

Report to	-	Cabinet
Date	-	19 December 2018
Report of the	-	Executive Director
Subject	-	Business Rates Pilot 2019/20

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**Recommendation:** It be **RESOLVED:** That:

- 1) Rother District Council participates in the East Sussex Business Rate 75% Retention Pilot for the financial year 2019/20;
  - 2) Wealden District Council be nominated as the lead authority for the East Sussex Business Rate 75% Retention Pilot for the financial year 2019/20;
  - 3) the basic principle be agreed that no authority will receive a lower level of funding than they would have received without the East Sussex Business Rates Pool;
  - 4) resources gained on the growth in business rates be shared as follows 26% to East Sussex County Council, 5% to the East Sussex Fire Authority and the remaining 44% split amongst the district/borough councils;
  - 5) the financial stability and economic development share of funding be agreed with the economic development funding being encouraged to go to improvements in town centre regeneration; and
  - 6) the Assistant Director Resources be authorised to finalise the Memorandum of Understanding in consultation with the Cabinet Portfolio Holder for Finance, Resources and Value for Money.
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**Assistant Director Resources: Robin Vennard**  
**Lead Cabinet Member: Councillor Lord Amptill**

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**The Chairman of Council has already agreed that, subject to the approval of Cabinet, this decision can be taken as an urgent decision to allow the Council to participate in the East Sussex Business Rate 75% Retention Pilot by 12 January 2019.**

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**Introduction**

1. Members will be aware (Minute CB18/33 refers) that the Council, in conjunction with the other East Sussex Councils and East Sussex Fire Authority (ESFA), agreed to submit an application to Government to operate a 75% Business Rate Retention Pool Pilot. On 13 December 2018, the Government announced as part of the local Government finance settlement for 2019/20, the successful councils which included the East Sussex application. This report details the arrangements and how the expected financial benefits of the Pilot will be shared.

2. Appendix A to this report details the background to the current 50% Business Rate Retention Scheme (BRRS) and the pooling arrangements that have been in place for 2018/19. Appendix B details the basis of the Pilot application and Appendix C compares the 50% BRRS with the 75% Pilot Scheme at the baseline position assumed by the Government.

### Sharing the Gains/Losses from Pooling

3. The allocation of gains and losses is proposed to be based on the following principles:
  - a. Each individual authority, if resources allow, will receive at least the same level of funding they would have received without the 75% pool (i.e. authorities acting as a 50% Pool).
  - b. Any additional resource that is generated will be shared by Pool Members using the basis of allocation below. This allocation methodology looks to reward members of the Pool for achieving business rate growth.
  - c. The running costs of the Pool, if any, will be initially paid by the lead authority and will be paid to them on a pro-rata basis (based on the increased resources from being in the Pool).
  - d. If after (c), there are still resources to be distributed, then authorities will retain their own growth, based on the following local shares:

<b>Tier</b>	<b>Proposed Share</b>	<b>Existing Share</b>
County	26%	9%
District/Borough Share	44%	40%
Fire	5%	1%
<b>Sub-Total</b>	<b>75%</b>	<b>50%</b>
Government	<b>25%</b>	<b>50%</b>
<b>Total</b>	<b>100%</b>	<b>100%</b>

- e. Where the Pool makes a loss, the loss will be funded by each Pool Member proportional to the cash amount that would have been received from Central Government if the Pool arrangement was not in operation from the BRRS.
4. The shares in the table above were based on the existing arrangements within the current East Sussex 50% business rate pool for sharing any retained levy. Appendix C shows the relative share of income if the amount of business rates collected is at the baseline level set by the Government. This shows a marginal improvement for Rother between the 50% BRRS and the 75% Pilot Scheme based on the 2019/20 business rate baseline. In reality, the Council collects income in excess of this amount by moving to the 75% Pilot Scheme. It is expected that across the county an additional £4.3m of income can be retained compared to £3.2m under the 2018/19 pooling arrangements. For Rother its share is expected to be in the region of £400,000, some £100,000 higher than the current pooling arrangement. However, traditionally final income levels from business rates are lower than forecast and therefore this will need to be updated as part of finalising the 2019/20 Revenue Budget in February 2019 and it is sensible that no core spending is reliant on this funding. Also the future of business rates is uncertain with trading in the high street struggling to compete with the internet sales and more businesses moving to flexible/home working to reduce costs of office accommodation.

5. The Government also has an expectation that Pilot councils will demonstrate how they will use the gains to benefit their local area. In relation to the East Sussex Business Rates Pilot the Chief Finance Officers recommend the following:
  - a. Financial Stability Element – this will be the equivalent of the 50% gain under the current pooling arrangements.
  - b. The Economic Development Element (EDE) – this will be the 25% additional gain from the Pilot.
6. In relation to Rother this results in the following shares:

<b>Council</b>	<b>Financial Stability £,000</b>	<b>Economic Development £,000</b>
Rother DC	300	100
East Sussex CC	180	60
East Sussex Fire	30	10
<b>Total</b>	<b>510</b>	<b>170</b>

7. With regard to the EDE, it is proposed to ask East Sussex County Council (ESCC) and ESFA to consider using the additional economic development funds towards improvements to town centres to help them complete and remain sustainable.

### **Appointing a Lead Authority**

8. A company called LG Futures has been employed to collate and advise on the financial viability of the scheme 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. Wealden District Council (WDC) is currently the lead authority for the current pooling arrangement and has indicated that they would be prepared to undertake the role of lead authority for the 75% Pilot. The expected administration work is expected to be minimal but the lead authority will need to liaise with Ministry of Housing, Communities and Local Government on the lessons of the Pilot and respond to information requests. This will be reflected in an enhanced administration fee to be levied on the retained rates. It is therefore recommended that WDC agree to be nominated as the lead authority.

### **Memorandum of Understanding**

9. As part of the bid process, a Memorandum of Understanding (MoU) has been drafted setting out how the relationship between the councils will be governed. This document (Appendix D) underpins how the Pool will operate and, in particular, the sharing of risk and reward between the partners. The MoU will need to be finalised and it is proposed that this is delegated to the Council's Chief Finance Officer (Assistant Director, Resources) in consultation with the Cabinet Portfolio Holder for Finance, Resources and Value for Money.

## **Conclusion**

10. The acceptance of the East Sussex Business Rate Retention Pilot bid by the Government is good news for the Council and East Sussex. The deal will bring additional income which will help financially support the Council's regeneration objectives including the Property Investment Strategy. The arrangement does however bring risk if income levels are not achieved in Rother or any of the other Council areas. This risk is however spread as described in the MoU.
11. Members are asked to support the Council being a member of the Pilot for 2019/20 based on the principle that no authority will receive a lower level of funding than they would have received without the Pool. Any additional income gained on the growth in business rates is proposed to be shared with 26% going to ESCC, 5% to ESFA and the remaining 44% split amongst the district/borough councils. Members are also asked to support the principal of using the additional resources to support the Council's regeneration plans.

Malcolm Johnston  
Executive Director

### **Risk Assessment Statement**

The key risk 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 considers that the risks to the Pool of an overall loss from losing two of the highest rate payers for a region, without warning, and for a whole year, as unlikely. Likewise, in terms of the economic picture, this is currently improving with growth in the business rates base being forecast locally in 2019/20. The pooling arrangement is voluntary for 2019/20.

## Background to the Business Rate Retention Scheme and Pooling Arrangements

1. A new 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. Under this scheme, 50% of business rates is retained by locally by Councils. The proportion retained by individual collection authorities, such as Rother, in East Sussex is 40%, 9% is payable to East Sussex County Council (ESCC), and 1% to East Sussex Fire Authority. The Government receives the other 50%.
2. The 50% Central Government share is distributed through the formula grant process (now termed Settlement Funding Assessment). 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.
3. The current arrangements use a system of tariffs and top ups. These are set that, all things being equal, an authority will have started with the same resources under the new system as it had under the old. Tariffs are applied where the income received by the Council is in excess of what the Government believe is their need.
4. Rother is a tariff Council and for 2019/20 under the current arrangements this equates to a cost of £5m. The financial forecast includes the Council's 40% share of £8m, but this is reduced by the tariff to approximately £3m.
5. The top ups and tariffs will automatically be updated for inflation. This gives top-up authorities e.g. ESCC, a guaranteed increase in part of their resources and means a tariff authority, such as Rother will lose resources unless it ensures its National Non-Domestic Rates (NNDR) growth at least keeps pace with inflation.
6. A reset mechanism will be in place with the first reset in 2020 and periods of 10 years between resets thereafter.
7. When not in a pooling arrangement, the Government charge a levy on the growth in business rates above their baseline figure for the Council. When added to the Government's normal 50% share of business rate income, the levy equates to 75% of the income growth. The draft Revenue Budget currently assumes a levy for 2019/20 of £630,000 based on the Medium Term Financial Strategy forecast.

**Pilot Application**

1. A report on the potential for East Sussex being a 75% Business Rates Retention Pilot was first considered by Chief Executives/Directors of respective Councils and the Fire Authority where it was agreed unanimously that an application should be submitted on the basis of the arrangements and recommendations outlined in this report.
2. The Pilot is for the 2019/20 year only as Government has indicated that it intends to pursue 75% Business Rates Retention, which it can do within existing legislation, alongside the business rates reset and introduction of the Fairer Funding Formula.
3. The prospectus stated “The government is interested in exploring how 75% rates retention can operate across more than one authority to promote financial sustainability and to support coherent strategic decision-making across functional economic areas. Accordingly, the government would like to see authorities form pools (either on existing or revised boundaries) and, with agreement in place from all participating authorities, to apply jointly for pilot status. We would expect a proposed pool to comprise a county council and all of the associated district councils; a group of unitary authorities; or a two-tier area and adjoining unitaries, but it should extend across a functional economic area. Proposals will need to set out tier split arrangements of all precepting authorities, including Fire and Rescue authorities.”
4. The invitation includes the following key points:
  - a) The pilot programme for next year may be smaller than 2018-19 given the limited time before the system moves to 75% retention.
  - b) The ‘no detriment’ clause that applied to previous pilots will not apply to the 2019-20 pilots. Instead, selected areas will test a 95% safety net to reflect increased risk in the proposed increased business rates retention system. Applying a ‘no detriment’ clause to the pilots would not be reflective of the reformed business rates retention system that the government aims to introduce in 2020/21.
  - c) Applications should include details of what pooling arrangements (if any) authorities would like to pursue in the event that their pilot bid is unsuccessful. Where pooling arrangements are to apply in the event of an unsuccessful bid and where these are different from those that would apply were the bid successful, the application should provide assurance that there is agreement to those arrangements from all local authorities involved in the proposed pool.
5. As part of the move towards a reformed business rates retention system in 2020/21, the intention remains to devolve Revenue Support Grant (RSG), Rural Services Delivery Grant (RSDG), the Greater London Authority (GLA) Transport Grant and the Public Health Grant (PHG) when the new system commences. However, successful pilots in 2019-20 will only be expected to forego RSG and RSDG. It is intended that the intervening period will be used to develop a set of measures that support a smooth transition of funding for public health services from grant funding to retained business rates.

6. 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.
7. For the 2018/19 financial year, the County Council, Districts and Boroughs and the Fire Authority are in a Pool. This brings additional resources to the County area as it allows the pool to retain the levy otherwise charged on business rates. Under this arrangement, the retained levy (which is equal to 20% of the total growth) is split 40:50:10 across the County Council: Districts and Boroughs: Fire Authority respectively. The split of this gain within a pool area is agreed locally. Without a pool the 50% retained rates would be split 9:40:1 respectively, with Districts and Boroughs having to pay 50% of their growth back to Central Government.

**Draft Business Rates Baseline 2019/20 – comparison of 50% scheme to 75% Pilot – source MHCLG**

LA name					Under current 50% scheme			Under 75% pilot		
	Existing tier split	New tier split	Revenue Support Grant 19/20 (£m)	Rural Services Delivery Grant 19/20 (£m)	19/20 Baseline Funding Level (£m)	19/20 Top-up (+ve) / Tariff (-ve) (£m)	19/20 Notional Business Rates Baseline (£m)	19/20 Baseline Funding Level (£m)	19/20 Notional Business Rates Baseline (£m)	19/20 Top-up (+ve) or Tariff (-ve) (£m)
East Sussex	9%	26%	3.49	0.00	73.86	61.77	12.09	77.35	34.94	42.41
E Sussex Fire	1%	5%	3.16	0.00	7.64	5.09	2.55	10.80	7.93	2.86
Eastbourne	40%	44%	0.00	0.00	3.59	-10.91	14.51	3.59	15.96	-12.36
Hastings	40%	44%	0.99	0.00	3.76	-5.58	9.33	4.75	10.27	-5.52
Lewes	40%	44%	0.00	0.00	2.21	-7.68	9.89	2.21	10.88	-8.67
<b>Rother</b>	<b>40%</b>	<b>44%</b>	<b>0.00</b>	<b>0.06</b>	<b>2.34</b>	<b>-5.04</b>	<b>7.38</b>	<b>2.40</b>	<b>8.11</b>	<b>-5.71</b>
Wealden	40%	44%	0.00	0.21	2.91	-9.75	12.66	3.11	13.92	-10.81

Above are subject to confirmation



# **East Sussex Business Rate Pool (Business Rates Retention Pilot Scheme 2019/20)**

## **Memorandum of Understanding**

This Memorandum of Understanding is made between:

- East Sussex County Council
- East Sussex Fire Authority
- Eastbourne Borough Council
- Hastings Borough Council
- Lewes District Council
- Rother District Council
- Wealden District Council

(Together referred to as the 'Pool' or 'Pool Members').

### **1. Purpose**

- 1.1 The main aim of the pool is to maximise the retention of locally generated business rates. The modelling work that has been undertaken by the Pool Members demonstrates that financially the pool area would retain a greater share of business rates revenue through pooling than it would otherwise do, as long as it experiences economic growth. This will act as a further incentive for all the pooling authorities to proactively work together to drive economic growth within the pool.
- 1.2 It is the purpose of this Memorandum of Understanding (MoU) to act as a Statement of Intent that will support the realisation of these benefits. The Pool Members have agreed to enter into this MoU to formalise their commitment and to set out their respective roles and responsibilities.

### **2. Glossary of Key Terms**

There are a number of technical terms used throughout this document. The meanings of these terms are as follows:

#### **Levy**

A formulaic mechanism to pay a percentage of additionally raised local business rates income over to Central Government when a target (set nationally for each billing authority) has been exceeded.

#### **Pool**

A voluntary arrangement amongst a group of local authorities to pool the business rates generated locally to allow a greater proportion of business rates growth is retained locally.

#### **Safety Net**

The additional funding received by an authority, from Central Government, if, in the Government's opinion, the decline in business rates in any year would

leave an authority with insufficient resources. Calculated using a national formula.

### **Lead Authority**

The Pool member who will act as the lead in managing the Pool's resources and being the key contact between Central Government and the Pool.

### **Schedule of Payments**

The Lead Authority will prepare an annual schedule that reflects all the financial payments to be processed through the pool, clearly indicating the amount, timings of each payment and who needs to make what and payment to whom.

## **3. Key Principles**

- 3.1 The Pool Members agree that they will operate the Pool in accordance with the following principles:

### **Increase in Resources**

The Pool Members recognise that the fundamental objective of the Pool is to generate increased resources for the area, and individual Pool Members

### **Risk Management**

The Pool Members agree to protect and mitigate as far as possible the risks associated with the level of business rate income. Income streams to the Pool Members may be more volatile, whether as the result of a one-off event (for example a successful large appeal) or something structural within an area (for example the closure of a major plant). The pooling arrangements should reduce this volatility.

### **Fairness**

The Pool Members agree to share the costs, risks and benefits of local business rate retention proportionately. Pool Members should be no worse off than if they were outside the Pool.

### **Transparency, Openness and Honesty**

Pool Members will be open and trusting in their dealings with each other, make information and analysis available to each other, discuss and develop ideas openly and contribute fully to all aspects of making the Pool successful. It also includes sharing data and intelligence outside of the formal reporting mechanisms on any substantive issues relating to business rate retention within their area.

### **Reasonableness of Decision-Making**

Pool Members agree that all decisions made in relation to this Memorandum of Understanding shall be made by them acting reasonably and in good faith.

## **4. Binding Memorandum**

- 4.1 This Memorandum of Understanding is produced as a Statement of Intent and, with the exception of Sections 5, 10 and 11, is not intended to be legally binding.

- 4.2 Sections 5, 10 and 11 are intended to be legally binding and to create obligations between Pool Members with immediate effect from the execution of this MoU.
- 4.3 Pool Members have approved this MoU in advance of the Secretary of State designating the Pool for the purposes of the Business Rates Retention Scheme. If the Secretary of State adds conditions to the designation, either initially or at any point in the future an immediate review of this MoU, as outlined in Section 12, will be triggered.

## **5. Term of Memorandum**

- 5.1 This MoU is for the financial year April 2019 to March 2020.

## **6. Decision-Making**

- 6.1 The statutory finance officers (Chief Finance Officer) from each Pool Member shall collectively be responsible for overseeing the operation of the Pool and making recommendations to their respective authorities about the way forward.
- 6.2 The Lead Authority shall ensure that reports are sent to the Chief Finance Officer of each Pool Member at least on a quarterly basis updating them of the performance of the Pool and advising them of any issues. These reports should be available within six weeks of the quarter end.
- 6.3 The Lead Authority is able to appoint external support in order to assist with the undertaking of its responsibilities (as per section 9 below) on behalf of the Pool. The costs incurred by the lead authority will be shared across the group, as outlined in section 11 below.
- 6.4 For the avoidance of doubt, any substantive decision e.g. commitment of resources, changes in governance or major operational changes shall be referred to each Pool Members' decision-making regime.

## **7. Dispute Resolution**

- 7.1 The Pool Members shall attempt in good faith to negotiate a settlement to any dispute arising between them arising out of or in connection to this MoU. If this cannot be resolved by the Chief Finance Officers it will be referred to a meeting of all Member authorities Heads of Paid Service for resolution.

## **8. Resourcing**

- 8.1 Each Pool Member will provide the appropriate resources and will act with integrity and consistency to support the intention set out in this MoU.
- 8.2 In the event that the Lead Authority needs to incur additional expenditure in order to administer the Pool, any reasonable costs agreed by Pool Members should be the first call on additional business rates income retained by the Pool (above what would have been received if the authorities had acted individually).

## **9. Lead Authority**

9.1 Wealden District Council will act as the Lead Authority for the Pool.

9.2 The responsibilities of the Lead Authority are:

- To make payments on behalf of the Pool to central government and Pool Members on time and in accordance with the schedule of payments.
- To liaise with and complete all formal Pool returns to central government on behalf of Pool Members.
- To keep Pool Members informed of all communications with central government.
- To manage the resources of the Pool in accordance with this MoU.
- To prepare quarterly reports and consolidate intelligence on future resource levels on behalf of the Pool.
- To convene an urgent meeting of the Chief Finance Officers if there is the possibility that the pool could make a loss.
- To prepare the annual report of the Pool's activity.
- To co-ordinate the annual review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources.
- To consult on and administer a schedule of all payments in respect of all financial transactions that form part of the Pool's resources.
- To lead on the timely provision of the information required, by Pool Members, in preparing their annual Statement of Accounts in relation to the activities and resources of the Pool.

9.3 To assist the Lead Authority in fulfilling this role, the responsibilities of individual Pool Members are:

- To make payments on time and in accordance with the schedule of payments.
- To provide accurate, timely information to the Lead Authority to enable all formal Pool returns to Central Government to be completed.
- To inform the Lead Authority, as soon as is practical, of any intelligence that may impact on the resources of the Pool either in the current year or in future years.
- To provide such information as the Chief Finance Officers agree is reasonable and necessary to monitor/forecast the Pool's resources within the timescales agreed.

- To provide such information as the Chief Finance Officers agree is reasonable and necessary on the use of the Pool's resources for inclusion in the Pool's annual report.
- To provide accurate and timely information on the end of year financial performance of the business rates collection fund to enable the Lead Authority to calculate the end of year accounting entries needed.

## **10. Cash Management**

- 10.1 The governing principle for the cash management of the Pool is that no individual Pool Member, including the Lead Authority, should incur a cash flow gain or loss as a result of the transfer of funds between Pool Members.
- 10.2 The Pool will receive/pay interest annually on any retained resource at the average investment rate of the Lead Authority.
- 10.3 Interest will be calculated on an annual basis and allocated to Pool Members based upon a method agreed by the Chief Finance Officers.
- 10.4 Where the Pool is required to make a payment to the Secretary of State, each authority in the Pool is jointly and severally liable to make that payment.
- 10.5 Any late payment may be subject to a late payment interest charge at base rate plus 4%.

## **11. Allocation of Pool Resources**

### **Principles**

- 11.1 The allocation of resources will be based on the following principles: Each individual authority, if resources allow, will receive at least the same level of funding they would have received without the 75% Pool (i.e. authorities acting as a 50% Pool).

Any additional resource that is generated will be shared by Pool Members using the basis of allocation below. This allocation methodology looks to reward members of the Pool for achieving business rate growth.

### **Basis of Allocation**

- 11.2 The underlying basis of allocation is as follows:

A: The running costs of the pool, if any, will be initially paid by the Lead Authority and will be paid to them on a pro rata basis (based on the increased resources from being in the Pool).

B: If after A, there are still resources to be distributed, then authorities will retain their own growth, based on the following local shares:

Tier	County Area
County	26%
District	44%

Fire	5%
Total	75%

C: Where the pool makes a loss, the loss will be funded by each Pool Member proportional to the cash amount that would have been received from central government if the Pool arrangement was not in operation from the business rates retention scheme.

## **12. Review Arrangements**

- 12.1 The pool is for 2019/20 only. If required during this period, the lead authority can undertake a review on behalf of the Chief Finance Officers and in sufficient time for any changes to be in place before the end of the following financial year.