 Risk Management

5.5.1 Risk is defined as an uncertain event that, should it occur, will have an impact on the organisation's ability to achieve its objectives. A risk is measured by the likelihood of a perceived threat or opportunity occurring and the magnitude of its impact on the organisation's objectives.

5.5.2 The overarching aims of the council's risk management framework are to improve the organisation's ability to deliver its strategic objectives by managing risk; creating a risk culture that adds value to operational activities; and achieving sustained benefit across the portfolio of activities.

5.5.3 The risk management framework should help to ensure risk management is embedded throughout the organisation and involves all key stakeholders, including officers, senior managers, members and partners.

5.5.4 The Council has taken steps to improve its risk management processes by integrating the management of financial and other risks facing the organisation.

5.5.5 The Council will continue to monitor and evaluate the risks inherent of being within a Business Rates Pool. Initial risks of reduced funding have been eliminated through the 'no worse off' clause within the MOU. If the Pool was not to go ahead then the MTFs would be detrimented to the value of £3m. The mitigation for this would be the Policy and Resources committee making decisions to resolve that deficit.

5.6 Equalities and Diversity

5.7.1 A public sector equality impact assessment has not been undertaken as the public sector equality duty (PSED) has not been engaged. However, it is anticipated the PSED may be engaged on individual projects funded by the SIP where EIAs will be a condition of project approval/allocation.

5.7 Consultation and Engagement.

5.7.1 The legislation does not prescribe any public consultation and the pooling arrangement will not change the amounts that ratepayers will have to pay. It is therefore deemed that the Council does not need to consult more widely on its

decision whether or not to join the Pool.

5.8 **Insight**

5.8.1 Not applicable.

6.0 **BACKGROUND PAPERS**

6.1 Policy and Resources Committee, 5 December 2017, Business Planning:
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=8739>