Agenda Item 7

Report to:	**Cabinet**
Date:	**15 October 2014**
By:	**Chief Operating Officer**
Title of report:	**East Sussex National Non Domestic Rates Pooling Agreement**
Purpose of report:	**To ask Cabinet to approve entering into the East Sussex National Non Domestic Rates Pooling Agreement.**

RECOMMENDATIONS:

Cabinet are recommended to approve entering into the East Sussex National Non Domestic Rates Pooling Agreement, and:

1. Endorse the Council's participation in an East Sussex NDR pool, this includes:

a) Endorse that the basic principle on which the agreement is based is that no authority will receive a lower level of funding than they would have received without the pool;

b) Endorse that any resources gained on the basis of the levy amount that was saved by individual authorities be shared on the following basis 40% to ESCC, 10% to the Fire Authority and the remaining 50% split amongst the District/Borough Councils;

c) That the finalisation of the submission, agreement of the Memorandum of Understanding, and the final decision on whether it is financial advantageous to partake in the pool is delegated to the Chief Finance Officer;

d) Chief Finance Officer to review the council's membership of the Pool on an annual basis; and

e) Note the lead authority in respect of the administration of the Pool will be Wealden District Council.

1. Financial Implications

1.1 Local authorities are free to come together to form pools for Non Domestic Rates (NDR) purposes. In such cases tariffs and top-ups can be combined – and this can result in lower payments being made to the government. Authorities within such arrangements need to agree how risks and benefits are shared. A pooling arrangement within East Sussex, covering the County, the five Boroughs and Districts and the Fire & Rescue service, could result in additional resources being retained within East Sussex. The estimates identify sums of £1.8m in 2015/16, £2m in 2016/17 and £2.2m in 2017/18 which would be shared between authorities and used for economic development purposes.

1.2 East Sussex County Council's share of the above would be £0.7m in 2015/16, £0.8m in 2016/17 and £0.9m in 2017/18.

1.3 The longer term benefit of operating a Pool arrangement is that a larger proportion of any increase in NDR resulting from economic development activity will be retained within the county.

2. Background

2.1 A new national funding regime was introduced on 1 April 2013 whereby local authorities effectively retain a proportion of any additional business rate income collected (above inflation) or conversely will experience a reduction in resources if the business rate base declines.

2.2 Under the scheme 50% of business rates is localised through a system of top-ups and tariffs that fix an amount to be paid by high yield authorities and distributed to low yield authorities – this amount being increased annually by inflation (RPI). The proportion retained by individual collection authorities in East Sussex is 40%, 9% is payable to East Sussex County Council, and 1% to Fire and Rescue authority (the government receive 50%).

2.3 The 50% central government share is distributed through the formula grant process (now termed Settlement Funding Assessment) – thus enabling the government to control the overall amount received by local authorities. Where there is disproportionate growth this will be used to provide a safety net for those authorities experiencing little or negative growth and allows the treasury to top slice business rates income.

A reset mechanism will be in place with the first reset in 2020 and periods of 10 years between resets thereafter.

3. Pooling

3.1 To date on a national basis there are 18 pools in operation, comprising 111 different authorities.

3.2 A report on the potential for pooling in East Sussex was first considered by the Leaders and Chief Executives/Directors of respective Councils on the 25 October 2013, with a subsequent report on the 25 April 2014 and more recently on the 25 July 2014 where all Councils agreed unanimously that an application should be submitted for 2015/16 on the basis of the arrangements and recommendations outlined in this report.

3.3 A company called LG Futures has been employed to collate and advise on the financial viability of the scheme, modelling some of the risks and identifying appropriate governance arrangements. LG futures will also help draft and coordinate the submission of an application on behalf of the seven authorities.

3.4 The issues are however complex and the financial figures and assumptions upon which the assessments are based are largely on the first year of a new funding stream and estimates for future years should be viewed with a level of potential change.

3.5 The 2015/16 pooling prospectus issued by the Department of Communities and Local Government (DCLG) makes it clear that a pooling application is unlikely to be approved merely on the basis that the pool will enable a greater level of business rates to be retained locally (to the detriment of the national pool). There will be a need for authorities therefore to agree a common objective to support any pooling application, for example making a clear link between economic development strategy, investment and consequent growth in the business rate base.

3.6 In brief the financial case for pooling remains strong. The joint application will need to be made by 31 October 2014 for it to apply in the 2015/16 financial year.

3.7 Agreement does need to be reached on a number of governance arrangements, namely:-
(1) Appointing a lead authority
(2) Supporting authorities that fall below the safety net
(3) Splitting the gains/losses from pooling
(4) Timetable and Authorisation
(5) Annual review

3.8 A summary of the suggested approach to each of these issues are set out on Appendix 1.

4. Recommendations

4.1 Cabinet are recommended to endorse:
a) The basic principle on which the agreement is based is that no authority will receive a lower level of funding than they would have received without the pool.
b) That any resources gained on the basis of the levy amount that was saved by individual authorities be shared on the following basis 40% to ESCC, 10% to the Fire authority and the remaining 50% split amongst the District/Borough Councils.
c) That the finalisation of the submission, agreement of the Memorandum of Understanding, and the final decision on whether it is financial advantageous to partake in the pool is delegated to the Chief Finance Officer.
d) The Chief Finance Officer to review the council’s membership of the Pool on an annual basis; and to
e) Note the lead authority in respect of the administration of the Pool will be Wealden District Council.

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Appendix 1

East Sussex National Non Domestic Rate Pooling Agreement

The following paragraphs provide background to the general assumptions that will be used in finalising the terms of the agreement.

1. Appointing a Lead Authority

1.1 A lead authority will need to be named in the application. It has already been agreed that LG Futures will be contracted to advise the pool in 2015/16 (should an application be successful), and this will also provide a degree of objectivity and impartiality for all parties. The very limited costs being shared equally between the seven authorities.

1.2 Wealden DC has indicated that they would be prepared to undertake the role of lead authority to administer and manage the operation of the pool.

2. Supporting Authorities that fall below the Safety Net

2.1 Currently if local authorities suffer significant reductions in the business rate tax base, a safety net is applied to restrict losses in any one year to 7.5% of a Council's baseline funding level.

2.2 Authorities need to jointly agree as a basic principle that no authority will receive a lower level of funding than they would have received without the pool i.e. than under the current DCLG scheme.

2.3 Therefore if one of Boroughs and Districts was to see a reduction in their business rate collected because of loss of a major business, that loss would be covered by the retained levies from the other authorities, before the residual gain is shared between the seven authorities.

2.4 LG Futures were asked to undertake a sensitivity analysis to assess the impact of the potential overall cash benefit of both a 5% increase and 5% decrease in collection levels.

2.5 In terms of sensitivity analysis, the gain from pooling resulting from a 5% decrease in NDR income in 2015/16, across the whole county, would reduce the retained benefits from £1.8m to £0.6m. No authority would hit the safety net if NDR income was 5% lower than currently forecast. The gain from pooling from a 5% increase in NDR income in 2015/16 increases from £1.8m to £3.0m in 2015/16.

2.6 The key risk in the Pool arrangement revolves around the reduction in the business rate taxbase. This could arise as a result of recession, companies closing down, or the level of rating appeals that are still outstanding resulting in larger than estimated reductions in rateable values. The report by LG futures considered what level of loss would be required for the overall Pool to loss all of its potential benefit. For this to materialise each borough / district area would need to lose the equivalent of two of the highest rate payers, without warning, and for a whole year. The potential for this happening is considered as being highly unlikely in terms of growth being forecast in the economy as a whole. In all the Boroughs and Districts the majority of the highest business rate payers come from the Retail sector and consist of the major Supermarket chains.

3. Splitting the Gains/Losses from Pooling

3.1 Should a pool not be formed, each District and Borough Council will end up paying a levy to the government based upon the level of business rate growth in their respective areas. The formation of the pool allows authorities to offset the levy payable against "Top up "authorities e.g. ESCC and the Fire authority.

3.2 LG Futures were asked to provide options for the basis of sharing any net retained rates within the pool. The authorities Chief Finance Officers considered all options and agreed that a split based upon the levy amount that was saved by individual authorities, would be the most equitable solution. The basis of the split is 40% ESCC, 10% Fire authority and 50% split amongst the remaining District and Borough Councils. The following table shows the potential proceeds based on current levy projections.

Local Authority	2015/16 £m	2016/17 £m	2017/18 £m
Eastbourne	0.223	0.301	0.311
Hastings	0.061	0.063	0.066
Lewes	0.230	0.238	0.246
Rother	0.139	0.177	0.218
Wealden	0.243	0.251	0.260
East Sussex	0.716	0.823	0.880
East Sussex Fire	0.179	0.206	0.220
Overall	**1.790**	**2.057**	**2.201**

3.3 This split is seen as the simplest and most transparent solution. It also has the following benefits:
(i) simpler administration
(ii) allows resources to be used in a timely manner/each local authority can determine its own reserve policy should a budgeted surplus actually result in a loss.
(iii) still allows local authorities to combine resources for joint working and allows for match funding.
(iv) would be more straight forward if the pool was dissolved or gained/lost members in the future.

4. Timetable and Authorisation

4.1 An application has to be made by the 31st October 2014, in the form of a joint Memorandum of Understanding.

4.2 The DCLG regulations require that the submission itself has to be authorised by the Chief Financial Officer of each authority. The timescales for compilation and agreement of the submission is tight. In addition there is only a narrow window to decide whether to withdraw an application once the Local Government settlement is known in December 2014. For practicable purposes alone, it would appear to be sensible to delegate the finalisation of the submission and the decision on whether to submit and/or withdraw the application on financial grounds to the Chief Finance Officer.

5. **Annual Review**

5.1 Should the application be successful, the pool would continue to operate for a minimum of one year. Should an individual authority withdraw from the pool arrangement, then the pool will terminate and if required a new Pooling arrangements with a revised number of authorities could then be set up.

5.2 To ensure that this potential is managed the Memorandum of Undertaking will place an obligation on all authorities to review their membership of the pool annually and be given the authority to withdraw from the pool where it is not financially advantageous to retain membership. Such a decision is to be taken in consultation with the remaining authorities in the pool and at the earliest possible time, in order to allow for an alternative submission to be made.