



CABINET

10 December 2014

Subject Heading:

**Formal Variation London Councils
Transport & Environment Committee
Governing Agreement**

Cabinet Member:

Councillor Robert Benham

Cabinet Member for Environment

CMT Lead:

Cynthia Griffin

Group Director for Culture, Community
and Economic Development

Report Author and contact details:

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Policy context:

London Councils Transport & Environment
Committee Governing Agreement

Financial summary:

No financial implications

Is this a Key Decision?

Yes. Because London Councils TEC
Governing Agreement is a corporate
matter and thus covers all Wards

When should this matter be reviewed?

This is a unique decision with no
requirement for a future review

Reviewing OSC:

Environment

The subject matter of this report deals with the following Council Objectives

| | |
|--|-------------------------------------|
| Ensuring a clean, safe and green borough | <input checked="" type="checkbox"/> |
| Championing education and learning for all | <input type="checkbox"/> |
| Providing economic, social and cultural activity in thriving towns and villages | <input type="checkbox"/> |
| Valuing and enhancing the lives of our residents | <input checked="" type="checkbox"/> |
| Delivering high customer satisfaction and a stable council tax | <input type="checkbox"/> |

SUMMARY

This report seeks Cabinet approval for the Council to expressly delegate to London Councils Transport and Environment Joint Committee (TEC) the exercise of section 1 of the Localism Act for the sole purpose of providing a parking on private land appeals service (POPLA) for the British Parking Association (BPA) under contract.

POPLA provides an independent resolution for non-statutory parking charges issued by companies to motorists for alleged unauthorised parking on private land, such as for example car parks in retail parks. Its establishment was mandated by central government as part of the Protections of Freedoms Act 2012 and the BPA were asked to provide it. POPLA should not be confused with the Parking and Traffic Appeals Service (PaTAS) which is mandated to provide independent adjudication in respect of Penalty Charge Notices (PCNs) issued by Councils under the Traffic Management Act 2004.

POPLA was established in October 2012 by London Councils using the delegated authority conferred upon it by all London Borough Councils under London Councils TEC Governing Agreement. Since its inception POPLA has been provided on a cost recovery basis with therefore no financial burden falling upon London Borough Councils and it is proposed that it will continue in that way until the end of the current POPLA BPA contract in October 2015.

London Councils auditors, PWC, have recently raised a concern as to whether or not London Councils TEC Governing Agreement provided it with the specific delegation authority required to initiate and administer a POPLA service in contract with the BPA. London Councils consider that its delegation authority is not deficient and so the POPLA BPA contract is sound. However, London Councils believe that a reaffirmation of the Governing Agreement, and so its delegation authority, by all London Borough Councils will confirm, for the avoidance of any doubt, that the existing POPLA BPA arrangements are and have been delivered appropriately and that London Councils TEC Governing Agreement is formally varied accordingly. Additionally, a reaffirmation would also allow London Councils' auditors, PWC, to conclude an outstanding issue in relation to an objection to London Councils 2012/2013 accounts.

RECOMMENDATIONS

That Cabinet:

1. Confirms that the exercise of functions delegated to London Councils TEC to enter into the arrangement with the British Parking Association to deliver the Parking on Private Land Appeals service were and continue to be delivered pursuant to section 1 of the Localism Act 2011;
2. Delegates the exercise of section 1 of the 2011 Act to London Councils TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract; and
3. Agrees to take all relevant steps to give effect to the matters set out in (1) and (2) above through a formal variation to the London Council TEC Governing Agreement

REPORT DETAIL

1. On 15th March 2012 London Councils TEC agreed that it should bid to provide a parking on private land appeals service (POPLA) for the BPA under contract on the basis that the POPLA service would complement the service provided by the Parking and Traffic Appeals Service (PaTAS), which operates under the auspices of London Councils, and that manages Civil Parking Enforcement appeals arising from the type of parking enforcement carried out by all London Borough Council's using the Traffic Management Act 2004.
2. London Councils considered that it providing a POPLA service on a cost recovery basis would be in the public interest as a significant proportion of the public affected and inclined to use a POPLA service were likely to come from the Greater London area; additionally it became clear London Councils TEC was the only interested, qualified bidder. On 14th June 2012, London Councils TEC received a report noting the BPA had agreed a contract for London Councils to provide a full cost recovery POPLA service starting on the 1st October 2012.
3. Latterly, following the commencement of the POPLA service, an objection was raised on London Councils consolidated 2012/13 accounts by an interested person claiming that London Councils TEC did not have the legal power to provide the POPLA service. London Councils' auditors, PWC, investigated the objection and discussed the same with the Audit

Commission who subsequently advised PWC that London Borough Council's have powers under Section 1 of the Localism Act 2011 to provide the POPLA service and that they can delegate those powers to London Councils TEC. However, the Audit Commission questioned whether the exercise of those powers had been properly delegated by London Borough Council's to London Councils TEC?

4. The issue turns on whether London Councils TEC had existing delegated authority under the terms of the London Councils TEC Governing Agreement or alternatively whether there was a made or confirmed delegation by virtue of the decisions London Councils TEC made to provide the POPLA service in 2012; or whether each individual London Borough Council should have expressly resolved to delegate the exercise of section 1 of the 2011 Localism Act to the London Councils joint committee for the purposes of London Councils TEC's delivery of the POPLA service, with the London Councils TEC Agreement being formally varied accordingly.
5. London Councils and its legal advisors are of the view that the POPLA service is currently being delivered by London Councils TEC on a lawful basis on behalf of all the participating London Borough Council's with their consent and proper authority under the existing terms of the London Councils TEC Governing Agreement, and as confirmed by the same committee when resolving to provide the POPLA service in 2012 with those matters having been raised with London Borough Council's prior to those decisions being taken in the normal way in respect of London Councils TEC business. However, London Councils accept that there is room for argument as to whether individual Council's had to state expressly that they agreed that the arrangement with the BPA was pursuant to exercise, by London Councils TEC, of their powers under section 1 of the Localism Act 2011.
6. Taking active and expedient steps to expressly clarify the authority of London Councils TEC to deliver the POPLA service is intended to satisfy London Councils' auditors and inform their determination in respect of the objection raised by the interested member of the public on the consolidated accounts for the 2012/13 year.
7. Accordingly, for the avoidance of doubt and to facilitate a conclusion to the issue directly impacting London Councils, viz the Auditor, PWC, and the objector, it is recommended that the London Borough of Havering, in common with all London Borough Council's:
 - a. formally confirm that the exercise of functions delegated to TEC to enter into the arrangement with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011;
 - b. formally resolve to expressly delegate the exercise of section 1 of the 2011 Act to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract; and
 - c. take all relevant steps to give effect to the matters set out in (a) and (b) above through a formal variation to the TEC Governing Agreement

REASONS AND OPTIONS

Reasons for the decision:

1. To expressly clarify and ensure the avoidance of any doubt in relation to the level and scope of the delegated authority of London Councils TEC Governing Agreement conferred upon it by the London Borough of Havering.
2. To ensure that the London Borough of Havering is professionally and ethically maintaining its responsibilities towards the London Councils TEC Governing Agreement by ensuring that delegated decisions are made transparently, legally and are able to withstand public scrutiny.
3. To facilitate London Councils' in satisfying its auditors in respect an objection raised by an interested member of the public in relation to London Councils consolidated accounts for 2012/13
4. To ensure that London Councils TEC are able to continue to deliver the POPLA service on a full cost recovery basis without therefore burdening the public purse

Other options considered:

The option of the Council not taking the actions recommended by London Councils has been rejected as being potentially unethical. Additionally, not taking the recommended actions could bring the Council into disrepute and isolate it from a core operational and strategic partner.

IMPLICATIONS AND RISKS

Financial implications and risks:

There are no specific financial implications arising from the recommendations of this report upon the Council.

Legal implications and risks:

Pursuant to Regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012, the Council's Executive has power to delegate executive functions to a joint committee of local authorities. In this case the London Councils TEC committee is a joint committee of all London Boroughs and with all other constituent councils by authorising that joint committee to discharge its executive functions with regard parking on private land, the joint committee can provide a pan-London parking on private land appeals service.

There are no immediate legal implications arising from this report, though failure to effect the delegation would have an adverse impact on persons parking on private land in Havering who would not be able to have recourse to the POPLA service.

Human Resources implications and risks:

There are no Human Resources implications arising from the recommendations of this report upon the Council.

Equalities implications and risks:

This decision relates to the governance arrangements of the Parking on Private Land Appeals Service (POPLA) and therefore it is perceived that there are not any equality implications or risks related to staff or local residents with protected characteristics. An Equality Impact Assessment is therefore not required. Cleared by: Paul Green Corporate Policy & Diversity Advisor.

BACKGROUND PAPERS

1. Item 4; London Councils Transport & Environment Sub Committee report of the 11th September 2014: Report can be accessed at;
http://www.londoncouncils.gov.uk/committees/agenda.htm?pk_agenda_items=5722
2. Third Further Variation TEC Agreement 021014
3. Memorandum of Participation – 5th Variation (3rd Further Variation) to the TEC Agreement
4. Cover Letter to Directors of Law & Governance re 5th Variation to the LCTEC Agreement 021014