

CABINET

11 December 2017

Agenda item:

Business Plan Update 2018-2022

Lead officer: Caroline Holland

Lead member: Councillor Mark Allison

Key Decision Reference Number: This report is written and any decisions taken are within the Budget and Policy Framework Procedure Rules as laid out in Part 4-C of the Constitution.

Contact officer: Roger Kershaw

Urgent report:

Reason for urgency: The chairman has approved the submission of this report as a matter of urgency as it provides the latest available information on the Business Plan and Budget 2018/19 and requires consideration of issues relating to the Budget process and Medium Term Financial Strategy 2018-2022. It is important that this consideration is not delayed in order that the Council can work towards a balanced budget at its meeting on 28 February 2018 and set a Council Tax as appropriate for 2018/19.

Recommendations:

1. That Cabinet considers and agrees the draft savings/income proposals (Appendix 3) and associated draft equalities analyses (Appendix 7) put forward by officers and refers them to the Overview and Scrutiny panels and Commission in January 2018 for consideration and comment.
 2. That Cabinet agrees the latest amendments to the draft Capital Programme 2018-2022 which was considered by Cabinet on 16 October 2017 and by scrutiny in November 2017.(Appendix 5)
 3. That Cabinet considers the proposed amendments to savings previously agreed. (Appendix 2)
 4. That Cabinet agrees the Council Tax Base for 2018/19 set out in paragraph 2.6 and Appendix 1.
 5. That Cabinet consider the draft service plans. (Appendix 6)
 6. That Cabinet agree that Merton participates in the London Business Rates Pilot Pool and signs up to the Memorandum of Understanding and agrees the draft resolutions set out in Appendix 9g.
-

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report provides an update to Cabinet on the Business Planning process for 2018-22 and in particular on the progress made so far towards setting a balanced revenue budget for 2018/19 and over the MTFS period as a whole.
- 1.2 Specifically, the report provides details of revenue savings and income proposals put forward by officers in order to meet the savings/income targets agreed by Cabinet in September 2017.
- 1.3 The report also provides an update on the capital programme for 2018-22 and the financial implications for the MTFS.
- 1.4 The report provides a general update on all of the latest information relating to the Business Planning process for 2018-22 and an assessment of the implications for the Medium Term Financial Strategy 2018-22.
- 1.5 The report sets out the details with respect to the proposed London Business Rates Pilot Pool 2018/19 and asks Cabinet to agree the terms.
- 1.6 This report is one of the budget updates through the financial year and will be referred to the Overview and Scrutiny Panels and Commission in January 2018 as part of the consultation pack.

2. DETAILS

Introduction

- 2.1 A review of assumptions in the MTFS was undertaken and reported to Cabinet on 18 September 2017. There was also a report to Cabinet on 16 October 2017 which provided an update on progress made towards achieving savings previously agreed and proposed some amendments to these, and also provided details of the latest capital programme, including new bids and an indicative programme for 2023- 2028. The report referred them to the Overview and Scrutiny panels and Commission for consideration.
- 2.2 Taking into account the information contained in both the September and October Cabinet reports, the overall position of the MTFS reported to Cabinet on 16 October 2017 was as follows:-

(Cumulative Budget Gap)	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000
MTFS Gap before Savings	7,018	14,252	29,779	30,608
Savings identified	(7,018)	(9,037)	(9,037)	(9,037)
MTFS Gap (Cabinet October 2017)	0	5,215	20,742	21,571

2.3 Review of Assumptions

Since Cabinet in October, work has been continuing to review assumptions, identify new savings/income proposals and analyse information which has been received since then.

2.3.1 Pay

As reported to Cabinet in September 2017, on 14 June 2017, three unions (UNISON, Unite and the GMB), representing more than 1.6 million local government employees in schools and councils across England, Wales and Northern Ireland submitted a pay claim for the year from April 2018 requesting to move the lowest paid staff onto the real living wage of £8.45 an hour (£9.75 in London). In addition the unions want all employees to receive a five per cent pay rise and deletion of the bottom of the NJC and London pay spines points 6-9. The claim follows eight years of government-imposed pay restraint, which has seen wages either frozen or held to a one per cent increase.

With over 130,000 signatures, UNISON's petition 'Pay Up Now! – Scrap the pay cap and give public servants a meaningful pay rise' will be debated in Parliament on 4 December 2017.

The National Joint Council negotiates the pay, terms and conditions of staff in local authorities. Responding in June 2017 to the local government unions' 2018 pay claim for a 5 per cent pay increase for all staff, the Chair of the National Employers said:

"We will be consulting with councils in the coming weeks on pay across the workforce and in particular how we can meet the challenge of the Government's proposed level of the National Living Wage over the next few years. The unions' claim will form part of the consultation. We recognise that public sector workers have had lower than average pay awards for a few years now, but local government continues to face significant financial challenges so we are surprised that the unions are seeking such an ambitious pay award. Local government has lost more than half a million jobs in recent years and meeting this claim would result in many more such job losses."

On 5 December 2017 the National Joint Council made the following offer to unions:-

Council employees have been offered a two-year pay increase from 1 April 2018. The majority of employees - those on salaries starting at £19,430 per annum - would receive an uplift of 2 per cent on 1 April 2018 and a further 2 per cent on 1 April 2019, with those on lower salaries receiving higher increases. The offer also includes the introduction of a new national pay spine on 1 April 2019.

The total increase to the national pay bill resulting from this offer is 5.6 per cent over two years (covering the period 1 April 2018 to 31 March 2020). This pay offer does not apply to council chief executives, senior officers, teachers or firefighters, who are covered by separate national pay arrangements.

The three unions representing local government staff will now put the offer to their respective committees for consideration.

The provision for pay inflation was last reviewed in September 2017 using the approved budget for 2017/18. The National Employers estimate that:-

- This first year of the pay offer would increase the national paybill by 2.707%
- This second year of the pay offer would increase the national paybill by 2.802%
- The total increase to the national paybill over the two-year period would be 5.584%

Using these estimates the latest forecasts of pay inflation included in the MTFS are:-

(Cumulative)	2018/19	2019/20	2020/21	2021/22
Pay inflation (%)	2.707%	2.802%	1.0%	1.0%
Revised Estimate (cumulative £000)	2,108	4,290	5,069	5,848

In the Autumn Budget 2017, the Chancellor of the Exchequer announced that in 2018-19, for those workforces covered by an independent Pay Review Body (PRB), the relevant Secretary of State will shortly write to the PRB Chair to initiate the 2018-19 pay round, before later submitting detailed evidence outlining recruitment and retention data and reflecting the different characteristics and circumstances of their workforce. Each PRB will then make its recommendations in the spring or summer, based on the submitted evidence. Secretaries of State will make final decisions on pay awards, taking into account their affordability, once the independent PRBs report.

2.3.2 Prices

The estimates for price inflation agreed by Council in March 2016 were reviewed and included in the September 2017 report to Cabinet. The latest forecast is set out in the following table:-

(Cumulative)	2018/19	2019/20	2020/21	2021/22
Price inflation (%)	1.5%	1.5%	1.5%	1.5%
Revised Estimate (cumulative £000)	2,258	4,516	6,775	9,033

The Consumer Prices Index (CPI) 12-month rate was 3.0% in October 2017, unchanged from September 2017. The inflation rate for food and non-alcoholic beverages continued to increase to 4.1%, the highest since September 2013.

Rising prices for food and, to a lesser extent, recreational goods provided the largest upward contributions to change in the rate between September 2017 and October 2017. The upward contributions were offset by falling motor fuel and furniture prices.

CPIH, a measure of UK consumer price inflation that includes owner occupiers' housing costs, 12-month inflation rate was 2.8% in October 2017, unchanged from September 2017. Owner occupiers' housing costs remained unchanged between September 2017 and October 2017, having risen a year ago.

The RPI 12-month rate for October 2017 stood at 4.0%, up from 3.9% in September 2017.

Outlook for inflation:

The Bank of England's Monetary Policy Committee (MPC) sets monetary policy to meet the 2% inflation target and in a way that helps to sustain growth and employment. At its meeting ending on 1 November 2017, the Committee voted by a majority of 7-2 to increase Bank Rate by 0.25% to 0.5%. The Committee voted unanimously to maintain the stock of sterling non-financial investment-grade corporate bond purchases, financed by the issuance of central bank reserves, at £10 billion. The Committee also voted unanimously to maintain the stock of UK government bond purchases, financed by the issuance of central bank reserves, at £435 billion. The November 2017 Inflation Report was published on the 2 November 2017. The next MPC meeting to agree the Bank Base Rate will be held in mid December.

In the November 2017 Inflation Report, the MPC noted that "CPI inflation rose to 3.0% in September. It is expected to peak at 3.2% in October, as increases in imported costs — stemming from the past fall in sterling and a more recent pickup in global energy prices — are passed on to consumer prices. Inflation is then expected to fall back as past rises in energy prices drop out of the annual comparison and as the pass-through of rises in other import prices progresses. Alongside that moderation in external pressures, however, domestic inflationary pressures are likely to build to more normal levels."

In terms of prospects for inflation, the MPC state that "CPI inflation has risen further above the 2% target as companies pass on the higher costs stemming from the lower level of sterling. Unemployment has continued to fall and the extent of spare capacity in the economy now seems limited. Moreover, the pace at which the economy can grow without generating inflationary pressure has fallen over recent years. Over the MPC's forecast period, conditioned on a path for Bank Rate that rises to 1% by the end of 2020, demand is projected to grow at a pace that uses up the remaining slack in the economy. As imported inflationary pressures wane, domestic pressures build. Inflation is projected to remain slightly above the 2% target at the three-year point."

The latest inflation and unemployment forecasts for the UK economy, based on a summary of independent forecasts are set out in the following table:-

Table 11: Forecasts for the UK Economy

Source: HM Treasury - Forecasts for the UK Economy (November 2017)			
	Lowest %	Highest %	Average %
2017 (Quarter 4)			
CPI	2.7	3.2	3.0
RPI	3.6	4.4	4.0
LFS Unemployment Rate	4.1	4.7	4.3
2018 (Quarter 4)			
CPI	1.6	3.0	2.4
RPI	2.5	3.8	3.1
LFS Unemployment Rate	3.7	5.1	4.5

Clearly where the level of inflation during the year exceeds the amount provided for in the budget, this will put pressure on services to stay within budget and will require effective monitoring and control.

Independent medium-term projections for the calendar years 2017 to 2021 are summarised in the following table:-

Source: HM Treasury - Forecasts for the UK Economy (November 2017)					
	2017	2018	2019	2020	2021
	%	%	%	%	%
CPI	2.7	2.6	2.2	2.1	2.0
RPI	3.6	3.5	3.1	3.2	3.1
LFS Unemployment Rate	4.4	4.4	4.5	4.4	4.5

2.3.3 Inflation > 1.5%:

There is also a corporate provision which is held to assist services that may experience price increases greatly in excess of the 1.5% inflation allowance provided when setting the budget. This will only be released for specific demonstrable demand.

	2018/19	2019/20	2020/21	2021/22
	£000	£000	£000	£000
Inflation exceeding 1.5%	457	468	472	474

The cash limiting strategy is not without risks but if the Government's 2% target levels of inflation were applied un-damped across the period then the budget gap would increase by c. £3.0m by 2021/22.

2.3.4 Income

The MTFS does not include any specific provision for inflation on income from fees and charges. However, service departments can identify increased income as part of their savings proposals.

2.3.5 Taxicards and Freedom Passes

These schemes are administered by London Councils on behalf of London boroughs. Latest information from London Councils indicates that negotiations with Transport for London (TfL) and the Association of Train Operating Companies (ATOC) will be concluded at the end of November 2017.

The MTFS includes the following amounts for Taxicards and Freedom Passes:-

	Current Estimate 2017/18 £000
Freedom Passes	9,029
Taxicards	113
Total	9,142
Uplift in MTFS	450
Provision in MTFS for 2018/19	9,592

Initial indications are that the charge to Merton for 2018/19 will be within the provision but this provision will be reviewed and reported when the figures are finalised.

2.3.6 Revenuisation

In recent budgets it has been recognised that some expenditure formerly included in the capital programme could no longer be justified as it did not meet the definition of expenditure for capital purposes. Nevertheless, it is important that some of this expenditure takes place and the following amounts have been included in the latest MTFS for 2018-22:-

	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000
Revenuisation	2,100	2,100	2,100	2,100

The expenditure charged to capital during the current year is being closely monitored and is being reported through the monitoring report.

2.3.7 Budgetary Control 2017/18 and need for growth

The revenue budgetary control information below summarises the corporate position using the latest available information as at 31 October 2017 as shown in a separate report on the agenda for this meeting. As at 31 October 2017, there is a forecast overspend for the Council of £1.444m.

The main causes of the overspend are:-

- Adult Social Care
- Waste, Public Spaces, Building and Development Control income
- Children's Services
- Housing General Fund, mainly temporary accommodation

The MTFS reported to Cabinet in October 2017 does not include any new provision for growth from 2018/19 to 2020//22 and future years. In terms of addressing issues which were identified as pressures that needed to be addressed in last year's budget the following budget growth was agreed and is included in the MTFS:-

	2017/18 £000	2018/19 £000	2019/20 £000	2020/21 £000
Adult Social Care	9,345	252	*(2,891)	0
Waste and Regeneration	1,582	222	(115)	0
Children's Services	1,000	500	500	500
Total	11,927	974	(2,506)	500
Cumulative total	11,927	12,901	10,395	10,895

* Additional grant received

2.3.8 Capital Financing Costs

Revenue Implications of Current Capital Programme

As previously reported the Capital Programme has been reviewed and revised and a draft programme for 2018-2022 was approved by Cabinet on 16 October 2017, along with an indicative programme for 2022-27.

Section 6 of this report sets out details of progress made towards preparing the draft capital programme 2018-22.

The estimated capital financing costs are net of investment income and based on the latest draft programme, which includes the revised MRP calculation, the best estimate of new schemes commencing in 2021/22, the effect of estimated government grant funding, estimated funding from the Education Funding Agency (EFA) and slippage/reprofiling based on 2016/17 outturn and latest monitoring information are set out in the following table. This also includes an element of revenue contribution to fund short-life assets:-

	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000
Capital Programme (including slippage)	63,203	31,084	9,267	8,568
Revenue Implications	7,891*	12,208	13,590	12,709

* includes 2017/18 and 2018/19 MRP saving

2.4 Forecast of Resources and Provisional Local Government Finance Settlement

2.4.1 Background

In recent years at the end of November to mid-December, the Department of Communities and Local Government (DCLG) has notified local authorities of their Provisional Local Government Finance Settlement. This has included the amounts of funding allocated to each local authority in terms of Revenue Support Grant, share of Business Rates and other major allocations of grant. The final Settlement figures are published the following January/February but are generally unchanged from the provisional figures. The total amount of funding available for local authorities is essentially determined by the amount of resources that Central Government has allocated as part of its annual Departmental Expenditure Limit which is set out in the Autumn Budget on 22 November 2017. The Autumn Budget sets out the government's plans for the economy based on the latest forecasts from the Office for Budget Responsibility (OBR).

2.4.2 Autumn Budget 2017

In the Autumn Budget the Chancellor of the Exchequer published details of Government Department Expenditure Limits (DELs) from which the Provisional Local Government Finance Settlement follows in mid-late December 2017. Officers are currently reviewing the potential impact on the Finance Settlement. There is a summary of the key points included as Appendix 8.

2.4.3 Funding Forecasts for 2018/19 to 2021/22

Forecasting resources for 2018/19 and beyond is fraught with difficulties since it requires making assumptions about a wide variety of variables which the Government are not prepared to release at the current time. There is also the impact of the proposed London-wide Pilot Business Rates Pool which is proposed for 2018/19 and is intended to give London Council 100% control over the Business Rates they collect. Under the pilot responsibilities previously funded by Revenue Support Grant and other grants will be expected to be met by business rates.

2.4.4 Share of Business Rates Yield

In 2017/18 the yield from Business Rates was shared 33% Central Government (Central Share), and the Local Share is 30% to Merton and 37% to the GLA. Under a London Pilot

Pool the central share payable to the Government would reduce to nil but there will continue to be a split between the GLA and London Boroughs. The split is currently estimated to be 36:64. See paragraph 2.5 for details of the proposed London Business Rates Pilot Pool 2018-19

There will be an update in future reports when further details are known.

2.4.5 London Pension Fund Authority (LPFA) Levy – Update on a proposed arrangement with regard to the pension deficit arising from the Former Pensioner sub-fund operated by the LPFA

In the budget setting report to Council in March 2017, Members were advised that following the abolition of the GLC in 1986 and the ILEA in 1990, the LPFA was established to take over the former GLC/ILEA Pensions fund and associated liabilities of the London Residuary Body (the successor body to the GLC/ILEA). The LPFA divided the fund into two sub funds with the staff in the two groups being in the pensioner sub fund.

Following the 2007 actuarial revaluation the LPFA notified boroughs that they intended to issue a further charge on the boroughs due to the deficit that had arisen on the pensioner sub fund. Discussions were then held with the SLT and draft regulations prepared by the DCLG (or its predecessor) to give effect to the proposed levy. This was challenged by two London boroughs and has remained unresolved. The Government's preference was for London boroughs and the LPFA to try to resolve the issue and subsequently the LPFA abolished the two sub funds which with other changes to the investment strategy has led to an improvement to the deficit position.

In January 2017, the Society of London Treasurers (SLT) advised the Council that the overall total deficit on these liabilities was £177m and discussions with SLT representatives and the LPFA had clarified that a fair proportion of any deficit for the London boroughs to be responsible for is 90% and this would form the basis of further negotiations on future proposals. Merton's share of the deficit was notified as £1.779m but each borough could agree individual plans with the LPFA around recovery arrangements for their specific part of the deficit and the situation will be reviewed every three years at subsequent valuations to assess the current position and agree future contribution recovery. The LPFA indicated that they would be prepared to be as flexible as possible in agreeing terms with individual boroughs and the proposals being discussed represented a significant change and reduction in contributions compared to the original proposals put forward for consultation in 2009, recognising the statutory nature of London boroughs to meet these liabilities over the long term (i.e. up to 30 years)

Based on these figures, the 2017/18 budget and MTFs 2017-21 included £86,000 p.a. which is the estimated annual financing costs if the Council borrows this amount over 30 years.

The latest position (23 November 2017) is that:-

- Documentation is now ready and with LPFA/SLT legal advisors for signature.
- LPFA are currently undertaking a review of the levels of current payments and future provision for asbestosis compensation payments in particular to determine the appropriate level of current levy payments due for 2018/19 and the extent to which the revised payments under the new agreement can be introduced.
- LPFA will also be finalising the administrative and operational processes around any future payments due in line with the agreement and liaising with appropriate contacts to confirm, the aim being to introduce an efficient process that will ensure appropriate identification and payment of any sums due as well as being one that is straightforward for the Boroughs to implement.

Once the LPFA have completed their review they will be in a position to determine the extent to which any payments can be implemented for 2018/19, although the timescales are fairly tight given that the LPFA have to issue levy notices by February. The LPFA will keep the SLT informed of progress and formally notify Boroughs of any outcome of the review.

In the meantime, the MTFs will continue to include £86,000 p.a. as provision for Merton's contribution to funding the deficit.

2.5 London Business Rates Pilot Pool 2018-19 proposal

- 2.5.1 The last Government committed to local government retaining 100% of business rates by 2020 and begun piloting elements of such a scheme in 2017-18 in 6 areas, including the GLA in London.
- 2.5.2 The London Devolution Memorandum of Understanding, announced by the government in the Spring Budget in March 2017, committed to working with London "to explore options for granting London Government greater powers and flexibilities over the administration of business rates. This includes supporting the voluntary pooling of business rates within London, subject to appropriate governance structures being agreed".
- 2.5.3 London Councils Leaders' Committee received a report following the Budget in March 2017, which set out the broad rationale and potential financial and strategic benefits of partaking in a pilot as then envisaged. In the event that such a pilot pool were available, it could bring both a financial incentive – through the early reduction of levy payments and access to 100% retained growth – and provide a limited opportunity to address some policy issues.
- 2.5.4 A pilot on the lines of those currently operating in other areas would not in itself address the full range of powers outlined in London's joint business rates proposition to Government, but participating in a pilot could also enhance Government's view of London's willingness and capacity to take on broader devolution of fiscal and service responsibilities.

- 2.5.5 On 10 October, Leaders' Committee and the Mayor agreed in principle to pool business rates in a London pilot of 100% retention in 2018-19. Leaders' Committee delegated authority to the 5 elected officers of London Councils (the Chair, Deputy Chair, and three Vice Chairs) to take the in principle agreement forward to arrive at a core proposition for the operation of the pool and to continue discussions with both the Mayor and ministers on this. The elected officers discussed this in October and agreed a final distribution option to take forward with government, on 1 November following discussions via the party groups.
- 2.5.6 The Chair of London Councils wrote to all Leaders on 10 November confirming the proposal that London Councils and the GLA would take forward to gain agreement with Government. This set out:
- the pool principles;
 - the basis for distributing any net financial benefit (15% to reward growth; 35% to reflect population; 35% to reflect Settlement Funding Assessment; and 15% set aside for a "Strategic Investment Pot");
 - the preferred option for governance of the strategic investment pot; and
 - the expected evaluation process that government would undertake.
- 2.5.7 In the Autumn Budget 2017 presented on 22 November, the Chancellor delivered his first Budget of the new fiscal timetable, taking tax and expenditure decisions for the financial year ahead. The key announcements in the Autumn Budget relating to London local government included confirmation of the London business rates pilot for 2018-19.
- 2.5.8 The terms of the 100% pilot have been agreed via a memorandum of understanding (MOU) between the Chair of London Councils, the Mayor, the Secretary of State and the Minister for London.
- 2.5.9 Next Steps and draft timetable
Now that the detail of the pilot has been formally agreed via an MOU between the Chair of London Councils, the Mayor, the Secretary of State and the Minister for London, to support the creation of the pool and the framework for its operation, each authority will need to take the relevant decisions, through their own constitutional decision-making arrangements:
- 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);
 - To agree a Memorandum of Understanding between London authorities for the operation of the pilot pool; and
 - Where appropriate, to delegate authority to a lead member or committee to take decisions in relation to the Strategic Investment Pot.

The deadline for all 34 authorities to have done this is anticipated to be mid-January, no later than 28 days after the provisional Local Government Finance Settlement (expected to be mid-December).

In order to facilitate and support authorities in taking these decisions, London Councils have commissioned advice and guidance from Trowers & Hamlins on the legal framework and governance options for the pool.

Timeline to make the pool operational

London Councils to circulate pooling agreement MOU	by Friday 1 December
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

2.5.10 Achieving the arrangements to implement the pool within the timescales will be a complex issue. To assist Members understanding, the following draft paperwork is attached as Appendix 9 (a) – (f) for information

Document Title	Author
London Business Rates Pilot Pool 2018-19 Final Prospectus – November 2017	London Councils
Memorandum of Understanding on the London 100% business rates retention pilot 2018-19	DCLG, London Councils, Mayor of London
London Business Rates Pooling Pilot Suggested Sample Draft Resolutions for Participating Authorities	London Councils
Greater London Business Rates Pooling Pilot Arrangement - Legal Questions and Answers	London Councils
Pooling Business Rates in London Advice on the legal framework and governance options	Trowers & Hamlin LLP
Business Rates Pilot Pool Legal Note on Executive Functions	Trowers & Hamlin LLP

2.5.11 Based on the provisional estimates produced by London Councils, London would benefit by approximately £240m by operating pool arrangements in 2018/19. Merton would receive an estimated £2.4m of this benefit, but this would not be confirmed until after the 2018/19 financial year.

	Incentives (growth)%	Needs %	Population %	Investment Pot %	Merton share £m
Agreed distribution	15	35	35	15	2.4

Draft resolutions to enable Merton to participate in the pilot pool are set out in Appendix 9g and Cabinet are requested to approve them. However, it would be imprudent at this stage to include any additional resources within the MTFs given that the pilot will only proceed if all of the other London boroughs agree to participate.

For the reasons discussed above, assessing the implications for Merton's funding at this stage, before the Provisional Finance Settlement and the Business Rates Pilot Pool are finalised, is difficult.

2.6 Council Tax Base

- 2.6.1 The Council Tax Base is a key factor which is required by levying bodies and the Council for setting the levies and Council Tax for 2018/19. The council tax base is the measure of the number of dwellings to which council tax is chargeable in an area or part of an area. The Council Tax Base is calculated using the properties from the Valuation List together with information held within Council Tax records. The properties are adjusted to reflect the number of properties within different bands in order to produce the Council Tax Base (Band D equivalent). This will be used to set the Council Tax at Band D for 2018/19. The Council is required to determine its Council Tax Base by 31 January 2018.
- 2.6.2 Regulations set out in the Local Authorities (Calculation of council Tax Base) Regulations 2012 (SI 2012:2914) ensure that new local council tax support schemes, implemented under the Local Government Finance Act 2012, are fully reflected in the council tax base for all authorities.
- 2.6.3 The Council Tax Base Return to central Government takes into account reductions in Council Tax Base due to the Council Tax Support Scheme and also reflects the latest criteria set for discounts and exemptions. The CTB Return for October 2017 is the basis for the calculation of the Council Tax Base for 2018/19.
- 2.6.4 Details of how the Council Tax Base is calculated are set out in Appendix 1. A summary of the Council Tax Bases for the Merton general area and the addition for properties within the Wimbledon and Putney Commons Conservators area for 2018/19 compared to 2017/18 is set out in the following table:-

Council Tax Base	2017/18	2018/19	Change
			%
Whole Area	72,442.3	74,124.0	2.3%
Wimbledon & Putney Common Conservators	11,131.2	11,308.8	1.6%

2.7 Proposed Amendments to Previously Agreed Savings

2.7.1 Cabinet on 16 October 2017 agreed some proposed amendments to E&R savings which had been agreed in previous year's budgets and also agreed that the financial implications should be incorporated into the draft MTFS 2018-22.

2.7.2 There are some further requests for changes to existing savings as follows:-

- Corporate Services department have identified savings of £0.957m to replace unachievable savings in 2018/19 and propose to defer some savings with no overall effect over the MTFS period.
- Children, schools and Families Department have identified savings of £0.229m in 2018/19 to replace unachievable savings of equivalent value.
- Community and Housing have unachievable savings of £1.463m in 2018/19 and have identified replacement savings of £1.081m in 2018/19, leaving a net balance of £0.382m to be found. C&H department also propose to defer £0.548m of savings from 2018/19 to 2019/20.

2.7.3 The change over the four year MTFS period resulting from these proposals is set out in the following table:-

SAVINGS TARGETS BY DEPARTMENT	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000	Total £000
Corporate Services	177	(103)	(74)	0	0
Children, Schools and Families	0	0	0	0	0
Environment and Regeneration	0	0	0	0	0
Community and Housing	930	(548)	0	0	382
Total	1,107	(651)	(74)	0	382
Cumulative	1,107	456	382	382	

2.7.4 Details of the unachievable savings and their replacements, and the deferred savings are detailed in Appendix 2.

3. FEEDBACK FROM THE OVERVIEW AND SCRUTINY PROCESS IN NOVEMBER 2017

3.1 The information available on the Business Planning process reported to Cabinet on 16 October 2017 was reviewed by the Overview and Scrutiny Panels and Commission in November 2017.

3.2 Feedback is included in a separate report to Cabinet on the agenda.

4. SAVINGS PROPOSALS 2018-22 AND SERVICE PLANNING

Controllable budgets and Savings Targets for 2018-22

4.1 Cabinet on 18 September 2017 agreed savings targets to be identified by service departments over the period 2018-22 as follows:-

SAVINGS TARGETS BY DEPARTMENT	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000	Total £000
Corporate Services	0	2,363	1,911	169	4,443
Children, Schools and Families	0	0	3,328	132	3,460
Environment and Regeneration	0	3,256	3,352	262	6,870
Community and Housing	0	0	6,693	265	6,958
Total	0	5,619	15,284	828	21,731
Cumulative	0	5,619	20,903	21,731	

4.2 Since then service departments have been reviewing their budgets and formulating further proposals to address their targets. The progress made to date is set out in this report.

4.3 Proposals that are agreed by Cabinet at its meeting on 11 December will be referred to the Overview and Scrutiny Commission and panels as part of the consultation pack for review and comment in January 2018.

4.4 The proposals submitted by each department are summarised in the following table and set out in detail in Appendix 3.

SUMMARY (cumulative)	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000	Total £000
Corporate Services	0	1,014	187	40	1,241
Children, Schools & Families	0	0	150	0	150
Environment & Regeneration	0	280	95	75	450
Community & Housing	0	500	1,100	0	1,600
Total	0	1,794	1,532	115	3,441
Net Cumulative total	0	1,794	3,326	3,441	

4.5 Summary of progress to date

4.5.1 If all of the proposals are accepted, the balance remaining to find is:-

	Targets	Proposals	Net change replacements	Balance
	£'000	£'000	£'000	£'000
Corporate Services	4,443	(1,241)	0	3,202
Children, Schools & Families	3,460	(150)	0	3,310
Environment & Regeneration	6,870	(750)	0	6,120
Community & Housing	6,958	(1,600)	382	5,740
Total	21,731	(3,741)	382	18,372

*E&R Savings above include £300k in 2019/20 agreed by Cabinet in October 2017.

4.5.2 Where departments have not met their target or put forward options that are deemed not to be acceptable then the shortfall will be carried forward to later meetings and future years budget processes to be made good.

4.6 Service Plans

4.6.1 Draft Service Plans are included in Appendix 6.

4.7 Equality Assessments

4.7.1 Draft Equalities Assessments where applicable are included in Appendix 7.

4.8 Use of Reserves in 2017/18 and 2018/19

4.8.1 The application of revenue reserves in 2017/18 to address any level of overspend will have an ongoing impact on the MTFS going forward. If the actual level of overspend is at the level currently forecast it is possible that the budgeted contribution of £2.443m from the Reserve for Use for Future Years Budgets will have to be increased with a consequent impact on the amount of reserve available in 2018/19. The reduction in the anticipated level of the Reserve for Use for Future Years Budgets will have an adverse impact on the budget gap.

5. UPDATE TO MTFS 2018-22

5.1 If the changes outlined in this report are agreed, the forecast gap in the MTFS over the four year period is as follows, subject to the impact of the Autumn Budget announcement on 22 November 2017 and Provisional Local Government Finance Settlement in December.

	2018/19 £000	2019/20 £000	2020/21 £000	2021/22 £000
Budget Gap in MTFS	0	3,732	17,500	18,196

5.2 A more detailed MTFS is included as Appendix 4.

5.3 Draft Service department budget summaries based on the information in this report will be included in the pack available for scrutiny.

6. CAPITAL PROGRAMME 2018-22: UPDATE

6.1 The proposed draft Capital Programme 2018-22 and an Indicative Capital Programme 2022-27 were presented to Cabinet on 16 October 2017.

6.2 The programme has been reviewed by scrutiny panels.

6.3 Monthly monitoring of the approved programme for 2017/18 has been ongoing and there will inevitably be further changes arising from slippage, reprofiling and the announcement of capital grants as part of the local government finance settlement which has yet to be announced.

6.4 The changes that have been made to the proposed capital programme since it was presented to Cabinet in October 2017 are set out in Appendix 5.

6.5 The estimated revenue implications of funding the draft capital programme are summarised in paragraph 2.3.8 and these have been incorporated into the latest draft MTFS 2018-22.

7. BUDGET STRATEGY

7.1 The council has a statutory duty to set a balanced budget.

7.2 The MTFS assumes 3% ASC Council Tax flexibility in 2018/19 and a 2% Council Tax increase in 2019/20, 2020/21 and 2021/22.

7.3 Also, as part of the 2017/18 budget, local authorities were required to validate their use of the Government's Adult Social Care flexibility arrangements. This required the authority to certify that it was using the adult social care precept on council tax for 2017-18 and to provide details comparing the changes in adult social care budgets with those of other

non-ringfenced services. It is expected that a similar requirement will be applied in 2018/19 but details are not yet known.

8. GLA BUDGET AND PRECEPT SETTING 2018-19 – PROVISIONAL TIMETABLE

- 8.1 The Greater London Authority (GLA) sets a budget for itself and each of the four functional bodies: Transport for London, the London Development Agency, the Metropolitan Police Authority, and the London Fire and Emergency Planning Authority. These budgets together form the consolidated budget.
- 8.2 The GLA expects to issue the Mayor's draft 2018-19 GLA Group budget for consultation before Christmas and details on this will be circulated to Chief Financial Officers and key contacts once published. The date on which the consultation budget will be published is, however, dependent on the timing of the provisional Local Government Finance and Fire and Police Grant settlements which will be announced during December. If these announcements are delayed significantly then it is possible that the publication date of the Mayor's consultation budget may be later than envisaged currently.
- 8.3 The Mayor's draft budget is expected to be considered by the London Assembly on Thursday 25 January 2018. The final draft budget is scheduled to be considered by the Assembly on Thursday 22 February following which the Mayor will confirm formally the final precept and GLA group budget for 2018-19. It is expected that the final GLA council tax precept will be formally approved on 22 February 2018. The final precept amounts and the approved supporting text for the Mayor's communication to council taxpayers will be issued to billing authorities by no later than Friday 23 February 2018.
- 8.4 NNDR1 returns will be required to be submitted to the DCLG by 31 January 2018 and due to the introduction of the London pool it is essential that all authorities meet this deadline for the GLA to achieve its timetable. It is anticipated that the percentage shares for 2018-19 used for the returns for London authorities will be 64% for the 32 boroughs and City of London and 36% for the GLA in line with the apportionment agreed by the Congress of Leaders on 10 October. This is expected to be confirmed in the provisional local government finance settlement.

9. CONSULTATION UNDERTAKEN OR PROPOSED

- 9.1 There will be extensive consultation as the business plan process develops. This will include the Overview and Scrutiny panels and Commission, business ratepayers and all other relevant parties.
- 9.2 In accordance with statute, consultation is taking place with business ratepayers and a meeting will be arranged for February 2018.

9.3 As previously indicated, a savings proposals consultation pack will be prepared and distributed to all councillors at the end of December 2017 that can be brought to all Scrutiny and Cabinet meetings from 10 January 2018 onwards and to Budget Council. As it was last year, this should be an improvement for both councillors and officers - more manageable for councillors and it will ensure that only one version of those documents is available so referring to page numbers at meetings will be easier. It will also keep printing costs down and reduce the amount of printing that needs to take place immediately prior to Budget Council.

9.4 The pack will include:

- Savings proposals
- Equality impact assessment for each saving proposal. Draft EAs are included as Appendix 7 to this report and will be reviewed prior to circulation of the consultation pack.
- Service plans (these will also be printed in A3 to lay round at scrutiny meetings)

10. **TIMETABLE**

10.1 In accordance with current financial reporting timetables.

11. **FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

11.1 All relevant implications have been addressed in the report.

12. **LEGAL AND STATUTORY IMPLICATIONS**

12.1 All relevant implications have been addressed in the report.

13. **HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

13.1 Draft Equalities assessments of the savings proposals are included in Appendix 7.

14. **CRIME AND DISORDER IMPLICATIONS**

14.1 Not applicable

15. **RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

15.1 Not applicable

APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

Appendix 1: Council Tax Base 2018/19

Appendix 4: MTFS Update

Appendix 5: Capital Programme 2018-22

Appendix 8: Autumn Budget 2017 – Summary of key Points

Appendix 9a: London Business Rates Pilot Pool 2018-19 Final Prospectus – November 2017

Appendix 9b: Memorandum of Understanding on the London 100% business rates retention pilot 2018-19

Appendix 9c: London Business Rates Pooling Pilot - Suggested Sample Draft Resolutions for Participating Authorities

Appendix 9d: Greater London Business Rates Pooling Pilot Arrangement - Legal Questions and Answers

Appendix 9e: Pooling Business Rates in London Advice on the legal framework and governance options

Appendix 9f: Business Rates Pilot Pool - Legal Note on Executive Functions

Appendix 9g: Merton draft resolutions for the London Business Rates Pool Pilot 2018/19

NOW INCLUDED IN CONSULTATION PACK

Appendix 2: Proposed amendments to savings previously agreed

Appendix 3: New savings/income proposals 2018-22

Appendix 6: Service Plans 2018-22

Appendix 7: Draft Equalities Assessments

BACKGROUND PAPERS

Budget files held in the Corporate Services department.

REPORT AUTHOR

– *Name: Roger Kershaw*

– *Tel: 020 8545 3458*

email: roger.kershaw@merton.gov.uk

APPENDIX 1**Council Tax Base 2018/19****1. INTRODUCTION**

- 1.1 The council tax base is the measure of the number of dwellings to which council tax is chargeable in an area or part of an area. The Council Tax base is calculated using the properties from the Valuation List together with information held within Council Tax records. The properties are adjusted to reflect the number of properties within different bands in order to produce the Council Tax Base (Band D equivalent).
- 1.2 Since 2013/14 the Council Tax Base calculation has been affected by the introduction of the new local council tax support scheme and technical reforms to council tax. On 30 November 2012, new regulations set out in the Local Authorities (Calculation of council Tax Base) Regulations 2012 (SI 2012:2914) came into force. These regulations ensure that new local council tax support schemes, implemented under the Local Government Finance Act 2012, are fully reflected in the council tax base for all authorities.
- 1.3 Under the regulations, the council tax base is the aggregate of the relevant amounts calculated for each valuation band multiplied by the authority's estimated collection rate for the year.
- 1.4 The relevant amounts are calculated as
- number of chargeable dwellings in each band shown on the valuation list on a specified day of the previous year,
 - adjusted for the number of discounts, and reductions for disability, that apply to those Dwellings
- 1.5 All authorities notify the DCLG of their unadjusted Council Tax Base using a CTB Form using valuation list information as at 11 September 2017. The deadline for return was 13 October 2017 and Merton met this deadline.
- 1.6 The CTB form for 2017 includes the latest details about the Council Tax Support Scheme and the technical reforms which impacted on discounts and exemptions.
- 1.7 There is a separate council tax base for those properties within the area covered by Wimbledon and Putney Commons Conservators. The Conservators use this, together with the Council Tax bases from RB Kingston, and Wandsworth to calculate the levy which is charged each year.

2. ASSUMPTIONS IN THE MTFS

- 2.1 Other than changes in the actual council tax rates levied, in producing a forecast of council tax yield in future years, there are two key variables to be considered:-

- the year on year change in Council Tax Base
- the council tax collection rate

2.2 The draft MTFS previously reported to Cabinet during the business planning process has assumed that the Council Tax Base increases 0.5% per year and that the collection rate was 97.25%% in each of the years.

2.3 These assumptions, with the collection rate increased to 98%, have been applied to the latest Council Tax Base information included on the CTB return completed on 13 October 2017 to produce the Council Tax Base 2018/19.

2.4 Information from the October 2017 Council Tax Base Return

2.4.1 The Council makes two CTB returns, one for the whole area of the borough and the other for the area covered by the Wimbledon and Putney Common Conservators for which an additional levy is applied.

2.4.2 The information in the CTB returns has been used to calculate the council tax bases and these are summarised in the following table compared to 2016/17:-

Council Tax Base	2017/18	2018/19	Change
			%
Whole Area	72,442.3	74,124.0	2.3%
Wimbledon & Putney Common Conservators	11,131.2	11,308.8	1.6%

3. **IMPLICATIONS FOR COUNCIL TAX YIELD 2018/19**

3.1 On a like for like basis (i.e. assuming council tax charges do not change) the estimated income in 2018/19 compared to 2017/18 is summarised in the following table:-

Council Tax: Whole area	2017/18	2018/19
Tax Base	72,442.3	74,124.0
Band D Council Tax	£1,135.31	£1,135.31
Estimated Yield	£82.244m	£84.154m
Change: 2017/18 to 2018/19 (£000)		+ £1.910m
Change: 2017/18 to 2018/19 (%)		+ 2.3%

3.2 Analysis of changes in yield 2017/18 to latest 2018/19

3.2.1 There are a number of reasons for the change in estimated yield between 2017/18 and the latest estimate based on the CTB data.

- 3.2.2 Over this period the Council Tax Base increased by 1,681.7 from 72,442.3 to 74,124.0 which multiplied by the Band D Council Tax of £1,135.31 results in additional yield of £1.910m.
- 3.2.3 An exact reconciliation for the change between years is not possible because of changes in distribution of Council Tax Support and discounts and benefits, and premiums between years varies and bands. However, broadly the changes can be analysed as follows:-
- a) A Change in collection rate from 97.25% to 98%
There has a change in the estimated collection rate from 97.25% to 98% between 2017/18 and 2018/19. This is based on the achievement of a strong collection rate being maintained.
 - b) Number of Chargeable Dwellings and Exempt Dwellings
Between years the number of properties increased by 575 from 83,737 to 84,312 but the number of exempt dwellings decreased by 7 from 779 to 772. This means that the number of chargeable dwellings increased by 582 between years. Based on a full charge, this equates to additional council tax of £0.661m.
 - c) Amount of Council Tax Support Reduction
In 2017/18 there was a reduction of 8,639.2 to the Council Tax Base for local council tax support. This has reduced to 8,192.1 in 2018/19 which is a change of 447.1 and equates to additional council tax of about £0.508m.
 - d) Changes in Discounts, Exemptions and Premiums
Overall, the number of properties subject to discounts or exemption reduced by 483 and those subject to premiums reduced by 4 between 2018/19 and 2017/18.

Summary

The following puts the individual elements together to show how the potential council tax yield changes between 2017/18 and 2018/19:-

	Approx. Change in Council Tax Base	Approx. Change in Council Tax yield
		£m
Increase in number of chargeable dwellings	582	0.661
Change in Council Tax Support Reductions	447	0.508
Change in discounts, exemptions, premiums and distribution	86	0.097
Increase in Collection Rate from 97.25% to 98%	567	0.644
Total	1,682	1.910

3.10 Council Tax Yield 2018/19

3.10.1 Assuming no change in Council Tax for 2018/19 the estimated Council Tax yield for 2018/19 is:-

Council Tax: Whole area	Tax Base	Band D 2017/18	Council Tax Yield 2018/19	Council Tax Yield 2017/18
Merton	74,124.0	£1,135.31	£84.154m	£82.244m
WPCC	11,308.8	£28.61	£0.324m	£0.318m
GLA	74,124.0	£280.02	£20.756m	£20.285m

The amounts collected for the GLA and WPCC are paid over to each of them as precepts.

3.10.2 The MTFs reported to Cabinet on 16 October 2017 assumed an annual collection rate of 97.25% and year on year increases in Council Tax Base of 0.5%. The potential change in Council Tax yield on that included in the MTFs, based on the new Council Tax Base and increased collection rate, is as follows:-

MTFS Council Tax Yield: EXISTING CT BASE	2018/19 £'000	2019/20 £'000	2020/21 £'000	2021/22 £'000
Council Tax - 17/18 CT Base, Basic charge excluding ASC precept	80,249	80,650	81,053	81,459
Council Tax - Adult Social Care 3% in 2017/18	2,407	2,420	2,432	2,444
Council Tax - Adult Social Care 3% in 2018/19	2,408	2,419	2,432	2,444
Council Tax General: Change (0% in 18/19, 2% thereafter)	0	1,613	3,242	4,888
Council Tax income	85,064	87,102	89,159	91,235
Council Tax Yield: NEW CT BASE	2018/19 £'000	2019/20 £'000	2020/21 £'000	2021/22 £'000
Council Tax - New CT Base, Basic charge excluding ASC precept	81,703	82,112	82,522	82,935
Council Tax - Adult Social Care 3% in 2017/18	2,451	2,463	2,476	2,488
Council Tax - Adult Social Care 3% in 2018/19	2,451	2,464	2,475	2,488
Council Tax General: Change (0% in 18/19, 2% thereafter)	0	1,642	3,301	4,976
Council Tax income	86,605	88,681	90,774	92,887

CHANGE IN YIELD	2018/19 £'000	2019/20 £'000	2020/21 £'000	2021/21 £'000
Council Tax - Change in CT Base, excluding ASC precept	1,454	1,462	1,469	1,476
Council Tax - Adult Social Care precept	87	88	87	88
Council Tax - General	0	29	59	88
Council Tax income	1,541	1,579	1,615	1,652

DRAFT MTFS 2018-22:				
	2018/19	2019/20	2020/21	2021/22
	£000	£000	£000	£000
Departmental Base Budget 2017/18	151,131	151,131	151,131	151,131
Inflation (Pay, Prices)	4,387	8,849	11,907	14,965
Autoenrolment/Nat. ins changes	315	315	315	315
FYE – Previous Years Savings	(7,018)	(8,737)	(8,737)	(8,737)
FYE – Previous Years Growth	974	(1,532)	(1,032)	(1,032)
Amendments to previously agreed savings/growth	1,107	456	382	382
Change in Net Appropriations to/(from) Reserves	(1,257)	(993)	(851)	(984)
Taxi card/Concessionary Fares	450	900	1,350	1,800
Change in depreciation/Impairment (Contra Other Corporate items)	0	0	0	0
Growth	0	0	0	0
Other	1,360	1,436	3,323	3,604
Re-Priced Departmental Budget	151,449	151,825	157,788	161,443
Treasury/Capital financing	7,891	12,208	13,590	12,709
Pensions	3,469	3,552	3,635	3,718
Other Corporate items	(18,528)	(18,866)	(18,652)	(18,661)
Levies	614	614	614	614
Sub-total: Corporate provisions	(6,554)	(2,492)	(813)	(1,620)
Sub-total: Repriced Departmental Budget + Corporate Provisions	144,895	149,333	156,974	159,824
Savings/Income Proposals 2018/19	0	(2,094)	(3,626)	(3,741)
Sub-total	144,895	147,239	153,348	156,083
Appropriation to/from departmental reserves	173	(92)	(234)	(100)
Appropriation to/from Balancing the Budget Reserve	(2,120)	(3,330)	0	0
BUDGET REQUIREMENT	142,948	143,817	153,115	155,983
Funded by:				
Revenue Support Grant	(10,071)	(5,076)	0	0
Business Rates (inc. Section 31 grant)	(36,304)	(37,176)	(37,725)	(38,285)
Adult Social Care Improved BCF - Budget 2017	(2,115)	(1,054)	0	0
PFI Grant	(4,797)	(4,797)	(4,797)	(4,797)
New Homes Bonus	(3,110)	(2,984)	(2,000)	(1,500)
Council Tax inc. WPC	(86,923)	(88,999)	(91,092)	(93,205)
Collection Fund – (Surplus)/Deficit	372	0	0	0
TOTAL FUNDING	(142,948)	(140,085)	(135,614)	(137,787)
GAP including Use of Reserves (Cumulative)	0	3,732	17,500	18,196

Capital Investment Programme - Schemes for Approval

Merton	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22
	£000	£000	£000	£000
Corporate Services	19,558	10,876	2,135	3,862
Community and Housing	729	480	630	280
Children Schools & Families	17,449	7,536	650	650
Environment and Regeneration	25,086	7,738	5,017	4,052
Capital	62,823	26,630	8,432	8,844

Merton	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22
	£000	£000	£000	£000
Business Improvement	2,412	250	0	1,942
Facilities Management Total	2,960	1,250	950	950
Infrastructure & Transactions	1,085	630	1,060	970
Resources	0	0	125	0
Corporate Items	13,101	8,746	0	0
Corporate Services	19,558	10,876	2,135	3,862
Adult Social Care	44	0	0	0
Housing	629	280	280	280
Libraries	100	200	350	0
Community and Housing	773	480	630	280
Primary Schools	650	650	650	650
Secondary School	9,391	5,781	0	0
SEN	7,304	1,000	0	0
CSF Schemes	104	105	0	0
Children Schools & Families	17,449	7,536	650	650
Public Protection and Development	0	60	0	35
Street Scene & Waste	5,790	340	340	340
Sustainable Communities	19,297	7,338	4,677	3,677
Environment and Regeneration	25,086	7,738	5,017	4,052
Capital	62,866	26,630	8,432	8,844

Please Note

- 1) Excludes expenditure budgets relating to Disabled Facilities Grant funding from 2018/19.
- 2) Excludes expenditure budgets relating to Transport for London Grant from 19/20 as grant funding has not been announced.
- 3) Excludes expenditure budgets relating to Devolved Formula Capital for schools from 2018/19 onwards as grant funding has not been announced.

FUNDING THE CAPITAL PROGRAMME 2017-22

Merton	Capital Programme £000s	*Funded by Merton £000s	Funded by grant and capital contributions £000s
2017/18 Current Budget	51,528	34,698	16,830
Potential Slippage b/f	0	0	0
2017/18 Revised Budget	51,528	34,698	16,830
Potential Slippage c/f	(7,359)	(6,023)	(1,336)
Potential Underspend not slipped into next year	(912)	(671)	(242)
Total Spend 2017/18	43,257	28,006	15,252
2018/19 Current Budget	62,866	41,740	21,126
Potential Slippage b/f	7,359	6,023	1,336
2018/19 Revised Budget	70,225	47,763	22,462
Potential Slippage c/f	(6,116)	(5,361)	(754)
Potential Underspend not slipped into next year	(906)	(778)	(128)
Total Spend 2018/19	63,203	41,621	21,580
2019/20 Current Budget	26,630	23,788	2,843
Potential Slippage b/f	6,116	5,361	754
2019/20 Revised Budget	32,746	29,149	3,597
Potential Slippage c/f	(1,322)	(1,297)	(26)
Potential Underspend not slipped into next year	(340)	(340)	0
Total Spend 2019/20	31,084	27,512	3,571
2020/21 Current Budget	8,432	7,782	650
Potential Slippage b/f	1,322	1,297	26
2020/21 Revised Budget	9,754	9,080	676
Potential Slippage c/f	(140)	(139)	(1)
Potential Underspend not slipped into next year	(348)	(315)	(33)
Total Spend 2020/21	9,267	8,626	642
2021/22 Current Budget	8,879	8,229	650
Potential Slippage b/f	140	139	1
2021/22 Revised Budget	9,019	8,368	651
Potential Slippage c/f	(108)	(107)	0
Potential Underspend not slipped into next year	(343)	(311)	(33)
Total Spend 2021/22	8,568	7,949	619

*Funded by Merton refers to expenditure funded through Capital Receipts, Revenue Reserves and by borrowing.

Detailed Capital Programme 2018-22

	Scrutiny	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22
Corporate Services		£000	£000	£000	£000
Customer Contact Programme	OSC	1,050	250	0	1,900
IT Systems Projects	OSC	1,012	0	0	42
Social Care IT System	OSC	350	0	0	0
Business Improvement		2,412	250	0	1,942
Works to other buildings	OSC	300	650	650	650
Civic Centre	OSC	300	300	0	0
Invest to Save schemes	OSC	2,010	300	300	300
Water Safety Works	OSC	100	0	0	0
Asbestos Safety Works	OSC	250	0	0	0
Facilities Management Total		2,960	1,250	950	950
Planned Replacement Programme	OSC	1,085	630	1,060	970
Infrastructure & Transactions		1,085	630	1,060	970
ePayments System	OSC	0	0	125	0
Resources		0	0	125	0
Acquisitions Budget	OSC	5,000	0	0	0
Multi Functioning Device (MFD)	OSC	0	600	0	0
Housing Company	OSC	8,101	8,146	0	0
CPOs Morden	OSC				
Corporate Items		13,101	8,746	0	0
Corporate Services		19,558	10,876	2,135	3,862
Community and Housing		£000	£000	£000	£000
Telehealth	HCOP	44	0	0	0
Adult Social Care		44	0	0	0
Disabled Facilities Grant	SC	629	280	280	280
Housing		629	280	280	280
West Barnes Library Re-Fit	SC	0	200	0	0
Library Self Service	SC	0	0	350	0
Library Management System	SC	100	0	0	0
Libraries		100	200	350	0
Community and Housing		773	480	630	280

- 1) Excludes expenditure budgets relating to Disabled Facilities Grant funding from 2018/19.
- 2) Excludes expenditure budgets relating to Transport for London Grant from 19/20 as grant funding has not been announced.
- 3) Excludes expenditure budgets relating to Devolved Formula Capital for schools from 2018/19 onwards as grant funding has not been announced.

Detailed Capital Programme 2018-22 Continued.....

	Scrutiny	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22
Children Schools & Families		£000	£000	£000	£000
Schools Cap Maintenance & Accessibility	CYP	650	650	650	650
Primary Schools		650	650	650	650
Harris Academy Morden	CYP	2,194	800	0	0
Harris Academy Merton	CYP	100	0	0	0
St Mark's Academy	CYP	1,624	3,681	0	0
Harris Academy Wimbledon	CYP	5,474	1,300	0	0
Secondary School		9,391	5,781	0	0
Perseid	CYP	650	0	0	0
Cricket Green	CYP	5,028	0	0	0
Secondary School Autism Unit	CYP	1,330	0	0	0
Unallocated SEN	CYP	296	1,000	0	0
SEN		7,304	1,000	0	0
Admissions IT System	CYP	0	105	0	0
Capital Loans to schools	CYP	104	0	0	0
CSF Schemes		104	105	0	0
Children Schools & Families		17,449	7,536	650	650
Environment & Regeneration		£000	£000	£000	£000
Parking Improvements	SC	0	60	0	0
Public Protection and Development	SC	0	0	0	35
Public Protection and Development		0	60	0	35
Fleet Vehicles	SC	400	300	300	300
Alley Gating Scheme	SC	40	40	40	40
Smart Bin Leases - Street Scene	SC	6	0	0	0
Waste SLWP	SC	5,344	0	0	0
Street Scene & Waste		5,790	340	340	340
Street Trees	SC	60	60	60	60
Highways & Footways	SC	3,581	3,067	3,067	3,067
Unallocated TfI	SC	1,865	0	0	0
Mitcham Area Regeneration	SC	2,032	301	0	0
Morden Area Regeneration	SC	3,000	3,000	1,000	0
Morden Leisure Centre	SC	5,756	169	0	0
Sports Facilities	SC	1,550	250	250	250
Parks	SC	1,452	491	300	300
Sustainable Communities		19,297	7,338	4,677	3,677
Environment and Regeneration		25,086	7,738	5,017	4,052
Capital		62,723	26,630	8,432	8,844

* OSC= Overview and Scrutiny Commission, CYP = Children and Young People, HCOP = Healthier Communities and Older People SC = Sustainable Communities,

Growth/(Reductions) against Approved Programme 2018-21 and Indicative Programme 2021-22

Merton	Scrutiny	Proposed 2018/19	Proposed 2019/20	Proposed 2020/21	Proposed 2021/22
		£000	£000	£000	£000
Business Improvement	OSC	1,050	250	0	(100)
Facilities Management Total	OSC	0	0	0	0
Infrastructure & Transactions	OSC	0	0	0	0
Resources	OSC	0	0	0	0
Corporate Items	OSC	0	0	0	0
Corporate Services		1,050	250	0	(100)
Adult Social Care	HCOP	0	0	0	0
Housing	SC	0	0	0	0
Libraries	SC	0	0	0	0
Community and Housing		0	0	0	0
Primary Schools	CYP	0	0	0	0
Secondary School	CYP	0	0	0	0
SEN	CYP	0	0	0	0
CSF Schemes	CYP	0	0	0	0
Children Schools & Families		0	0	0	0
Public Protection and Developm	SC	0	0	0	0
Street Scene & Waste	SC	0	0	0	0
Sustainable Communities	SC	0	0	0	0
Environment and Regeneration		0	0	0	0
Capital		1,050	250	0	(100)

* OSC= Overview and Scrutiny Commission, CYP = Children and Young People, HCOP = Healthier Communities and Older People SC = Sustainable Communities,

Indicative Capital Programme 2022-27

	Scrutiny	Proposed Indicative 2022/23	Proposed Indicative 2023/24	Proposed Indicative 2024/25	Proposed Indicative 2025/26	Proposed Indicative 2026/27
Corporate Services		£000	£000	£000	£000	£000
Customer Contact Programme	OSC	0	0	0	1,000	1,000
IT Systems Projects	OSC	100	75	682	550	0
Social Care IT System	OSC	0	2,100	0	0	0
Business Improvement		100	2,175	682	1,550	1,000
Works to other buildings	OSC	650	650	650	650	650
Invest to Save schemes	OSC	300	300	300	300	300
Facilities Management Total		950	950	950	950	950
Planned Replacement Programme	OSC	900	775	630	1,060	970
Infrastructure & Transactions		900	775	630	1,060	970
Financial System	OSC	700	0	0	0	0
Resources	OSC	700	0	0	0	0
Multi Functioning Device (MFD)		0	0	600	0	0
Corporate Items		0	0	600	0	0
Corporate Services		2,650	3,900	2,862	3,560	2,920
Community and Housing		£000	£000	£000	£000	£000
Disabled Facilities Grant	SC	280	280	280	280	280
Housing		280	280	280	280	280
Library Enhancement Works	SC	0	0	0	350	0
Library Management System	SC	100	0	0	0	0
Libraries		100	0	0	350	0
Community and Housing		380	280	280	630	280
Children Schools & Families		£000	£000	£000	£000	£000
Schs Cap Maint & Accessibility	CYP	650	650	650	650	650
Primary Schools		650	650	650	650	650
Admissions IT System	CYP	0	105	0	0	0
CSF Schemes		0	105	0	0	0
Children Schools & Families		650	755	650	650	650
Environment and Regeneration		£000	£000	£000	£000	£000
Parking Improvements	SC	0	0	60	0	0
Public Protection and Development	SC	0	0	0	0	35
Street Scene & Waste		0	0	60	0	35
Fleet Vehicles	SC	300	300	300	300	300
Alley Gating Scheme	SC	40	40	40	40	40
Waste SLWP	SC	0	0	0	3,998	0
Street Scene & Waste		340	340	340	4,338	340
Street Trees	SC	60	60	60	60	60
Highways & Footways	SC	3,067	3,067	3,067	3,067	3,067
Sports Facilities	SC	250	250	250	250	250
Parks	SC	300	300	300	300	300
Sustainable Communities		3,677	3,677	3,677	3,677	3,677
Environment and Regeneration		4,017	4,017	4,077	8,015	4,052
Capital		7,697	8,952	7,869	12,855	7,902

* OSC= Overview and Scrutiny Commission, CYP = Children and Young People, HCOP = Healthier Communities and Older People SC = Sustainable Communities,

Please Note

- 1) Excludes expenditure budgets relating to Disabled Facilities Grant
- 2) Excludes expenditure budgets relating to Transport for London Grant .
- 3) Excludes expenditure budgets relating to Devolved Formula Capital for schools.

Autumn Budget 2017 and Economic Outlook

The Autumn Budget 2017 was published on 22 November 2017 and used as its economic basis the November 2017 Economic and Fiscal Outlook by the Office for Budget Responsibility (OBR) also published the same day. In its outlook the OBR noted that “The UK economy has slowed this year as households’ real incomes and spending have been squeezed by higher inflation. GDP growth has been a little weaker than we expected in March, but once again we have been more surprised by the strength of employment growth and the corresponding weakness of productivity growth. The persistence of weak productivity growth does not bode well for the UK’s growth potential in the years ahead.”

Furthermore, the OBR believes that:-

“The outlook for the economy over the next five years looks weaker than we forecast in March, primarily because we see less scope for productivity growth.”

The OBR now expects to see slower GDP growth over the forecast period, mainly reflecting a change in its forecast for productivity growth. It has revised down its forecast for GDP growth by 0.5 percentage points to 1.5% in 2017, then growth slows in 2018 and 2019, before rising to 1.6% in 2022.

Inflation- The value of sterling is little changed compared to Spring Budget 2017 in trade-weighted terms, but is around 10% below the level seen in the first half of 2016. This has fuelled an increase in inflation over the past year. Consumer Prices Index (CPI) inflation has risen from 0.9% in October 2016 to 3.0% in October this year and stands above the ten-year average of 2.4%. The increase has primarily been driven by a rise in goods price inflation, which has increased from -0.4% to 3.3% over the past year. In contrast, services price inflation has not increased materially, and remains below its long-run average.

Key Economic & Fiscal Indicators

	2016	2017	2018	2019	2020	2021	2022
Gross domestic product (GDP) (%)	1.8	1.5	1.4	1.3	1.3	1.5	1.6
Public sector net borrowing (£bn)	45.7	49.9	39.5	34.7	32.8	30.1	25.6
Public sector net borrowing (deficit % of GDP)	2.3	2.4	1.9	1.6	1.5	1.3	1.1
Public sector net debt (% of GDP)	85.8	86.5	86.4	86.1	83.1	79.3	79.1
LFS unemployment (% rate)	4.9	4.4	4.3	4.4	4.6	4.6	4.6
Employment (millions)	31.7	32.1	32.3	32.4	32.5	32.6	32.7
CPI Inflation (%)	0.7	2.7	2.4	1.9	2.0	2.0	2.0

Source: H.M.Treasury – Autumn Statement 2017; OBR - Economic & Fiscal Outlook, November 2017

Announcements in the Budget 2017 with Public Sector Implications

Business rates –

- bringing forward to 1 April 2018 the planned switch in indexation from RPI to the main measure of inflation (currently CPI)
- legislating retrospectively to address the so-called “staircase tax”. Affected businesses will be able to ask the Valuation Office Agency (VOA) to recalculate valuations so that bills are based on previous practice backdated to April 2010 – including those who lost Small Business Rate Relief as a result of the Court judgement. The government will publish draft legislation shortly
- continuing the £1,000 business rate discount for public houses with a rateable value of up to £100,000, subject to state aid limits for businesses with multiple properties, for one year from 1 April 2018
- increasing the frequency with which the VOA revalues non-domestic properties by moving to revaluations every three years following the next revaluation, currently due in 2022. To enable this, ratepayers will be required to provide regular information to the VOA on who is responsible for business rates and property characteristics including use and rent.

The government will consult on the implementation of these changes in the spring. Local government will be fully compensated for the loss of income as a result of these measures.

100% Business Rates Retention - The government has agreed a pilot of 100% business rates retention in London in 2018-19. The Greater London Authority (GLA) and London boroughs will come together to form a pool and invest revenue growth strategically on a pan- London basis.

Council Tax

- Empty homes premium – The government is keen to encourage owners of empty homes to bring their properties back into use. To help achieve this, local authorities will be able to increase the council tax premium from 50% to 100%.

Housing Investment

The Budget announced a package aimed to raise housing supply by the end of this Parliament to 300,000 per year, through:

- making available £15.3 billion of new financial support for housing over the next five years
- introducing planning reforms that will ensure more land is available for housing, and that maximises the potential in cities and towns for new homes while protecting the Green Belt

The Budget also announced further support for those aiming to get on the housing ladder now. The government will permanently exempt first time buyers from stamp duty for properties up to £300,000, with purchasers benefiting on homes up to £500,000.

Local Housing Allowance

- The government will increase the Targeted Affordability Fund by £125 million (£40 million in 2018-19 and £85 million in 2019-20) in areas of greatest pressure.

Right to Buy

- Government will proceed with a £200 million largescale regional pilot of the Right to Buy for housing association tenants in the Midlands.

Homelessness

- Government will provide £20 million of funding for schemes to support people at risk of homelessness to access and sustain tenancies in the private rented sector.

NHS and Health

The government will provide the NHS with £2.8 billion of additional resource funding in England. This will help it get back on track to meet its performance targets on waiting times both in A&E and after patients are referred to treatment:

- £335 million of this will be provided this year, to help the NHS to increase capacity over winter
- £1.6 billion will be provided in 2018-19
- £900 million will be provided in 2019-20, to help address future pressures
- Disabled Facilities Grant – The government will provide an additional £42 million for the Disabled Facilities Grant in 2017-18

NHS Pay

- The government is committing to funding pay awards for NHS staff on the Agenda for Change contract that are agreed as part of a pay deal to improve productivity, recruitment and retention.
- To protect frontline services in the NHS, the government is also committing to fund pay awards as part of a pay deal for NHS staff on the Agenda for Change contract, including nurses, midwives and paramedics. Any pay deal will be on the condition that the pay award enables improved productivity in the NHS, and is justified on recruitment and retention grounds. This does not prejudge the role of the independent NHS Pay Review Body in recommending the level of pay award that these staff should receive.

Public sector pay

- In 2018-19, for those workforces covered by an independent Pay Review Body (PRB), the relevant Secretary of State will shortly write to the PRB Chair to initiate the 2018-19 pay round, before later submitting detailed evidence outlining recruitment and retention data and reflecting the different characteristics and circumstances of their workforce. Each PRB will then make its recommendations in the spring or summer, based on the submitted evidence. Secretaries of State will make final decisions on pay awards, taking into account their affordability, once the independent PRBs report.

Not addressed in the Budget

Adult Social Care – there was nothing to address the growing funding pressures on this service. It had previously been announced that publication of the Adult Social Care Green paper has been pushed back to Summer 2018.

Children's Social Care – there was nothing to address the growing funding pressures on this service.

On these two issues the Local Government Association commented:-

“It is hugely disappointing that the Budget offered nothing to ease the financial crisis facing local services. Funding gaps and rising demand for our adult social care and children's services are threatening the vital services which care for our elderly and disabled, protect children and support families. This is also having a huge knock-on effect on other services our communities rely on....The Chancellor has recognised the financial challenges facing the NHS. However, the best way to reduce pressures on the NHS is to tackle the chronic underfunding of care and support services, and to prevent people presenting at A&E in the first place. We therefore call on the Government to ensure that spending plans for the new funding are agreed with local government.”

Unemployment is also at its lowest rate since 1975.

In 2017 growth has remained solid, but slowed slightly at the start of the year. The UK economy is forecast to grow by 1.5% in 2017. It will then grow at a slightly slower rate in the next three years, before picking up in 2021 and 2022.

Inflation is forecast to peak at 3% in the final months of this year, as measured by the Consumer Prices Index (CPI). It will then fall towards the target of 2% over the next year.

2. Borrowing has fallen by three quarters since 2010, but debt is still high

In 2009-10 the UK borrowed £1 in every £4 that was spent. Last year it was £1 in every £16.

The fall in borrowing means we are adding less to our debt every year. However the UK still has a debt of over £1.7 trillion – around £65,000 for every household in the country.

3. An extra £3 billion to prepare for Brexit over the next two years

The money will make sure the government is ready on day 1 of exit. It will include funding to prepare the border, the future immigration system and new trade relationships.

4. £6.3 billion of new funding for the NHS

£3.5 billion will be invested in upgrading NHS buildings and improving care.

£2.8 billion will go towards improving A&E performance, reducing waiting times for patients, and treating more people this winter.

5. Abolishing stamp duty land tax (SDLT) on homes under £300,000 for first-time buyers from 22 November

95% of first-time buyers who pay stamp duty will benefit.

First-time buyers of homes worth between £300,000 and £500,000 will not pay stamp duty on the first £300,000. They will pay the normal rates of stamp duty on the price above that. This will save £1,660 on the average first-time buyer property.

80% of people buying their first home will pay no stamp duty.

There will be no relief for those buying properties over £500,000.

6. 300,000 new homes a year, an amount not achieved since 1970

£15.3 billion new financial support for house building over the next five years – taking the total to at least £44 billion. This includes £1.2 billion for the government to buy land to build more homes, and £2.7 billion for infrastructure that will support housing.

The government will also create 5 new ‘garden’ towns.

Changes to the planning system will encourage better use of land in cities and towns. This means more homes can be built while protecting the green belt.

7. The National Living Wage and the National Minimum Wage will increase from April 2018

The National Living Wage for those aged 25 and over will increase from £7.50 per hour to £7.83 per hour from April 2018. Over 2 million people are expected to benefit. For a full-time worker, it represents a pay rise of over £600 a year.

The National Minimum Wage will also increase:

21 to 24 year olds 18 to 20 year olds 16 and 17 year olds Apprentices

£7.38 per hour £5.90 per hour £4.20 per hour £3.70 per hour

8. The tax-free personal allowance will rise with inflation to £11,850 from April 2018

The personal allowance – the amount you earn before you start paying income tax – will rise from £11,500 to £11,850. This means that in 2018-19, a typical taxpayer will pay £1,075 less income tax than in 2010-11.

9. Fuel duty will remain frozen for an eighth year

In 2018, fuel duty will remain frozen for the eighth year in a row, saving drivers £160 a year on average.

14. Households applying for Universal Credit will get more upfront support

Households in need who qualify for Universal Credit will be able to access a month's worth of support within five days, via an interest-free advance, from January 2018. This can be repaid over 12 months.

Claimants will be eligible for Universal Credit from the day they apply, rather than after seven days. Housing Benefit will continue to be paid for two weeks after a Universal Credit claim.

Low-income households in areas where private rents have been rising fastest will receive an extra £280 on average in Housing Benefit or Universal Credit.

17. More investment in maths and science in schools

Schools will get £600 for every extra pupil who takes A level or Core maths.

£27 million will help improve how maths is taught in 3,000 schools. £49 million will go towards helping students resitting GCSE maths.

£350,000 of extra funding a year will be given to every specialist maths school that is set up across the country. The number of fully-qualified computer science teachers will also rise from 4,000 to 12,000.

18. £64 million for construction and digital training courses

£34 million will go towards teaching construction skills like bricklaying and plastering. £30 million will go towards digital courses using AI.

This funding is provided in advance of launching a National Retraining Scheme that will help people get new skills. It will be overseen by the government, the Trades Union Congress (TUC) and the Confederation of British Industry (CBI). They will decide on other areas of the economy where new skills and training courses are needed.

19. A £220 million Clean Air Fund for local areas with the highest air pollution

Local authorities will be able to use this money to help people adapt as steps are taken to reduce air pollution. Possible ways the money could be spent include reducing the cost of public transport for those on low incomes or modernising buses with more energy efficient technology.

The money will come from a temporary rise in Company Car Tax and Vehicle Excise Duty on new diesel cars.

21. Business rates will switch to being increased by the Consumer Price Index (CPI) 2 years earlier than planned

Business Rates will rise by CPI from April 2018. Business rates currently rise by the Retail Price Index (RPI), a different way of measuring inflation which tends to be higher than the CPI.

Business rates revaluations will take place every 3 years, rather than every 5 years, starting after the next revaluation, currently due in 2022.

22. Pubs in England will continue to receive a £1,000 business rates discount next year

The discount applies to pubs with a rateable value of up to £100,000.

25. Funding for transport across England

£1.7 billion will go towards improving transport in English cities. Half will be given to Combined Authorities with Mayors, and the rest allocated by a competition.

Office for Budget Responsibility (OBR) – Economic and Fiscal Outlook 22 November 2017

The OBR published its latest update of its forecasts on the 22 November 2017 in the November 2017 Economic and fiscal outlook.

“The UK economy has slowed this year as households’ real incomes and spending have been squeezed by higher inflation. GDP growth has been a little weaker than we expected in March, but once again we have been more surprised by the strength of employment growth and the corresponding weakness of productivity growth. The persistence of weak productivity growth does not bode well for the UK’s growth potential in the years ahead.”

“The outlook for the economy over the next five years looks weaker than we forecast in March, primarily because we see less scope for productivity growth.”



London Business Rates Pilot Pool 2018-19 Final Prospectus – November 2017

Introduction

1. Earlier draft versions of this prospectus were circulated to Leaders in July and September asking all boroughs, the City of London and the GLA to consider the issues involved in establishing a pilot pool ahead of the Leaders' Committee and Congress of Leaders and the Mayor on 10 October.
2. At that meeting Leaders' Committee and the Mayor agreed in principle to pool business rates in a London pilot of 100% retention in 2018-19. Leaders' Committee delegated authority to the 5 elected officers of London Councils (the Chair, Deputy Chair, and three Vice Chairs) to take the in principle agreement forward to arrive at a core proposition for the operation of the pool and to continue discussions with both the Mayor and ministers on this. The elected officers discussed this in October and agreed a final distribution option on 1 November following discussions via the party groups, which was subsequently taken forward.
3. The Government formally confirmed its commitment to establishing a 100% business rate retention pilot in London in April 2018 in the Autumn Budget. This was agreed by a memorandum of understanding (MOU) 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.
4. This final prospectus sets out how the London Business Rates pilot pool will work in practice, were the 32 boroughs, the City of London Corporation and the Mayor of London to form a pool in 2018-19.

Pilot principles

5. The MOU between London Government and the Government on the London 100% business rates retention pilot 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 income¹. 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.

¹ As defined by DCLG.

- 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 A).
- 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 period². 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

6. The MOU with the Government establishes the terms of the 100% retention pilot, but 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.
7. 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

² This includes current 67% scheme growth retained under the retention pilot, and reflects Enterprise Zones and “designated areas” where the designations made by the Secretary of State came into force on or before 1 April 2018, along with other special arrangements, such as the statutory provision to reflect the unique circumstances of the City of London Corporation.

current 67% system). Where authorities expect to grow, they will continue to retain at least as much of that income as they would under the current system, plus a potential share of the aggregate benefits of pooling assuming the pools grows (see paragraphs 14 and 18). Where the pool overall has less income than would have been available collectively under the 67% system, the funding provided by the Government as part of the “no detriment” guarantee would be used to ensure that no individual authority is worse off than it would have been otherwise. Existing Enterprise Zones and “designated areas”, along with other special arrangements, such as the statutory provision to reflect the unique circumstances of the City of London Corporation, will be taken into account in calculating the level of resources below which the guarantee would operate. For boroughs in an existing pool, DCLG have also indicated that the basis of comparison would include the income due from that pool³.

- **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.

Lead authority

8. As in other existing pools, 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.
9. 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.
10. 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. In practice, this will mean some authorities will receive net payments from the pool in instalments during the 2018-19 financial year and others will make net payments into the pool depending on their top up and tariff positions and estimated business rates income. These transfers through the pool will also incorporate the GLA’s share.
11. Under a delegation arrangement, the GLA will manage treasury management issues and monetary transfers between billing authorities on behalf of the lead authority. This reflects the

³ Of the 33 London authorities in 2017-18 this includes Barking & Dagenham, Havering and Croydon

fact that the GLA already has the systems in place to manage payment flows to and from billing authorities for business rates retention as well as council tax and the BRS.

12. It is likely that the resources required to perform this function would be 1 FTE post, which would likely be a senior accountant with considerable experience and understanding of collection fund accounting and the business rates retention scheme.
13. In the case of the London pilot pool, 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 (as described in paragraphs 21 to 23 below).

Distributing the benefits of pooling

14. 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). The principle would mean that *any aggregate growth* in the pool overall – because of the increased retention level – would generate additional resources to share, with each pooling member to benefit to some extent.
15. The net financial benefit to participating in the pool in 2018-19 is currently estimated to be in the region of £240 million, based on London Councils' modelling using boroughs' own forecasts. A more accurate forecast will be expected in February 2018 following the completion of individual forecasts for 2018-19.
16. The pooling agreement sets out the principles and method for distributing any net financial benefits that may be generated. The principles are based on four objectives agreed by Leaders and the Mayor:
 - **incentivising growth** (by allowing those boroughs where growth occurs to keep some proportion of the additional resources retained as a result of the pool)
 - **recognising the contribution of all boroughs** (through a per capita allocation)
 - **recognising need** (through the needs assessment formula); and
 - **facilitating collective investment** (through an investment pot designed to promote economic growth and lever additional investment funding from other sources).
17. The final agreed distribution method recognises all four of these objectives with 15% of any net financial benefit set aside as a "Strategic Investment Pot" (see paragraphs 19 to 23 below); and the resources not top-sliced for the investment pot being shared between the GLA and the 33 billing authorities (the 32 boroughs and the Corporation of London) in the ratio 36:64, in accordance with the principle previously agreed by London Councils and the GLA in the joint business rate devolution proposals to Government in September 2016. Estimated boroughs shares of the estimated £240 million net benefit to the pool and the above distribution weightings are set out in Appendix B.
18. The Mayor of London has committed that the GLA's share of any additional net financial benefit from the pilot will be spent on strategic investment projects. It is therefore anticipated that approximately 50% of net additional benefits arising from the pilot pool will be spent on strategic investment projects. Decisions on the allocation of the GLA's share will be made by

the Mayor of London. Examples of the kinds of projects the Mayor will seek to support with the GLA's share include supporting the delivery of housing through infrastructure investment and the provision of skills and training to further support housing delivery.

Strategic investment pot and pool governance

19. 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.
20. For these purposes, "strategic investment" is defined as projects that will contribute to the sustainable growth of London's economy which lead to an increase in London's overall business rate income.
21. Following legal advice regarding the form of the governance mechanism for taking decisions regarding the SIP, decisions will be taken formally by the City of London - as the lead authority - in consultation with all member authorities, reflecting voting principles designed to protect Mayoral, borough and sub-regional interests⁴, previously endorsed by Leaders and the Mayor in the London Finance Commission (both 2013 and 2017), and 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.
22. The lead authority will oversee the methodology for the allocation of resources and prepare reports on proposals for the SIP, supported by London Councils and the GLA, in accordance with the agreed criteria. Decisions on allocating the strategic investment pot will be taken bi-annually with the lead authority reporting back on decisions, following consultation with all participating authorities, at each meeting of the Congress of Leaders and the Mayor of London.
23. The Lead Authority will prepare reports with proposed recommendations as to SIP allocations and shall circulate the reports to the Participating Authorities for consultation in advance of Congress meetings and each Participating Authority will decide, in accordance with its own governance process and scheme of delegation, whether that Participating Authority wishes to

⁴ For these purposes, the sub-regions would be defined as the Central, West, South and Local London sub-regions as defined for devolved employment support arrangements and illustrated in the map at Appendix C. If in the future, boroughs wished to change the initial groupings that could be achieved by agreement of the pool member authorities.

recommend to the lead authority that a strategic investment project is supported or rejected and if rejected together with its reasons for such recommendation.

Future of the pilot

24. The Government will undertake a qualitative evaluation of the progress of the pilot based on the current research programme for the existing business rate retention pilots, with additional focus on the governance mechanism and decision making process, and the scale of resources dedicated to strategic investment.
25. 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.

Designated areas

26. Enterprise Zones and “designated areas” effectively hypothecate future business rate revenues to support investment. Under current arrangements, these are subject to agreement between the government and the boroughs directly involved, in consultation with the GLA, whose revenues are also affected.
27. The Government is not actively encouraging further such arrangements. However, if, during the lifetime of a pilot pool, new “designated areas” or Enterprise Zones were to be created, this could – depending on the nature of the individual scheme – impact on the potential future revenues of all members of the pool and will need to be considered in establishing the pool and framework.
28. It is not proposed that consideration or decision-making in respect of new designated areas be a matter for the pool. However, depending on the nature of individual schemes, such decisions would have to be taken by the relevant local authority after appropriate consultation with those affected.

Accounting and reporting

29. In order that a the lead authority can fulfil its functions and meet its obligations as the accountable body, each member authority will need to provide timely information to the lead authority as well as making timely payments to an agreed schedule.
30. Forecast (NNDR1) and outturn (NNDR3) figures will still be required as per the existing NDR Regulations 2013, in order to enable budget processes to be complete and for the schedule of payments from the lead authority and to government to be determined during the course of the year. The pool would use NNDR1 returns to establish the schedule of payments to be made to the lead authority and for the calculation of any notional levy savings to be made. However, it would not be until the outturn position is known (the NNDR3 form) that actual reconciliation would be made and the final growth/decline for the pool as a whole, and

individual pool members, would be known. This will be in September 2019 after accounts have been audited for the financial year 2018-19.

31. The forecast NDR income figures in the NNDR1 forms determine the growth/decline for that year and it is this figure that would determine the amount to be shared between pool members or between local authorities and central government in the current system.
32. Variances against forecast in the non-domestic rating income are reflected in the forecast surplus or deficit of the collection fund at the start of the following year (information which is collected as part of NNDR1). Appeals provisions impact each year on the calculation of the NNDR income figure: a higher provision in a year, everything else being equal, reduces the NNDR income figure determining growth/decline for that year.
33. A separate pooled collection fund would be required to be established that would sit with the lead authority. A key issue will be the treatment of Collection Fund surpluses and appeals provisions within the pool. The key principle pooling authorities would have to agree is that the benefits (or costs) of actions undertaken by the authorities prior to entering the pool should remain with the authority so that no authority can be worse off than they would have been under the 67% scheme. So – for example – if a provision established in 2013-14 proves not to be necessary and is released during 2018-19, the authority should receive at least as much as it would have under the existing 67% scheme, plus its share of any additional retained revenues.
34. The pool's collection fund account would have to continue beyond the life of the pool until all appeals relating to the pool period were resolved. Provisions released after the operation of the pilot would be distributed on the basis of the pool's founding agreement – i.e. the authority where the provisions originated would receive at least as much as it would under the 67% retention system, with any additional resources being shared according to the pool's agreed distribution mechanism. There would therefore be no “gaming” benefits to individual authorities of setting higher (or lower) provisions. The lead authority would be responsible for administering this.
35. Further work is being undertaken to set out how the accounting and reporting requirements would work in practice, which may require an additional “London pool” form to be administered by the lead authority. This will be confirmed following the Provisional Local Government Finance Settlement in December.

Next steps - Local decisions required to establish the pool

36. Establishing a 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).
37. With regard to the former, the Government has prepared a draft “designation order” establishing a London pilot pool that will be sent out by DCLG alongside in the Provisional

Local Government Finance Settlement in December (a draft of the designation order letter will be circulated alongside this final prospectus). If any authority decides to opt out within the following 28 days – that is, by 28 days after the Provisional Local Government Finance Settlement – the pool would not proceed.

38. The pooling agreement MOU between the 34 London authorities will be circulated by Friday 1 December, to be signed by each Leader of the 32 London boroughs, the Chairman of the Policy and Resources Committee of the City of London and the Mayor of London, and.
39. Each authority will need to take the relevant decisions regarding the pooling agreement and designation order, through its own constitutional decision-making arrangements in time for the resulting business rate and funding baselines to be incorporated within the Final Local Government Finance Report in February.
40. In order to facilitate and support authorities in taking these decisions, advice on the legal framework and governance options for the pool has been circulated to Chief Executives and Finance Directors, along with other supporting material to help facilitate those local decisions including:
 - draft resolutions to support boroughs in drafting any cabinet/committee/council reports
 - an FAQs document to answer any legal queries in relation to the pool
 - a further legal note on executive decisions
 - this final prospectus.
41. The timeline to make the pool operational is as follows:
 - Government publishing draft baseline figures in the provisional settlement (Mid-December).
 - 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).

Appendix A – Revenue Support Grant amounts to be rolled in to the funding baselines as part of the London 100% BRR pilot

The amount of Revenue Support Grant (RSG) to be ‘rolled-in’ to 100% rates retention for 2018/19 for each authority is set out below. This is in addition to the sums rolled in in 2017-18 in respect of the Transport for London investment grant and the Greater London Authority’s RSG under the GLA’s partial pilot.

	Amount (£m) for 2018/19
Barking & Dagenham	23.3
Barnet	14.9
Bexley	8.5
Brent	33.7
Bromley	4.3
Camden	31.9
City of London	7.5
Croydon	23.3
Ealing	26.2
Enfield	25.7
Greenwich	33.3
Hackney	45.0
Hammersmith & Fulham	23.4
Haringey	30.2
Harrow	7.3
Havering	6.8
Hillingdon	13.1
Hounslow	15.7
Islington	32.6
Kensington & Chelsea	16.3
Kingston upon Thames	1.5
Lambeth	42.8
Lewisham	36.9
Merton	10.1
Newham	46.4
Redbridge	16.8
Richmond upon Thames	0.0
Southwark	47.0
Sutton	11.8
Tower Hamlets	43.8
Waltham Forest	26.1
Wandsworth	30.2
Westminster	38.1

NB: Provisional baselines and tariffs and top-ups will be circulated following the Provisional Local Government Finance Settlement in December.

Appendix B – Forecast shares of net financial benefit in 2018/19 based on £240 million estimate

The figures below represent the estimated shares of the overall net financial benefit currently forecast from the London pool in 2018/19 (£240m), applying the distribution methodology set out in paragraph 17, which applies the following weightings (15% incentives; 35% population; 35% SFA; 15% Strategic Investment Pot).

Table B1 - Breakdown of estimated total net benefit

	£m	%
<i>Incentives pot (boroughs' share)</i>	23.0	9.6%
<i>SFA pot (boroughs' share)</i>	53.7	22.3%
<i>Population pot (boroughs' share)</i>	53.7	22.3%
London Boroughs total	130.3	54.2%
GLA total	73.9	30.8%
Boroughs/GLA total	204.3	85.0%
Strategic Investment Pot	36.0	15.0%
London Total	240.3	100.0%

Note: The GLA's total is comprised of 36% of each of the incentives, SFA and population pots

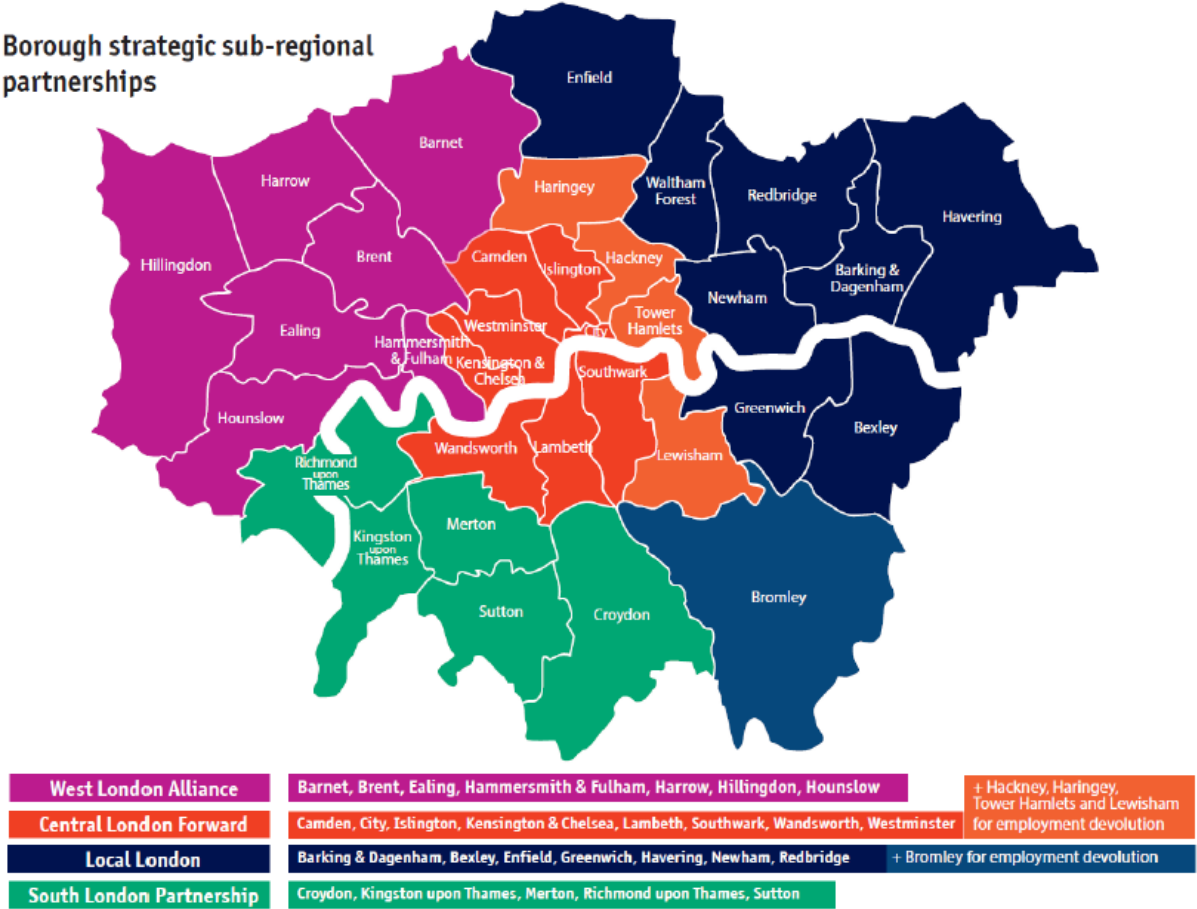
Table B2 – Borough breakdown of estimated net benefit in 2018/19

	£m
Barking & Dagenham	2.8
Barnet	3.7
Bexley	2.8
Brent	4.9
Bromley	2.9
Camden	5.7
City of London	8.2
Croydon	4.3
Ealing	4.4
Enfield	4.2
Greenwich	3.9
Hackney	4.6
Hammersmith & Fulham	2.6
Haringey	3.7
Harrow	2.4
Havering	2.5
Hillingdon	5.4
Hounslow	3.4
Islington	3.8
Kensington & Chelsea	2.2
Kingston upon Thames	1.7
Lambeth	5.3
Lewisham	4.3
Merton	2.4
Newham	6.2
Redbridge	3.2
Richmond upon Thames	1.7

Southwark	6.0
Sutton	2.1
Tower Hamlets	8.0
Waltham Forest	3.4
Wandsworth	3.9
Westminster	3.8
London Boroughs total	130.3
GLA total	73.9
Boroughs/GLA total	204.3
Strategic Investment Pot	36.0
London Boroughs total	240.3

Note: These figures should be treated with caution and are only indicative. They are based on modelling which uses boroughs' own estimates from a survey of London Treasurers in May 2017. Where boroughs did not respond, the 2017-18 forecast figures were used.

Appendix C - Illustrative sub-regional groupings for the purposes of the “sub-regional veto” in respective of Strategic Investment Pot decisions



Memorandum of Understanding on the London 100% business rates retention pilot 2018-19



Department for
Communities and
Local Government



MAYOR OF LONDON

.....

Rt Hon Sajid Javid MP
Secretary of State for Communities and
Local government

.....

Sadiq Khan
Mayor of London

.....

Rt Hon Greg Hands MP
Minister for London

.....

Cllr Claire Kober
Chair, London Councils



100% Business Rates Retention Pilot 2018-19 Agreement for London

Introduction

1. In the Spring Budget 2017, the London Devolution Memorandum of Understanding¹ included a commitment to exploring options for granting London government greater powers and flexibilities over the administration of business rates, including supporting the voluntary pooling of business rates within London, subject to appropriate governance structures being agreed.
2. This Memorandum of Understanding confirms the commitment by the Government, the Mayor of London and London local government to pilot the principles of 100% business rates retention in 2018-19 through a pan-London business rates pool. It sets out the terms by which the local authorities listed at **Annex A** will pilot 100% business rates retention.
3. This agreement comes into effect from 1 April 2018 and expires on 31 March 2019.

Pilot principles

4. The pilot pool will be voluntary, but will include all 32 London boroughs, the Corporation of the City of London and the Greater London Authority [“the London authorities”].
5. From 1 April 2018 the London authorities will retain 100% of their non-domestic rating income². They 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.
6. In moving to 100% rates retention, the Department for Communities and Local Government will no longer pay Revenue Support Grant to the London authorities in 2018/19. The value of these grants in 2018/19 is set out in **Annex B**.
7. The 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 67% scheme in place in 2017-18 reflecting the

¹ <https://www.gov.uk/government/publications/memorandum-of-understanding-on-further-devolution-to-london>

² As defined in the Non-Domestic Rating (Rates Retention) Regulations 2013 (SI2013/452) (as amended).

incremental impact of the Greater London Authority's partial pilot as a result of the rolling in of its revenue support grant and the Transport for London investment grant. 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.

8. Levy and safety net payments due from/to the London business rates pool will be calculated, in accordance with the Non-Domestic Rating (Levy and Safety Net) Regulations 2013 (SI 2013/737) (as amended), as if the London authorities were not 100% pilots, but instead were operating under the 50% rates retention scheme adjusted for the GLA's partial pilot for 2017-18 which is continuing as part of the pool and increased the locally retained share to 67%.
9. However, notwithstanding the calculation of levy and safety net payments under the Regulations, the Government will calculate levy and safety net payments due from/to the London business rates pool on the basis that it has a "zero" levy rate and "safety net threshold" of 97%, and that the London authorities will be retaining 100% of London's business rates income. The difference between any sums due under this calculation and the levy/safety net due under SI 2013/737 will be paid to the London business rates pool via a section 31 grant.
10. 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 includes current 67% scheme growth retained under the retention pilot, and reflects Enterprise Zones and "designated areas" where the designations made by the Secretary of State came into force on or before 1 April 2018, along with other special arrangements, such as the statutory provision to reflect the unique circumstances of the City of London Corporation.

Distribution of any financial benefit

11. The 34 London authorities will prepare a framework agreement for the operation of a pilot pool in which:
 - each authority will receive at least as much from the pool as they would have individually under the existing 67% retention scheme;
 - 15% of any net financial benefit will be set aside as a "Strategic Investment Pot" (see paragraphs 13 and 14); and
 - the resources not top-sliced for the investment pot will be shared between the GLA and the 33 billing authorities (the 32 boroughs and the Corporation of London) in the ratio 36:64, in accordance with the principle previously

agreed by London Councils and the GLA in the joint business rate devolution proposals to Government in September 2016.

Strategic investment

12. The Mayor of London commits that the GLA's share of any additional net financial benefit from the pilot will be spent on strategic investment projects. Decisions on the allocation of the GLA's share will be made by the Mayor of London.
13. For this purpose, and for the separate joint strategic investment pot, "strategic investment" is defined as projects that will contribute to the sustainable growth of London's economy which lead to an increase in London's overall business rate income. Examples of the kinds of projects the Mayor will seek to support with the GLA's share include supporting the delivery of housing through infrastructure investment and the provision of skills and training to further support housing delivery.
14. The joint strategic investment pot 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 (see paragraph 16).
15. It is anticipated that approximately 50% of net additional benefits arising from the pilot pool will be spent on strategic investment projects.

Governance

16. Decisions regarding the Strategic Investment Pot will be taken formally by the Corporation of the City of London - as the lead authority - in consultation with all member authorities, reflecting voting principles designed to protect Mayoral, borough and sub-regional interests, previously endorsed by Leaders and the Mayor in the London Finance Commission (both 2013 and 2017), and 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 Corporation of the City of London), subject to the caveat that where all boroughs in a given sub-region disagreed, the decision would not be approved;
- 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.

17. It is envisaged that decisions will be taken bi-annually to coincide with meetings of the Congress of Leaders and the Mayor of London.

Evaluation

18. The Government will undertake a qualitative evaluation the progress of the pilot based on the current research programme for the existing business rate retention pilots, with additional focus on the governance mechanism and decision making process, and the scale of resources dedicated to strategic investment.

Next steps

19. As specified in paragraph 3, the pilot will operate for one year. The Government is committed to giving local government greater control over the revenues they raise. Subject to the evaluation of the pilot, the Government will work with London authorities to explore: the 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.

20. The Government will prepare a “designation order” establishing a London pilot pool and reflect this in the Provisional Local Government Finance Settlement in December. If any authority decides to opt out within the following 28 days – that is, by 28 days after the Provisional Local Government Finance Settlement – the pool would not proceed.

21. London Government will draft a pooling agreement between the 34 London authorities by which London Government collectively decides how to operate the pool and distribute the financial benefits. Each authority will be required to take the relevant decisions through its own constitutional decision-making arrangements.

Annex A

Authorities in the London Pilot

Barking & Dagenham
Barnet
Bexley
Brent
Bromley
Camden
City of London
Croydon
Ealing
Enfield
Greenwich
Hackney
Hammersmith & Fulham
Haringey
Harrow
Havering
Hillingdon
Hounslow
Islington
Kensington & Chelsea
Kingston upon Thames
Lambeth
Lewisham
Merton
Newham
Redbridge
Richmond upon Thames
Southwark
Sutton
Tower Hamlets
Waltham Forest
Wandsworth
Westminster
Greater London Authority

Annex B

Grants

The amount of Revenue Support Grant (RSG) to be 'rolled-in' to 100% rates retention for 2018/19 for each authority is set out below. This is in addition to the sums rolled in in 2017-18 in respect of the Transport for London investment grant and the Greater London Authority's RSG under the GLA's partial pilot.

RSG	Amount (£m) for 2018/19
Barking & Dagenham	23.3
Barnet	14.9
Bexley	8.5
Brent	33.7
Bromley	4.3
Camden	31.9
City of London	7.5
Croydon	23.3
Ealing	26.2
Enfield	25.7
Greenwich	33.3
Hackney	45.0
Hammersmith & Fulham	23.4
Haringey	30.2
Harrow	7.3
Havering	6.8
Hillingdon	13.1
Hounslow	15.7
Islington	32.6
Kensington & Chelsea	16.3
Kingston upon Thames	1.5
Lambeth	42.8
Lewisham	36.9
Merton	10.1
Newham	46.4
Redbridge	16.8
Richmond upon Thames	0.0
Southwark	47.0
Sutton	11.8
Tower Hamlets	43.8
Waltham Forest	26.1
Wandsworth	30.2
Westminster	38.1

London Councils

London Business Rates Pooling Pilot

Suggested Sample Draft Resolutions for Participating Authorities

(Note: these are samples and can be combined or condensed to suit individual authorities' own normal styles)

Establishment of Governance Arrangements:

That the [Council/Cabinet/Mayor/Committee] resolves to:

- 1 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;
- 2 participate in the London Business Rates Pilot Pool with effect from 1 April 2018 [to 31 March 2019];
- 3 delegate the authority's administrative functions as a billing authority pursuant to the Non-Domestic Rating (Rates Retention) Regulations 2013, [GLA only and to delegate the administrative functions as a major precepting authority pursuant to s39(1)(aa) of the Local Government Finance Act 1992] to the City of London Corporation ("COLC") acting as the Lead Authority;
- 4 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:

- 5 delegate authority to the Chief Finance Officer [in consultation with the [Cabinet] Member for Finance,] to agree the operational details of the pooling arrangements with the participating authorities;

[Either

- 6(a) 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 Chief Finance Officer [in consultation with the Head of Legal Services] to negotiate, finalise and execute the same on behalf of the authority;]

[Or alternatively

- 6(b) authorise the Chief Finance Officer, [in consultation with the Head of Legal Services] to make any amendments to [the Memorandum of Understanding, attached at Appendix [] to the report,] as may be required by the Secretary of State, and to enter into the final Memorandum of Understanding on behalf of the authority;]

Operation of the Pool:

- 7 to authorise [elected member eg in his/her official capacity as Leader/directly elected 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;

- 8 delegate to [Senior Executive Member/Officer/Committee] 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.

(Optional as these issues will be covered in the Memorandum of Understanding);

- 9 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.

(Optional as these issues will be covered in the Memorandum of Understanding.)

Trowers & Hamlins LLP

Ref: HZR

14 November 2017

London Councils

Greater London Business Rates Pooling Pilot Arrangement

Legal Questions and Answers

(This document supplements London Business Rates 100% Retention Pilot 2018 - "Some Questions and Answers" issued by London Councils)

1 What power does a local authority have to enter into a pooling arrangement for business rates?

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).

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 Boroughs¹ as billing authorities and the GLA is also a precepting authority pursuant to section 39 (1) of the Local Government Finance Act 1992.

2 What power does a local authority have to enter into a Memorandum of Understanding or Inter Authority Agreement in relation to a business rates pooling arrangement?

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.

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

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.

3 What decisions will be required to establish the pool by local authorities with executive arrangements?

On the assumption Option 2 is chosen, then it will initially involve:

- (a) a resolution to participate in the pool and accept the Secretary of State's designations of the pool;
- (b) delegation of administrative functions by your Executive to the lead authority;

¹ For the purposes of this note, the term "London Borough" should be deemed to include the City of London Corporation.

- (c) a decision on the MOU/IAA to be agreed between the members of the pool – including distribution, and the basis of the strategic investment pot (**SIP**).

Subsequently, it will involve receiving reports from the Lead Authority with recommendations as to the proposed allocations of the Strategic Investment Pot to projects and your authority making a decision on how to respond with regard to the Lead Authority's recommendation.

Your authority's Senior Executive Member or a member to whom the Senior Executive Member and Cabinet delegates authority will attend twice yearly meetings to be informed as to the outcome of the Lead Authority's decisions regarding allocation of the SIP for an investment project. It is anticipated that this will be incorporated within the existing system of meetings of the Congress of Leaders and the Mayor of London.

The Lead Authority's 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 (the sub-regions for this purpose were defined in the London Councils Leader Committee report October 2017). The SIP projects will have been assessed by the Lead Authority against pre-agreed transparent and objective criteria.

4 What decisions will be required to establish the pool by authorities not operating executive arrangements?

Initially, this will involve:

- (a) a resolution to participate in the pool and accept the Secretary of State's designation of the pool;
- (b) then it will involve a decision regarding delegation of the administrative functions involved in running the pool pursuant to s101, LGA 1972 by your Council or a duly authorised committee to the lead authority; and
- (c) a decision on the MOU/IAA to be agreed between the members of the pool – including distribution, and the basis of the strategic investment pot (**SIP**).

Your authority's subsequent decisions as to its view like to decide its views in respect of the Lead Authority's recommendation regarding allocation of the SIP will need to be made by the duly authorised committee on the basis of a report which will be provided by the Lead Authority in advance for this purpose.

Your authority's chosen elected member representative (e.g. the Leader) will attend twice yearly meetings to be informed on the Lead Authority's decision(s) regarding allocation of the SIP. It is anticipated that this will be incorporated within the existing system of meetings of the Congress of Leaders and the Mayor of London.

The Lead Authority's decisions regarding SIP projects will be made on the basis of three consultation tests: (i) GLA and 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 oppose the proposal then it cannot be agreed (the sub-regions for this purpose were defined in the London Councils Leaders' Committee report October 2017). The SIP projects will have been assessed by the Lead Authority against pre-agreed transparent and objective criteria.

5 What will the Memorandum of Understanding/Inter Authority Agreement involve?

This will be based on the DCLG's Standard Template for the anticipated 2018/19 business rate pilots. It will be expressed to last for 1 year from 1 April 2018 to 31 March 2019. It will guarantee that the participating authorities will be no worse off than they would have been had they stayed within existing arrangements and that the authorities will not be subject to more onerous rules or constraints than they would have been if they had chosen not to participate in the pool. It will also set out the Lead Authority's administrative and accountable body responsibilities; the rationale for the pool; the principles and basis of allocation of resources; the decision-making arrangements for the Strategic Investment Pot; reviews; dispute resolution and notice arrangements. If it is an MOU it will not be contractually binding but it will express the intention to co-operate and collaborate. If there is a contractually binding IAA this will include more detailed provisions including the exit mechanism.

6 Will this arrangement have any implications with regard to public procurement law?

No. 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 co-operation-not applicable.

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.

7 Will the business rates pool have any implications for state aid?

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.

8 Is the business rates pooling arrangement likely to have any implications in far as employment law is concerned?

No, not for most participating authorities. 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. 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.

- 9 **Under paragraph 38 (2) of Schedule 7B of the Local Government Finance Act 1988 there is a potential joint and several liability for local authorities entering into a business rates pool in the event the Secretary of State requires them to make a payment, how can this be reconciled with a local authority's common law fiduciary duty to obtain value for money?**

During its lifetime, the Pool will make regular payments to the government, as it will have an aggregate tariff of well over £2 billion pa. It is one of the functions of the Lead Authority to manage those payments on behalf of pool members. The "no detriment guarantee" ensures that the pool cannot be worse off than the sum of the authorities would have been in the existing system and has the advantage that no one participating authority is worse off.

If the Pool ceases to operate, other than as a residual body accounting for the resolution of outstanding appeals, it is theoretically possible that the Pool may have distributed more money than it should have done (if appeals that turn out to be successful prove to have been under-provided for).

This liability is only likely to arise in the event the authorities had underprovided in aggregate in respect of pending appeals and the liabilities were to exceed the collected funds after the Pool was dissolved. This risk is to be managed (as is currently the case) through professional financial management and making appropriate relevant provision. This can also be addressed through contractual provisions in the MOU/IAA.

- 10 **What consultation has been undertaken to date and do we need to undertake any further consultation before deciding to enter into this arrangement?**

All local authorities must consent to the pooling arrangement. London Councils' discussion and consultation process to date has involved reports to London Councils Leaders' Committee on:

- 11 October 2016²;
- 21 March³;
- 11 July 2017⁴ (this included the first "draft prospectus" for each borough to consider and consult upon internally over the summer);
- 10 October 2017⁵ (this included a revised draft prospectus).

The legislation does not prescribe any public consultation and the pooling arrangement will not change the amounts that ratepayers will have to pay. However, we recognise that some participating authorities may operate their own standard consultation practices and you will need to build these within the constraints of the government's timetable.

- 11 **Has a public sector equality impact assessment been undertaken to satisfy the public sector equality duty (PSED)?**

None has been necessary yet as the PSED is not 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.

² <http://www.londoncouncils.gov.uk/download/file/fid/19337>

³ <http://www.londoncouncils.gov.uk/download/file/fid/20294>

⁴ <http://www.londoncouncils.gov.uk/download/file/fid/20709>

⁵ <http://www.londoncouncils.gov.uk/download/file/fid/21341>

12 **Will Brexit have any legal implications for the Greater London business rates pooling arrangement?**

Not as currently anticipated but this will be monitored.

15 November 2017
Trowers & Hamblins
Ref: HZR



Dated 15 November 2017

London Councils

Pooling Business Rates in London

Advice on the legal framework and governance options

Trowers & Hamblins LLP has produced this advice solely for the benefit of London Councils and does not assume any responsibility or liability to any third party in respect of the contents or accuracy of this advice.

Trowers & Hamblins LLP
3 Bunhill Row
London
EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

trowers & hamblins

Circulation Draft dated 15 November 2017

1 Executive Summary

- 1.1 This note outlines the potential governance options for the proposed London Business Rates 100% retention pilot pool for 2018/19.
- 1.2 Most of the functions associated with the pool will be administrative and would be performed by a lead authority and accountable body.
- 1.3 It is proposed that a portion of some of the net gain from the pooling arrangement would be retained as a strategic investment pot (**SIP**) which could be used to fund projects that will deliver economic growth.
- 1.4 This note suggests alternative governance options for oversight of project funding approvals from the SIP.
- 1.5 The three most pragmatic forms of governance for the business rates pooling arrangement appear to be:
- 1.5.1 a joint committee (**Option 1**); or
 - 1.5.2 a quasi-contractual approach involving a lead authority in consultation with participating authorities (**Option 2**); or
 - 1.5.3 a lead authority with a decision-making meeting of duly authorised officers (**Option 3**).
- 1.6 Of these three options, it would appear that Option 2 would be the most appropriate as it affords more flexibility and would appear to have the most support based on discussions held to date via London Councils.
- 1.7 Option 2 would be documented in a non-legally binding Memorandum of Understanding. It would involve the individual local authorities delegating authority to the City of London Corporation (COLC), as the Lead Authority, to take decisions on the allocation of the SIP, in consultation with the other 33 participating authorities. As some London Boroughs and COLC do not currently operate executive arrangements, those authorities cannot lawfully delegate decisions to single elected members. Therefore a meeting comprising elected members would need to be consultative in nature to enable all participating authorities to participate in the same way.
- 1.8 The Lead Authority would consult all individual participating London authorities including the GLA (the **Participating Authorities**) before making any decisions to allocate funds from the SIP to projects. The Lead Authority would only decide to approve projects for SIP funding where both the GLA and two thirds or more of the other Participating Authorities had, assuming no sub-region unanimously disagreed, already voted in favour of a project.
- 1.9 Currently, the only governance model which could incorporate this level of approval and enable all Participating Authorities' elected members to participate in the same way, whilst accommodating Participating Authorities' diverse constitutional structures, would constitute a consultative meeting of Participating Authorities (Option 2).
- 1.10 Other options for a governance model for the Pool have been considered but none would appear to be suitable or offer the flexibility or potential appeal of Option 2. Under current legislation, a joint committee structure could not accommodate voting other than by simple majority. A decision-making forum of Participating Authorities' officers would disenfranchise elected members from due consideration and involvement in the decisions of the pool regarding the allocation of the SIP to individual projects. An Economic Prosperity Board (EPB) model would not appear to be viable at this stage as it would require an order from the Secretary of State and its area would overlap with the existing

West London EPB. Nor would an incorporated structure as it has no precedent and may take too long to agree within the limited timescale.

- 1.11 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. The Pool's operation, including this governance model, will be evaluated by London Councils, the GLA and government and could allow for potential adjustments to the governance model if agreed as expedient, were pooling to continue beyond the first two years.
- 1.12 We recommend 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 form part of the terms of reference for the Pool.

2 Background

2.1 We have been instructed by London Councils to provide legal advice in connection with a proposal to establish a business rates pooling arrangement involving the COLC, all of the London Boroughs¹ and the Greater London Authority (**GLA**).

2.2 This advice note considers:

2.2.1 The powers of the London Boroughs to participate in a business rate pooling arrangement with each other and the GLA and any limitations or restrictions which need to be addressed;

2.2.2 The principal options for the form of governance arrangement for the pooling arrangements including the mechanism for allocating funds comprising the SIP.

2.3 The preferred model for the pilot pool would include the following features:

2.3.1 No participating authority would suffer financial detriment as a result of its involvement in the pooling arrangement;

2.3.2 The pooling arrangement should include three categories of distribution as follows:

(a) a percentage of the fund for distribution by the GLA/Mayor;

(b) a percentage of the fund which will be returned to each London Borough; and

(c) a percentage of the fund which will be included in the SIP to be allocated to projects by the Lead Authority taking into account the responses of the Participating Authorities.

2.3.3 The governance of the SIP should permit the Lead Authority to make decisions on the use of resources within the SIP where both the GLA and at least two thirds of the London Boroughs are in favour (subject to no participating authorities in one sub-region² unanimously disagreeing with the decision).

3 Powers to establish a Business Rate Pooling Arrangement

3.1 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 1988³.

3.2 Paragraph 45 (Interpretation) of Schedule 7B defines a "relevant authority" as:

3.2.1 a billing authority in England, or

3.2.2 a major precepting authority in England.

3.3 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

¹ Henceforth, for the purposes of this advice note, any reference to "London Boroughs" should be deemed to include COLC acting in its capacity as a local authority.

² London Councils' link to the map of sub regions: <http://www.londoncouncils.gov.uk/download/file/21341>. The Lead Authority can make decisions where consultation indicates the GLA and London Boroughs are in favour, and London Borough support is defined as two-thirds majority subject to sub-regional veto – as defined in the London Councils; prospectus.

³ As amended by the Local Government Finance Act 2012.

authorities and the GLA is also a precepting authority pursuant to section 39 (1) of the Local Government Finance Act 1992.

- 3.4 Schedule 7B, Part 9 imposes a number of requirements with regard to the designation of a pool including:
- 3.4.1 The authorities covered by the designation must be notified by the Secretary of State as per Part 9, paragraph 34 (7);
 - 3.4.2 Timing requirements regarding notification before making the local government finance report under paragraph 12 (2);
 - 3.4.3 A condition requiring the authorities to which the pooling designation relates to appoint a lead authority to exercise the functions specified in the condition⁴;
 - 3.4.4 Such other condition(s) as the Secretary of State thinks fit⁵;
 - 3.4.5 Any regulations with regard to levy payments and safety net payments on account may treat the pool as a "relevant authority" for the purposes of the regulations; and
 - 3.4.6 Furthermore, where a pool of authorities is required to make a payment to the Secretary of State, each authority in the pool is jointly and severally liable to make that payment⁶ and where the Secretary of State is required to make a payment to pool authorities, the payment must be made to the lead authority appointed in accordance with conditions under paragraph 35 (1)⁷.
- 3.5 As far as we have been able to ascertain, there is nothing in legislation (except insofar as may be included within a condition by the Secretary of State pursuant to the relevant Designation Order) which would require a pooling arrangement to assume a particular legal structure or corporate form.
- 3.6 In light of our understanding of discussions which have taken place to date, there are in our view theoretically five principal options which might be available to the GLA and the London Boroughs for the administration of the proposed pooling of business rates in London. These are as follows:
- 3.6.1 A joint committee (**Option 1**)⁸; or
 - 3.6.2 A lead authority consulting the participating authorities in advance and, within their authority's own constitutional arrangements, decide their authority's view on proposals for the allocation of funds to individual projects from the SIP (**Option 2**);
 - 3.6.3 A lead authority with a meeting of duly authorised officers with delegated authority from their Participating Authorities to make decisions at meetings on allocations of SIP funds (**Option 3**);
 - 3.6.4 The Participating Authorities each becoming members of a separate corporate vehicle, (such as a limited company) for the purpose of operating the pooling arrangement (**Option 4**); and

⁴ Paragraph 35(1)(A)

⁵ Paragraph 35(2).

⁶ Paragraph 38(2) the potential risk associated with this issue can be mitigated contractually – see later at page 12

⁷ Paragraph 38(3)

⁸ Pursuant to the Local Government Act 1972, section 101 (5) (**Joint Committee Option**) and in respect of the GLA pursuant to section 39 of the Greater London Authority Act 1999.

3.6.5 The establishment of an Economic Prosperity Board (**EPB**) (**Option 5**).

3.7 Given the constraints of the timetable for implementation of the London pooling proposal, we do not propose to explore at present Options 4 or 5 for the following pragmatic reasons.

3.8 We would suggest a corporate vehicle (**Option 4**) would not be appropriate in these circumstances given this form has no precedent within other authorities' pooling arrangements; and that it would be ambitious to expect resolution by all the stakeholders of the requisite fundamental issues and documentation (for example, a shareholders or members agreement) to form a company within the timescale is for what is intended to be a two year pilot arrangement. The legal powers to found such a proposal would also require more detailed consideration.

3.9 An EPB (**Option 5**) we suggest would similarly not be feasible in the short term both because it would require an order from the Secretary of State and it would overlap with the current West London EPB area.

4 **"Proper Purpose"**

4.1 Given that local authorities and any pooling arrangement designated by the Secretary of State are generally⁹ "creatures of statute", as a matter of public law, the relevant authorities must exercise the powers available to them for a "proper purpose" when deciding which form of governance the pooling arrangement should take. For example, the authorities should not seek to adopt a particular form of governance as an artificial device with the main purpose of circumventing legislation that might otherwise be applicable in order to avoid controls¹⁰.

4.2 However, the authorities are entitled to identify and follow a legitimate route to a legitimate end by reference to the relative operational and financial advantages and disadvantages which will follow from the potential different options available to them.

4.3 By way of example, a decision to choose the lead authority and consultative members model (Option 2) rather than a joint committee (Option 1) because Option 2 would afford more opportunities for consultation with and consideration by the Participating Authorities would be an exercise of powers for a "proper" purpose. Whereas a decision to choose Option 2 with the sole motive of circumventing the statutory controls on voting applicable to Option 1 (referred to in paragraph 5.11 below) might arguably be regarded as an exercise of the relevant power for an "improper" purpose.

4.4 A potential improper purpose argument is an intrinsic risk of any innovative arrangement involving local government and the likelihood of challenge will diminish with the passage of time. In this context, it should be borne in mind that this arrangement will apply to a one or two year pilot and will be evaluated by London Councils and the government before any extension of pooling arrangements in London.

"Wednesbury Reasonableness"

4.5 The Participating Authorities will need to take into account the usual "Wednesbury" principles in making the decision as to which option to adopt. This will involve the authorities paying due regard to any relevant considerations (such as efficiency) and disregarding irrelevant considerations (such as purely political motives to secure re-election).

⁹ Although the COLC is not strictly a creature of statute, COLC must exercise the local authority powers and functions conferred upon it having regard to the same considerations.

¹⁰ *Credit Suisse v Allerdale BC* [1996] 4 All E.R. 129

- 4.6 The Participating Authorities should also act in a fairly business-like manner with reasonable care, skill and caution, and with a "due and alert regard" to the interests of their ratepayers¹¹. It is our current understanding that the choice of governance structure the pooling arrangement alone will not directly affect ratepayers in London.

¹¹ *Bromley LBC v Greater London Council* [1983] 1 A.C. 768; *Roberts v Hopwood* [1925] A.C. 578; *Prescott v Birmingham Corporation* [1955] Ch. 210

5 The Most Viable Governance Options

5.1 Joint Committee (Option 1)

Powers

5.2 The London Boroughs will be familiar with their powers to establish a joint committee which also underpin the London Councils Leaders' Committee Governing Agreement 2001 (as amended).

5.3 In summary, the legislative basis is contained in sections 101 and 102 of the Local Government Act 1972 (**LGA 1972**), restated here for convenience:

5.4 *"101 (1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions:*

(a) by a committee, a sub-committee or an officer of the authority; or

(b) by any other local authority."

102 (1) For the purpose of discharging any functions in pursuance of arrangements made under section 101 above:

(b) two or more local authorities may appoint a joint committee of those authorities."

5.5 Executive functions are not to be delegated under section 101 of the LGA 1972 but can be delegated under similar provisions to those set out above pursuant to sections 9E and 9EA (formerly section 19) of the LGA 2000 and the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

5.6 For the purposes of sections 101 and 102 of the LGA 1972, each London Borough and the GLA are "relevant local authorities".

5.7 The GLA is not a participating member of the London Councils Leaders' Committee and accordingly, if a joint committee were the preferred governance model for the business rate pooling arrangement, it would be necessary to establish a further joint committee involving all of the London Boroughs and the GLA.

Governance issues concerning joint committees

5.8 A joint committee has no separate legal identity and no corporate status and so cannot own property and where it purports to employ staff or enter into contracts in effect such arrangements are enforceable against each of the individual authorities. Therefore any agreement will need to address such issues with one authority acting as a "lead" (which is also a requirement under paragraph 35(1) of Schedule 7B of the Local Government Finance Act 1988). In relation to the business rates pooling arrangement, the authorities have identified the City of London Corporation as the proposed lead authority.

5.9 There is a degree of flexibility in relation to the terms of any delegation and authorities may specify the manner in which the delegated functions may be exercised (e.g. by reference to geography, service, or financial parameters).

- 5.10 Authorities can agree joint arrangements where certain closely specified types of decisions taken by a joint committee might be able to be the subject of a review by any of the Participating Authorities, following certain procedural steps (perhaps including a "cooling off" period before any decisions of the joint committee could be acted upon). These issues, together with the constitutional set up of the joint committee (e.g. numbers of members each authority may appoint; their terms of office; designation and role of COLC as lead authority; allocation of running costs and so on would need to be addressed in a formal agreement between all authorities involved).
- 5.11 Voting rights for joint committees are prescribed by paragraphs 39 to 44 of Schedule 12 (Meetings and Proceedings of Local Authorities) of the LGA 1972. Paragraph 39 requires that *"all questions coming or arising before a local authority shall be decided by a majority of the members of the authority present and voting thereon at a meeting of the authority"*. It is possible that this legislation could be amended and this issue has been raised with government but currently, given the timescales it is unlikely that any such legislative amendments would be made in time for the pilot to start next financial year.
- 5.12 As a formal committee of the Participating Authorities, a joint committee would of course be subject to the political balance requirements¹² in the Local Government and Housing Act 1989 (LGHA) Schedule 1 and the Local Government (Committees and Political Groups) Regulations 1990. Although we are given to understand, this is unlikely to be an issue in this case as each of the Participating Authorities' leaders would be involved in such an arrangement.

Advantages/What would be possible

Option 1, a joint committee, could offer the following principal advantages:

- 5.13 it is a model that has been used many times across the country for other functions and the Leeds City Region Business Rates Pool operates through a joint committee;
- 5.14 it is legally one of the more straightforward entities to set up, and has clear statutory authority;
- 5.15 it maintains direct democratic oversight of the functions in question;
- 5.16 it is possible to delegate statutory functions to it directly;
- 5.17 it would be possible to frame the terms of the delegations to incorporate a framework for decision making on the allocation of funds; and

Disadvantages/What would not be possible

However, there are a number of potential disadvantages associated with this model:

¹² Section 15(5) LGHA states that the seats on any body which fall to be filled by appointments made by any relevant authority or committee of a relevant authority must have regard to the following principles of political balance: (a) that not all of the seats on the body may be allocated to the same political group; (b) that the majority of the seats on the body is allocated to a particular political group if the number of persons belonging to that group is a majority of the authority's membership; (c) subject to (a) and (b), the number of seats on the ordinary committees of a relevant authority which are allocated to each political group bears the same proportion to the total of all the seats on the ordinary committees of that authority as is borne by the number of members of that group to the membership of the authority; and (d) subject to (a) and (c) the number of the seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the authority.

- 5.18 from an operational viewpoint, the establishment of a new joint committee will require and engage the associated administrative machinery including compliance with formal requirements of advance publication of agenda papers, voting and publicity. On the one hand, this could be perceived as an advantage in terms of added visibility, transparency and accountability. On the other hand, this could be perceived as involving perhaps slightly more administrative resources. This is a matter for consideration and discussion by the authorities;
- 5.19 a joint committee has no separate legal personality and would need to operate through a lead authority;
- 5.20 the statutory restrictions on voting arrangements mean that the preferred governance arrangements addressing the principles for governance prepared by the London Finance Commission and reflected in the draft prospectus for the pilot pool considered by Leaders Committee and the Mayor (see footnote 13 for summary¹³) could not be applied;
- 5.21 each participating authority will need to ensure that it has obtained the required authorisations under its constitution to enter into the arrangements;
- 5.22 there are also specific provisions in section 13 LGHA with regard to the status of a person who is not an elected member of any of the authorities but is appointed a member of the joint committee. The disadvantage of a joint committee in this case is that a person who is appointed as a member of the joint committee but who is not an elected member of one of the Participating Authorities would not have a vote¹⁴.

6 **Lead Authority and Consultation of Elected Member Representatives** (Option 2)

Powers

- 6.1 Local authorities have a power to delegate decisions to other authorities as referred to in paragraphs 5.4 and 5.5 above.
- 6.2 A pooling arrangement can be operated by agreement between the relevant authorities, whether as a non-legally binding memorandum of understanding (**MOU**); a more detailed formal legally binding contract or possibly, a hybrid arrangement where some provisions are expressed to be legally/contractually binding and others are included as expressions of general intent as to the protocols to be followed. Given the constrained timescale we consider an MOU is the most realistic option for documenting the governance arrangements and it also has precedent in other pools.
- 6.3 Local authorities have the power to enter into a Memorandum of Understanding to record the governing arrangements between them including under section 111 of the Local Government Act (**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*

¹³ In summary: each element of London government should have a stake; no exclusion from the benefits of London's success or be disempowered from addressing local needs; no overriding of the Mayor's interests by the London local authorities, and vice versa; decision-making arrangements must provide for the prevention or breaking of any deadlock; the system must enforce binding decisions which reflect a clear consensus; the system must be simple and clear in the processes and parties' responsibilities; stability by retaining existing responsibilities where possible; there should be scope to respond to other relevant reforms; decision-making should reflect the roles of the authorities (the London Boroughs) and the GLA/Mayor; and the political arrangements should be supported by a formal officer group to provide standing technical advice and support.

¹⁴ Section 13(1) LGHA 1989

discharge of any of their functions". If a contractually binding Inter Authority Agreement were deployed then the relevant powers include 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 functions of the local authority". In this context the relevant "functions" are those of a billing authority or a major precepting authority.

- 6.4 In relation to the London Business Rates Pooling arrangement, the Participating Authorities would 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.

Governance issues

- 6.5 By and large, the governance and distribution arrangements would be set out within the terms of the MOU.
- 6.6 This could either involve a lead authority arrangement with authorities resolving to delegate certain clearly defined administrative functions to a single lead authority with a meeting of elected members who are consulted regarding allocations for the SIP (**Option 2**) or it could involve a lead authority supported by a decision-making forum of authority officer representatives who have delegated authority to make decisions (**Option 3**). The potential mechanics and responsibilities of the lead authority are explained in more detail below.

Lead Authority

- 6.7 The Participating Authorities could delegate most administrative functions to COLC as the lead authority who would then be responsible for administering the pool and could provide a secretariat with the GLA and London Councils for assessing and preparing reports to the Participating Authorities' applications for the SIP against pre-agreed criteria. We understand that it is currently proposed that the GLA may provide the transactional support role.

MOU

- 6.8 For this arrangement, the Lead Authority's role would (in addition to its normal responsibilities) cover:
- 6.8.1 Maintenance and support of the Pool's governance arrangements and the methodology for the allocation of resources;
- 6.8.2 Assessment and preparation of reports on applications for the SIP in accordance with the agreed criteria.
- 6.9 The MOU could be expressed not to be legally binding and would not (in the absence of consideration or being expressed as a deed) be a contract. In due course for example if the pilot were deemed to be successful and were continued then, the arrangement in the MOU could be re-expressed as a legally binding Inter Authority Agreement and hence potentially enforceable as a contract between the authorities in part or as a whole.
- 6.10 As the arrangement under Option 2 or Option 3 would be an unincorporated association, the representatives will be able to operate bespoke voting arrangements (subject to the proviso above regarding a "proper purpose") according to the provisions of the MOU or Inter Authority Agreement.

Option 2 – Consultative Elected Member Representatives

- 6.11 With regard to the approval of allocations of the SIP for individual projects, the Lead Authority would take decisions following consultation with Participating Authorities. This could involve the Lead Authority preparing reports with proposed recommendations as to SIP allocations and circulating the report to the Participating Authorities for prior consultation and a decision as to which way the relevant authority will vote. The consultative representatives could then meet but decisions would not be made at that meeting.
- 6.12 If the representatives are to comprise elected members of the authorities, then care will need to be taken by each individual participating authority to ensure their appointments fit with their particular authority's constitution/governance model and scheme of delegation. Authorities which have a Mayor and Cabinet Executive or Leader and Cabinet Executive would be able to appoint the Senior Executive Member (Mayor or Leader) or another executive member as their appointed representative.
- 6.13 The elected members from authorities with non-executive arrangements (committees) would need to have the decision as to how to respond made in a duly constituted committee or subcommittee meeting of their authority.
- 6.14 In making decisions regarding allocations of the SIP it will be important that all Participating Authorities take lawful and valid decisions. Given the diversity of constitutional arrangements in London local government, (e.g. elected Mayors and Executives; Leader and Executives; and Committee forms of governance) the only way that all Participating Authorities can be engaged through their elected members on a two thirds response basis would be for each participating authority to take an individual view on the recommendations in a report prepared by the Lead Authority and then communicate their decision to the Lead Authority. This would need to ensure reports were circulated by the Lead Authority at least one month in advance of a meeting of the representatives to allow the individual authorities time to consider and make their decision within their own governance timetables (including scrutiny and call-in). The Lead Authority would then aggregate the individual Participating Authorities' responses and make the decisions regarding the allocation of the SIP to individual projects on the basis of the consultation principles and agreed thresholds. The decision-making process would be scheduled to take place bi-annually to allow the Lead Authority to report the outcome to the Congress of Leaders and the Mayor of London

Option 3 - Officer representatives

- 6.15 Alternatively, an officer representative arrangement could involve each Participating Authority delegating authority to its own authorised officer representative and the representatives which can respond to SIP allocation decisions. The representative(s) could all be officers¹⁵ (duly authorised and delegated with the authority to exercise the relevant functions by their authority), depending on what the individual authority's particular constitutional/governance arrangements¹⁶ and scheme of delegation allow, with

¹⁵ There is a general power to local authorities to discharge their functions through officers under section 101(1) Local Government Act 1972. Local authorities can delegate to officers as long as decisions are not effectively being made by a member(s) through an officer (*R v Port Talbot BC* [1988] 2 All E.R. 207; *Fraser v SoS for the Environment and the Kensington and Chelsea RLBC* (1987) 56 P. & C.R. 386). However, if a power is delegated to an officer acting in consultation with an executive member(s) then a decision without consulting the member(s) would be ultra vires.

¹⁶ If the relevant authorities have executive arrangements and to the extent executive functions as set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) are involved, then this would need to comply with the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012) where authorities have a committee system or prescribed arrangements.

those officer delegates then being duly empowered to make decisions at the duly constituted representatives meeting.

- 6.16 The extent of the terms governing the lead authority and consultative members' arrangement could similarly be comprised in a MOU or a more detailed Inter Authority Agreement.

Advantages of Options 2 and 3

- 6.17 Options 2 and 3 have the advantage of familiarity to DCLG and the Secretary of State: All of the established business pool agreements we have reviewed have been based on MOUs signed by the relevant s151 Officers of the authorities involved whether or not there is a combined authority or joint committee as well.
- 6.18 Simplicity – in the context of achieving agreement between the Participating Authorities within the time constraints, it may be easier for the Participating Authorities to reach agreement on a shorter MOU than on a more detailed contract, joint committee or corporate shareholding arrangements.
- 6.19 Voting rights – the statutory requirements regarding voting which apply to joint committees do not apply to the arrangements described in Option 2 or 3. Whilst most of the current MOUs for operational business pooling arrangements do provide for decisions by a simple majority, a number require unanimity (which indicates that the Secretary of State is prepared to agree bespoke voting rights where agreed by the Participating Authorities).
- 6.20 A contractual arrangement in the form of Option 2 or Option 3 could accommodate the features summarised at paragraph 2.3 of the Background section above.
- 6.21 Flexibility – the terms of the MOU can specify whether particular provisions are intended to be legally binding between the parties, allowing the Participating Authorities to clarify their legal rights and obligations to one another.
- 6.22 It should be borne in mind that either Option 2 or 3 could later transition to a joint committee arrangement if the factors mitigating against the latter option (e.g. restrictions on voting rights) were to be resolved by legislation or otherwise.

Disadvantages associated with Options 2 and 3

- 6.23 Whilst existing MOUs indicate that the Secretary of State is willing to approve bespoke voting arrangements, none include the degree of detail required by the Participating Authorities in this project.

7 Distribution arrangements – key issues

Authorities' decisions to enter into arrangements/terms of reference

- 7.1 Whichever governance form the Participating Authorities adopt to govern the pooling arrangement it will be necessary for each of them to approve those arrangements formally.
- 7.2 Confidence that the conditions which the authority leaders set out in their "in principle" agreement to participate is likely to be underpinned if each authority's formal decision to participate includes a condition which confirms the allocation of business rates between the collecting authorities, the GLA and the SIP. Further, this condition could with other terms be mandated as terms of reference for both the pooling arrangement and decisions to allocate funding to SIP initiatives.
- 7.3 The terms of reference/conditions which are likely to underpin confidence in the proposals appear to us to include:

- 7.3.1 That no authority should be financially worse off compared to their position if they had not participated in the pooling arrangement - we see this as being of particular importance in order to reassure s151 Officers that the authorities could not be in breach of their common law fiduciary duty to their ratepayers given the potential joint and several liability provision under Schedule 7B, Part 9, paragraph 35(1);
- 7.3.2 The allocation to each authority and the share allocated to the SIP;
- 7.3.3 The factors which are to be applied in the allocation of funds from the SIP to individual projects - including:
- (a) a requirement to make SIP allocations (within each financial year) with a requirement to seek to do this to meet specified targets;
 - (b) specified broad economic/growth criteria which must be satisfied to enable an initiative to qualify for funding – we appreciate this will have to be approved by DCLG – existing criteria used by central government business growth funds might be applicable or capable of adaptation;
 - (c) that the pooling arrangement is time limited unless all of the authorities and government approve an extension;
 - (d) a mechanism to deal with and distribute either income above that projected or income less than projected;
 - (e) a liability distribution provision to deal with claw-back on an equitable basis in the event income is subsequently reduced (through rating appeals) after the pool is dissolved; and
 - (f) a sub-regional right to veto a project for funding.
- 7.3.4 The report underlying the decision of each authority is likely to consist of a part common to all of them but should also include a part which addresses any particular implications for that individual authority.
- 7.3.5 Our expectation is that the 'governance arrangement' will in each year approve projected business rate income and subsequently review/reconcile the actual income. With notional allocations being made and a subsequent review to ensure notional allocations had been paid/committed with a process to deal/reallocate any underspent amounts.
- 7.3.6 If the Participating Authorities decide to appoint one of their members as the lead authority, the MOU or Inter Authority Agreement will need to recognise this. The lead authority will need protection that the consequences of certain actions taken in its name are shared (e.g. through indemnities and financial compensation mechanisms) and conversely, the other authorities will need to be protected from the unauthorised actions of the lead authority, the issue of joint and several liability and will want reassurance that should any payments be made by the Secretary of State to the lead authority under Schedule 7B paragraph 38(3) that these are equitably redistributed.

8 Conclusion

- 8.1 We would recommend either Option 2 or 3 involving a designated lead authority delegated with the role of undertaking the bulk of administrative decisions and supported by a meeting of representatives.

- 8.2 If Option 2 were adopted then it should be borne in mind that the elected member representatives could not validly take decisions at the bi-annual meetings, hence they would be consulted in advance.
- 8.3 If Option 3 were pursued then the officer representatives could be delegated with authority to make decisions on behalf of their authorities.
- 8.4 Meetings could be convened biannually during the financial year. The pilot arrangement would be documented in a MOU and then in due course in an Inter Authority Agreement if felt advantageous to do so.

Trowers & Hamlins LLP
Ref: HZR
15 November 2017



Dated 16 November 2017

London Councils

Business Rates Pilot Pool

Legal Note on Executive Functions

Trowers & Hamlin LLP has produced this advice solely for the benefit of London Councils and does not assume any responsibility or liability to any third party in respect of the contents or accuracy of this advice.

Trowers & Hamlin LLP
3 Bunhill Row
London
EC1Y 8YZ
t +44 (0)20 7423 8000
f +44 (0)20 7423 8001
www.trowers.com

trowers & hamlin

Circulation Draft dated 16 November 2017

1 **Query: is participation in a business rates pool in pilot and entry into a Memorandum of Understanding an executive function?**

1.1 The relevant functions¹ are:

1.1.1 administrative functions as a billing authority² pursuant to the Non-Domestic Rating (Rates Retention) Regulations 2013, [and GLA only, administrative functions as a major precepting authority pursuant to s.39(1)(aa) of the Local Government Finance Act 1992];

1.1.2 entry into the Memorandum of Understanding (**MOU**) as ancillary and incidental to those functions pursuant to s.111 Local Government Act 1972³;

1.1.3 appointment of a representative for consultative purposes.

1.2 With regards to the administrative functions and the entry into the MOU, the Secretary of State has not made any regulations under s.9D(3) Local Government Act 2000 (**LGA 2000**). Therefore by default, the above functions fall to be the responsibility of the executive of the local authority under executive arrangements pursuant to s.9D(2) LGA 2000. Nor are the above functions listed in The Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Hence under s.9DA(2) LGA 2000 the above functions are exercisable by the executive.

1.3 Moreover, pursuant to s.9E LGA 2000, any functions which under the arrangements are the responsibility of "*(a) a mayor and cabinet executive, or (b) a leader and cabinet executive (England), are to be discharged in accordance with this section*"⁴. The "*senior executive member - (a) may discharge any of those functions, or may arrange for the discharge of any of those functions - (i) by the executive, (ii) by another member of the executive, (iii) by a committee of the executive, (iv) by an area committee, or (v) by an officer of the authority*"⁵. Therefore, if operating executive arrangements, the decision with regard to the participation in the business rates pool and signature of the MOU can be made by the mayor and cabinet executive, or the leader and cabinet executive, or senior executive member, or by any other duly empowered individual or meeting in accordance with s.9E LGA 2000 and the authority's scheme of delegation.

¹ "Function" means a function of any nature, whether conferred or otherwise arising before, on or after the passing of this Act: LGA 2000 Act s.9D(9). Any reference in Pt 1A to the discharge of any functions includes a reference to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the discharge of those functions: 2000 Act s.9R(5): see *Champion v North Norfolk DC* [2013] EWHC 1065 (Admin) (para.1-36) (Cross on Local Government Law (2017, Sweet & Maxwell))

² 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 Boroughs² as billing authorities and the GLA is also a precepting authority pursuant to section 39 (1) of the Local Government Finance Act 1992.

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*".

⁴ s.9E(1)(a), (b) Local Government Act 2000

⁵ s.9E(2) Local Government Act 2000

- 1.4 The resolution also involves "appointment of a representative for the purposes of consultation". It is our view that this can similarly be regarded an "executive function" as it:
- 1.4.1 Will not involve the appointment to an external body per se; and
 - 1.4.2 Provided the appointment does not constitute a change of "office",
- 1.5 Then the resolution to delegate this consultative role does not fall within Schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000, 'Functions which may be (but need not be) the responsibility of an authority's executive'.
- 1.6 However, whether a change of office is triggered (thus engaging paragraph 19⁶ of Schedule 2) will depend upon the authority's own scheme of delegation and the terms of the relevant individual's current official mandate.
- 1.7 It is anticipated that the Leaders' Congress will be informed as to the outcome of the Lead Authority's decisions regarding SIP allocation to projects under the London Business rates pool but the Leaders' Congress will not be making decisions on this issue.⁷.

Trowers & Hamlins LLP
Ref: HZR
16 November 2017

⁶ Schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 'Functions which may be (but need not be) the responsibility of an Authority's Executive'

⁷ "the appointment of any individual - (a) to any office other than an office in which he is employed by the authority; (b) to any body other than – (i) the authority; (ii) a joint committee of two or more authorities; or (c) to any committee or sub-committee of such body, and the revocation of any such appointment" may be (but need not be) the responsibility of an authority's executive"-Paragraph 19 of Schedule 2 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

London Business Rates Pooling Pilot

Draft Resolutions for Participating Authorities

That Cabinet resolves to:

With respect to Establishment of Governance Arrangements:

1. 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;
2. participate in the London Business Rates Pilot Pool with effect from 1 April 2018 to 31 March 2019;
3. 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. 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];

With respect to Entry into the Memorandum of Understanding:

5. delegate authority to the Chief Finance Officer [in consultation with the Deputy Leader and Cabinet Member for Finance] to agree the operational details of the pooling arrangements with the participating authorities;
6. 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 Chief Finance Officer [in consultation with the Head of Legal Services] to negotiate, finalise and execute the same on behalf of the authority;

With respect to Operation of the Pool:

7. to authorise the Leader of Merton Borough Council 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;

8. delegate to [Senior Executive Member/Officer/Committee] 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.

(Optional as these issues will be covered in the Memorandum of Understanding);

9. 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.

(Optional as these issues will be covered in the Memorandum of Understanding.)

This page is intentionally left blank