

Governance Principles: Enterprise Zones

(Principles to form basis of a Collaboration Agreement across 4 Local Authorities and the PMO)

1. Background

- 1.1 This paper sets out the principles and framework for managing the programme, funding, and monitoring of the Black Country Enterprise Zone (BCEZ), including:
- The process for the collection and distribution of the Business Rates Uplift
 - The process for monitoring the Business Rate Uplift and transfer of Business Rates Surplus to the Single Accountable Body (SAB).
 - Collaborative working between Local Authorities (LA), including joint working on the Financial Model
 - Prioritisation of costs to be funded from business rates
 - Principles of borrowing, payback and the collection of surpluses or non-business rate income generation.
- 1.2 This paper must be considered in conjunction with the Black Country LEP Assurance Framework (BCAF), as BCEZ funding must be compliant with this framework. The BCAF defines the officer and member groups referred to as part of its governance processes.

2. Definitions

- 2.1 **Business Rates** means the tax or taxes levied on non-domestic premises based on a local valuation of premises in accordance with The Local Government Finance Acts 1988 or such other act or regulation, statutory instrument as is currently in force.
- 2.2 **Business Rates Baseline Assessment** means the Business Rates assessment in respect of the Sites as at 31 December 2011 and 31 December 2016 for WWEZ and DY5 respectively, as approved by DCLG.
- 2.3 **Business Rates Uplift** means the Business Rates collected by Local Authorities at the end of each financial year above the Business Rates Baseline Assessment in respect of the Sites, net of bad debts and reliefs that are not recoverable from Government.
- 2.4 **Business Rates Surplus** means the net Business Rates Uplift remaining after deducting costs approved by the LEP, including but not limited to the repayment of Borrowing costs (capital repayment and interest) and revenue costs.

- 2.5 **Financial Model** means the excel based financial model developed and designed by Cushman and Wakefield, and used by each Local Authority and the SAB to forecast business rate uplift projections, costs, borrowing costs and Business Rates Surpluses within the BCEZ.
- 2.6 **Grant** means funds approved by the BC LEP and offered to either (i) a third party that is not subject to the Black Country Joint Committee Collaboration Agreement or (ii) a local authority where there are specific terms and conditions that fall outside of the BCEZ Collaboration Agreement,
- 2.7 **Income generation** means the surplus or a profit generated as a result of EZ funding or borrowing supported by EZ funding, identified by the SAB's professional technical advisors as part of the project's due diligence assessment.
- 2.8 **NNDR1 Forecast** means the National Non-Domestic Rates Provisional Return form designed to calculate and report the LA's estimated amount of non-domestic rates it will collect each financial year.
- 2.9 **NNDR3 Outturn** means the National Non-Domestic Rates Outturns form designed to reconcile and report the LA's actual non-domestic rates collected.
- 2.10 **Surplus Sites** mean BCEZ sites that are forecast to create a net Business Rates Surplus on a stand alone basis. These sites create excess business rates by the end of the relevant enterprise zone, after taking into account borrowing costs. These sites therefore self-fund over the BCEZ lifetime, and create additional funding that can be re-invested into BC LEP priorities.
- 2.11 **Deficit Sites** mean BCEZ sites where the borrowing costs are forecast to exceed the business rates generated by the end of the relevant enterprise zone. These sites would require cross-subsidy from other surplus generating sites in the BCEZ, or alternative funding in order to be delivered/fully funded.

3. **Governance**

- 3.1 Projects/sites seeking investment via the BCEZ will be required to submit an Initial Proposal (IP) to PMO for review, in line with the existing Black Country Assurance Framework (BCAF).
- 3.2 The IP financial information must be as recorded in the BCEZ Financial Model, so that the Programme Management Office (PMO) at BCC and the SAB can understand the funding ask in the context of the wider model outputs. If in drafting the IP the LA or PMO

consider that the Financial Model needs updating, the relevant LA must update the template data tabs and submit these to the SAB prior to submission to the PMO.

- 3.3 If the IP is supported and the Financial Model is forecasting that funding is available to support the investment (or any other BCLEP funding is available), the project will follow the BCAF process (section 4.16 Project Lifecycle).
- 3.4 All Assurance Framework report templates will be updated for risks and financial implications specific to the Enterprise Zones funding mechanism.

4. Roles and Responsibilities

- 4.1 **BC LEP:** In accordance with BCEZ bid submissions and memorandums of understandings with the Cities and Local Growth Unit (CLGU), the BCLEP Board will make strategic investment decisions in relation to the BCEZ, including reinvestment of retained business rates and prioritisation of BCLEP funds to ensure BCEZ delivery.
- 4.2 **BC Pipeline:** The list of priority Black Country pipeline projects initially developed by the Black Country Pipeline Group, a time limited task and finish group set up by The Association of Black Country Authority (ABCA) Leaders. ABCA tasked the LEP and four Black Country Local Authorities to review Delivering the Black Country Priorities with a view to refreshing the pipelines. Although the group is time-limited, the BC Pipeline will be an ongoing and live set of pipeline projects, refreshed on an ongoing basis by the Local Authorities and the BCC.
- 4.3 **Local Authorities** are responsible for:
 - The day to day running and management of sites within the BCEZ within their own geographical area, including engagement with land owners, project management (including obtaining specialist consultancy and legal support where required), financial modelling and marketing.
 - Producing business cases as landowner/project lead, or supporting private land owners/developers in preparing business cases, for investment falling in their geographical area. Financial modelling completed as part of the business case must be shared with the SAB at the earliest opportunity so that the master Financial Model can be updated.
 - Borrowing for projects that have been approved by the BCLEP that fall within their geographical area. For the avoidance of doubt each Local Authority will remain

responsible for repayment of its own borrowings and meeting associated interest and loan servicing costs.

- Collecting the Business Rates for those Sites within their own Borough in accordance with the Local Government Finance Acts (Local Authorities are empowered under The Local Government Finance Act 2012 to retain and distribute business rates revenues from April 2013 and the Programme is in accordance with the Local Government Act 2000, The Localism Act 2011 and the Non-Domestic Rating Contributions (England) (Amendments) Regulations 2012).
- Prepare and submit financial returns/claims, with supporting evidence as required in Section 8.
- Transferring the Business Rate Surplus to the SAB in accordance with Section 8.
- Providing quarterly information to the PMO as required for reporting to Business Energy and Industrial Strategy (BEIS). This information must reflect information as reported in the Financial Model, and must be submitted at least 10 working days in advance of any reporting deadlines as set by the department for BEIS.
- Updating the input tabs to the Financial Model and reporting changes to the SAB as changes become known (i.e. as per 3.2) but as a minimum on a quarterly basis, at the same time as information is submitted to the PMO for BEIS returns.

4.4 The **Programme Management Office** at the Black Country Consortium are responsible for:

- Supporting the Local Authorities with consolidated and individual site marketing of the BCEZ.
- Co-ordinating quarterly returns to BEIS, for the SAB to review and sign off prior to submission by the PMO.
- The production and publication of the monthly BCEZ dashboard, working in collaboration with the LAs, with information to be provided by the LA EZ lead officers.
- The assessment and review of any full business cases for any BCEZ sites that come forward for development and investment. This may include and is not limited to independent appraisals by Thomas Lister and direct liaison with any applicants.

- Should any BCEZ sites be put forward for funding approval to the Funding sub group and subsequent boards, this will require the PMO to prepare any reports required to ensure that the approval process is adhered to and compliant with the Assurance Framework. In accordance with the Assurance Framework, the full business case shall include a named Senior Responsible Officer for that site.

4.5 The **SAB** is responsible for:

- Ensuring that decisions made by the BCLEP are carried out in line with the Assurance Framework and any other BCLEP approved governance arrangements
- Carrying out the secretariat function to the Joint Committee for BCEZ matters.
- Reviewing and signing off quarterly BEIS returns prepared by the PMO.
- Ownership and updating of the Financial Model. SAB will hold and maintain the Master version.
- Maintaining a consolidated running balance of the total Business Rate Uplift collected and transferred by and between the Parties and the total Borrowing position. Ensuring that costs across the BCEZ are claimed in line with the agreed priority order (Table 1).
- Reporting to the BC Implementation Group (as defined in the Assurance Framework), and any group within the Assurance Framework as considered necessary, on the latest consolidated BCEZ financial position, including business rate uplift, expenditure, risk, borrowing and business rate surplus position when there are significant changes.
- Undertaking monitoring and compliance procedures on projects within the BCEZ in accordance with the Assurance Framework, or any other BCLEP approved governance processes.
- Providing legal and financial and other professional assistance specific to BCEZs to the Black Country Implementation Group if required
- For the avoidance of doubt the SAB will be a formal consultee on reports submitted into the process, up to and including the LEP's Funding Sub Group and LEP Board, together with the BC Joint Committee as set out within the Assurance Framework, and be able to suggest amendments. All amendment will be agreed with the report

author or other appropriate officer on their behalf. If there are disagreements about suggested amendments, this will be escalated to the Chief Executive of BCC Ltd to resolve.

5. Financial Model

- 5.1 The Financial Model is based on a set of financial assumptions, including level of provisions for business rates income and capital expenditure, borrowing assumptions and interest rates. The SAB will review the assumptions on a timely basis to consider if they are still appropriate as the BCEZ evolves over time. Other Local Authorities within the EZ will be consulted on proposed changes and model assumptions will only be updated if mutually agreed by all parties.
- 5.2 If changes to assumptions have a material impact on the outputs of the Financial Model, including the Business Rate Surplus, these changes will be reported to the next available BCEZ Implementation Group, and BC Funding Sub-Group that timescales allow before any further funding decisions are made.
- 5.3 Each Local Authority is responsible for updating the model input tabs when (a) actual spend replaces forecasts and (b) forecast change, and returning these amended tabs to the SAB quarterly, at the same time information is submitted to the PMO for BEIS returns. This includes ensuring Business Rates income data is updated to reflect NNDRs
- 5.4 As a result of Local Authorities owning and updating their own input tabs, each Local Authority will have their own version of the Financial Model for their own geographical area although the consolidated model will be shared regularly or on request.

6. Eligibility and priority order of costs

- 6.1 The Financial model assumes that prudential borrowing will be utilised to fund otherwise unfunded capital costs approved by the BCLEP, which will be repaid using the future business rates uplifts generated within the BCEZ. Borrowing must only be undertaken for costs which meet International Financial Reporting Standards for capitalisation. All other costs will be considered to be Revenue Costs.
- 6.2 Such capital infrastructure may include, but is not limited to: Remediation; Site access (including third party acquisitions); Utilities; Land Assembly; Site preparation; On or off-site works that may be required by a Planning Permission; the Highways Agency; the Environment Agency; Canal and River Trust; and other utilities and statutory bodies or any other works reasonably required.

6.3 Revenue costs may still be recovered from future business rates but not via borrowing and are also subject to BCLEP and BCJC approval. Such costs may include those incurred by LAs, the PMO and the SAB to carry out their responsibilities in accordance with Section 3. This includes the LA five year development funding allocation of up to £250,000 per annum included in the financial model. Any revenue costs incurred by LAs or the BCC will need to be cash-flowed by the entity in which they are incurred until there is sufficient Business Rates generated to repay them, in the priority order as set out in Table 1 (6.4).

6.4 The priority order of costs to be allocated to business rates is set out in Table 1 below:

#1	Borrowing costs surplus sites approved by the BC LEP before 30 April 2020. (CAPITAL)	LAs are already taking the risk on these sites and without these being delivered, EZ surpluses would not be generated. This category includes i54, Phoenix 10, Boxpool. Borrowing costs will be recovered over the life of the BCEZ, as set out in section 7. Note that these sites would not receive cross subsidy if they became deficit sites unless cross subsidy is approved by the BC LEP. See point 8.9 below.
#2	Historic revenue costs up to 2019/20 where previous agreements are in place (REVENUE)	This is specifically Dudley historic revenue costs, which were included in the DY5 submission. Posts were appointed on this basis, hence basis for higher rank than other historic revenue costs. These costs are covered by DY5 business rates by 2020/21.
#3	Programme Management costs from 19/20 onwards (REVENUE)	SAB and PMO programme management costs, as there are no existing budgets to fund these costs. Also covered by recent MHCLG guidance on Assurance Framework.
#4	Black Country Transport Director costs	Transport Director costs for 4 years from 2021/22, where no alternative funding has been identified.
#5	Historic revenue costs to March 2020 (REVENUE)	Covers Wolverhampton Council and Walsall Council audited historic costs.. Historic costs are to be recovered over 10 years from 2020/21.

#6	Future revenue costs from April 20 onwards (REVENUE)	<p>This includes the following based on the Financial Model's rolling forecast:</p> <ul style="list-style-type: none"> • Up to £250,000pa development funding per Local Authority for 5 years from 2020/21. • Up to £10,000pa compliance and monitoring costs per LA after the 5 year period ends. <p>This is for development of named projects in the BC Pipeline and/or development of BCEZ sites including marketing. It must also cover EZ monitoring and compliance costs. If unused, it may be permitted to roll these budgets forward but only if it is considered critical to bringing key BC schemes forward. Allocations, variations and slippage will be approved by the BC LEP.</p>
#7	Borrowing costs on future LEP approved priority projects (CAPITAL)	<p>Investment could be in EZ deficit sites or non-EZ sites, but must be integral named sites mapped as part of the BC pipeline.</p> <p>Parameters of prioritisation of #7 projects will be approved by the BCLEP and the Local Authorities prior to the first #7 project being approved.</p>

6.5 BCEZ Surplus Sites yet to be approved can proceed outside of the prioritisation process, as these are forecast to be self-funding, plus will add a Business Rates Surplus to the BCEZ. Borrowing costs would only be recovered by the relevant LA in line with modelling of that site on a stand alone basis. There would be no further cross subsidies from the BCEZ and the risk of delayed recovery would sit with the sponsoring LA. These projects would also need oversight through the BC Pipeline group until that group ceases.

6.6 This means that surpluses generated across the BCLEP will be available to support BCEZ Deficit Sites or non-BCEZ sites, rather than being utilised to accelerate borrowing payments for surplus generating sites. For the avoidance of doubt, the implication of this is that LAs will only recover modelled and approved borrowing costs on an Equal Instalment of Principal (EIP) basis rather than a priority basis, meaning that there will be debt outstanding as surplus is accumulating and reinvested by the BCLEP.

6.7 The following conditions apply to any projects funded from the BCEZ:

- Projects must be in BC pipeline as a named key project, prior to seeking LEP approval.
- EZ should be funding of last resort. It must be demonstrated that all reasonable effort has been made to secure external funding prior to utilising EZ funding. This is to ensure the funding available to the BC LEP is maximised.
- Income generation on funded projects must be recycled back to the BCEZ or LEP funds. This will be agreed on a project by project basis, as advised by the SAB's professional technical advisors as part of the project's due diligence assessment

6.8 Applicants seeking funding support for projects that sit outside of the BCEZ boundaries, resulting in the BC LEP not receiving any Business Rate income from their investment, will be asked to set out what Income Generation is expected, together with proposals for sharing this Income Generation with the BC LEP.

7. Borrowing Principles

7.1 The model has fixed borrowing assumptions which at the date of this report are as follows:

- Borrowing is repaid on an EIP basis
- Interest rate forecast set at 4% rate
- Loan period commences in the year of investment and repayments are equally spread in half year instalments until the end date of either the WWEZ or DY5, depending on which location the investment is incurred.

The SAB may review the above assumptions in consultation with other LA as set out per 5.1. All site capital investments will be modelled based on the fixed borrowing assumptions for the purpose of seeking BCLEP approval.

7.2 Reports to the BCLEP seeking approval for capital investment should set out the borrowing profile as extracted from the Financial Model.

7.3 Local Authorities will follow their own Treasury Management rules and processes to take the most efficient loan or other method of financing the capital costs. It is therefore understood that actual borrowing undertaken by a Local Authority may not necessarily match the modelled assumptions, but claimed amounts will be based on the financial

model.

- 7.4 The interest rate in the financial model will be updated annually to a blended average interest rate for that financial year agreed by all LAs, which is supported by published rates. This will be the rate used for claiming borrowing costs (section 8), so that modelled and claimed interest will match actual interest costs as closely as possible.
- 7.5 Claiming borrowing costs on a blended average rate is the simplest approach for Local Authorities recovering their borrowing costs.
- 7.6 In the event that interest rates significantly change which results in a material variance between actual interest rates and claimed interest rates, then the approach and policy as stated in 7.4 will be reviewed by all 4 LA finance representatives and the policy will be amended so that the gap becomes immaterial.
- 7.7 For the avoidance of doubt, due to
- (i) the complexities of identifying actual borrowing costs incurred at Local Authorities due to their Treasury departments using a blend of resources depending on their cash-flow at a particular point in time;
 - (ii) the complexities in managing and updating a financial model using different types of borrowing (i.e. EIP, priority repayment and annuity loans) for each individual item of capital expenditure
 - (iii) seeking to match the actual surplus being generated as close as possible to the forecast surplus

the borrowing costs will be claimed back on the EIP basis and set interest rate as modelled.

- 7.8 The Local Authorities will be responsible for updating the Capital input template for actual capital costs, and this will be reviewed by the SAB.
- 7.9 Borrowing costs of each LA may be claimed from Business Rates Uplift collected by each LA on the agreed priority order from Table 1, on the basis that the investment is within the same geographical area. This is set out in the Claims process (section 8).
- 7.10 Repayment of borrowing costs are based on the financial model but Local Authorities must understand and accept that this is only a forecasting tool. Actual Business Rate Surpluses may differ to modelled surpluses meaning that Local Authorities may not recover their borrowing costs in line with the model forecast at the time of the funding

decision. Therefore, borrowing costs being recovered over a longer period than forecast and potentially not completely is a risk that will sit with each Local Authority borrowing for investment in their geographical area.

7.11 On this basis:

- Local Authorities will carry the risk on borrowing being repaid over a longer period than forecast for surplus sites within their geographical area. This will be somewhat mitigated by robust modelling and prudent assumptions being included for investment decisions, meaning LAs will be fully aware of the risks at the point of investment.
- Non EZ sites and EZ deficit sites will be reliant on surpluses forecast on other sites being realised, after minimum borrowing costs being recovered for approved surplus sites. Options include waiting until surplus is sufficient to fund the next priority investment before incurring spend, or a LA would be required to borrow at risk against a future forecast surplus.

8. Claims process

- 8.1 Each LA will be required to submit a Claim form to the SAB every 6 month by 28 February and 31 August. This return will set out capital and revenue expenditure charged to the BCEZ, Borrowing costs claimed, Business rates Uplift and Business Rates Surplus.
- 8.2 The first return shall include historic information as required per 8.1 from the start of the Enterprise Zone up to the date of the first claim.
- 8.3 The audited NNDR 3 should be submitted with the August claim and agree or reconcile to the August claim. Local Authorities will be responsible for setting their own provisions per their NNDRs although details on provision assumptions included against Enterprise Zone business rates in the NNDR will need to be provided as part of this return.
- 8.4 The SAB will then complete a consolidated summary of income and costs to date, based on LA bi-annual returns, and will allocate income to costs in the agreed priority order (Table 1). Any shortfall falling in a cost category will be prorated across the 5 entities (shortfall as % of total requirement), and will be recouped on the next claim if there is sufficient funds.

- 8.5 If a shortfall is identified on the consolidated summary, the business rates on the next claim (“new period”) will first be applied to Category #1 in Table 1 (Borrowing costs surplus sites approved by the BC LEP as at 30 April 2020), in that same new period. The next priority will be backdating shortfalls for cost categories on the previous claim/period in the same priority order. Once shortfalls have been met from the previous period, the rates income will then be applied to cost categories #2 to #7 in the usual way. In the event of a shortfall, the SAB, in consultation with the PMO, will reassess the financial model to confirm if this is a temporary in-year issue that will correct the following financial year, or if the costs are becoming unaffordable or need rephasing. If it is the latter, then this issue will be raised at the earliest opportunity through the BC Pipeline Group (until this group exists or its equivalent), and Heads of Regeneration, to consider collectively if revenue cost allocations need to be re-assessed, either short term or long term. However, with regular (minimum quarterly) updates to the financial model by LAs and review on a consolidated basis by the SAB, forecast deficits should be flagged and early warnings triggered in advance.
- 8.6 For Category 7, when there are multiple projects within this category, shortfalls will be applied to projects within this Category on a prorated basis, in proportion to the amount of gross capital investment (borrowing requirement), unless agreed otherwise through the BC Pipeline Group, and Heads of Regeneration. This will then require approval by the BCLEP.
- 8.7 The consolidated summary and reconciliation will be completed prior to any surplus being paid to the SAB. The SAB will then confirm cash transactions between LAs required to settle the order.
- 8.8 Where there is cross-subsidy of projects across different geographical areas (i.e. for sites that generate a net Business Rate deficit), the SAB can only pay across a surplus it holds where there is actual business rate surplus collected in real cash terms, and only in accordance with the priority order. The SAB will not be using its own Council revenue resources to pay for another Local Authority borrowing costs. This surplus will be paid across to Local Authorities in the priority order as set out in Table 1.
- 8.9 For sites that were forecast to generate a surplus at the time of an investment decision that turn into a deficit generating site, the non-recoverable costs will be borne by the Local Authority until the BCLEP approve the additional costs should funding be available. These additional costs will need to be assessed and prioritised against other projects in the BC Pipeline.

- 8.10 The Local Authority will provide transaction lists supporting the Capital and Revenue Expenditure lines in the Claim form. A sample of charged expenditure will be selected by the SAB, for which the relevant LA will be required to submit supporting evidence. The sample size will increase if errors are identified or there is insufficient evidence supporting the costs.
- 8.11 Each Local Authority or the PMO shall be liable for any cost implications or irregularities or errors attributable primarily to it and identified. Any changes required will need to be processed through the Change Control process within the Assurance Framework.
- 8.12 The SAB will maintain a running balance of the total Business Rate Uplift collected and transferred by and between the Parties and the total Borrowing position.
- 8.13 Evidence for Capital Expenditure should be third party evidence where available i.e. invoices, contractor certificates. No evidence for defrayal is required unless only internally generated evidence can be provided for capital expenditure. Internal staff costs charged to capital should be on the basis that the staff time is clearly attributable to the site and meets Capital rules. Therefore, time recorded should be supported to timesheets.
- 8.14 Third party evidence will also be required to support revenue costs. For internal management costs, evidence to support staff time claimed as a true and fair assessment of time spent on the Enterprise Zone will be required. Although time sheets would be the most desired form of evidence it is understood that this is not always a practical, time efficient method of claiming staff time. Therefore, staff should be able to demonstrate through other evidence over a fixed period of time (i.e. calendar invites or outputs) that the proportion claimed is a reasonable assessment of time attributed to the Enterprise Zone or eligible BC Pipeline projects. Once sampled and evidence is satisfactory, such staff apportionment evidence relating to a particular post will not be selected in further samples or require evidence for a period of no less than one year, unless the SAB becomes aware of a change in role of the sampled officer.

9. Grant Agreements

- 9.1 Local Authorities will be required to borrow for projects in their Geographical area.
- 9.2 Local Authority projects: Once the Collaboration Agreement is in place, there will be no requirement for additional funding agreements between LAs to cover revenue costs or borrowing undertaken for a project. Funds will be managed through the claims process in section 8, although if there are project specific terms and conditions that fall outside of this BCEZ Collaboration Agreement, including but not limited to such overage or profit share then individual legal agreements and undertakings will be put into place.
- 9.3 Non - Local Authority projects: Individual LAs will enter into grant agreements with third party applicants in their geographical area where borrowing is required to fund the grant. Because LAs will be taking the risk on the non-recovery of the borrowing which funded the grant, they will need to control some of this risk through their own grant agreements with applicants. This will enable them to set their own grant conditions in addition to those set out in 9.5 below.
- 9.4 The grant agreements must:
- (a) comply with the BCAF, including all monitoring and compliance arrangements that will be carried out by the SAB
 - (b) comply with the BCEZ legal agreement / collaboration agreement that will be based on this report.
 - (c) capture any conditions as set out in the Technical Appraisal and LEP Board approvals
 - (d) where possible, and where LAs consider necessary to manage their risk of non-recovery of borrowing costs, specifically ensure that there is onus on the applicants to deliver on the business rates payable, which is ultimately funding the scheme
 - (e) ensure that the necessary security arrangements are in place to manage local authority and BCLEP risk, proportionate to the value of the grant
- 9.5 Prior to entering into a grant agreement the Local Authorities must carry out the appropriate due diligence and obtain evidence of any other match funding.
- 9.6 Although the Local Authorities will be responsible for issuing the grant to third parties in their geographical area, the SAB would be able to support the drafting and development of the grant agreements should Local Authorities wish to purchase this service.

9.7 If however a project (either Local Authority or non Local Authority) is awarded a grant from the business rates surplus and borrowing is not required, then a grant agreement will be put in place by the SAB.