

1. **BUSINESS RATES PILOT AND POOLING ARRANGEMENTS**

Submitted by: Executive Director – Resources and Support Services

Portfolio: Finance IT and Customer

Ward(s) affected: All

Purpose of the Report

To provide Cabinet with details of the potential for the Council to participate in a Business Rates Pilot in 2018/19 and to outline the Business Case and relevant risks and rewards from pilot arrangements, whilst noting the 'no detriment' requirement of the pilot application.

To update members on the implications to existing pooling arrangements as result of membership of the pilot and to present the draft governance arrangements for the new pool

Recommendation

(a) That the Council participates in the Expression of Interest to form a Staffordshire and Stoke-on-Trent Pool based upon piloting the 100% Business Rates Scheme.

(b) That the Chief Executive and Section 151 Officer are authorised (in consultation with the Leader and Portfolio Holder for Finance IT and Customer) to submit a firm Expression of Interest to be a member of the Staffordshire and Stoke-on-Trent Pool based upon piloting the 100% Business Rates Scheme.

Reasons

The pilot scheme would enable all future growth in Business Rates to be retained within Staffordshire. A minimum of £200,000 additional resources would be generated for the financial year 2018/19 for the Council due to the estimated 'growth position' of the participating authorities.

1. **Background**

1.1 The 50% Business Rates Retention Scheme was introduced with effect from April 2013 and was effectively a 50/50 risk and reward sharing arrangement between Central and Local Government. The scheme enabled the Council to retain its tier share of growth, although such growth was potentially subject to a 50% cap or levy.

1.2 The Council avoided this cap or levy payment by joining the Staffordshire and Stoke-on-Trent Business Rates Pool alongside Staffordshire County Council, Stoke-on-Trent City Council, Stafford Borough Council, Staffordshire Moorlands District Council, South Staffordshire District Council and the Staffordshire Fire and Rescue Service.

1.3 The pooling arrangements have enabled (by the avoidance of the levy payment):

- Additional resources to be retained by the Council;
- Contributions to growth projects;
- A contingency to be made in the form of a safety net for members of the pool that have significant reductions in business rates.

1.4 Central Government announced during 2015 that it wished to progress to a 100% business rates retention scheme whereby in exchange for additional responsibilities Local Government would be able to retain 100% of the growth that it generated.

- 1.5 Six pilots of 100% business rates retention were launched by Central Government on 1st April 2017, solely to areas with ratified devolution deals. In return for the retention of 100% business rates income, some existing grants have been foregone. Over the pilot period they will retain all of their growth in income.
- 1.6 In response to the Consultation on Self Sufficient Local Government a commitment to launch a further pilot scheme in 2018/19 was given by Central Government. A pilot prospectus was issued on 1st September 2017 entitled 'Invitation to pilot 100% Business Rates Retention in 2018/19 and to pioneer new pooling and tier split models'.
- 1.7 Central Government expects to learn from the pilots' experience in the design of any national system of business rates retention. Hence the opportunity exists for a Staffordshire pilot to influence the design, attributes and complexity of the final system.

2. **Issues**

- 2.1 The pilot prospectus issued by Central Government provides a framework for the extension of the existing voluntary pooling of business rates revenues to two tier authorities. A pilot enables 100% of future growth to be retained by the pilot area as compared to the current 50% subject to Financial Neutrality (based on the baselines created at the commencement of the 50% scheme in 2013/14). Tariffs or Top Up's are adjusted to reflect the 100% share and the relevant government grants (Revenue Support Grant for the Council) consolidated within the Business Rates Regime.
- 2.2 The Business Rates Pilot 'Financial Neutrality' takes no account of the net growth (or loss) in Business Rates income since the commencement of the 50% scheme in 2013/14. Work undertaken by a steering group of the Staffordshire Chief Finance Officers Group has confirmed that all authorities within Staffordshire, that are responsible for collecting business rates, are in a growth position, averaging out at 7% for the proposed pool for 2017/18. This is likely to be at the least maintained during 2018/19. Under the current arrangements, only 50% of this growth is retained within Staffordshire, 50% is allocated to Central Government.
- 2.3 There is therefore a clear and simple financial advantage in that 50% of growth that is allocated to Central Government under existing arrangements would be retained within Staffordshire under the proposed pilot of 100% Business Rates Retention. The proposed pooling and pilot arrangements are shown as Appendix 1 to this report.
- 2.4 The 2018/19 pilot programme will last for one year only, however it is likely that pilots will remain in operation until the full 100% Business Rates Scheme is implemented (at the earliest 2020/21, more likely to be 2021/22).
- 2.5 All existing pilots have been created on a no detriment basis. This basis ensures that collectively the authorities in the pilot are no worse-off than if they had remained in the 50% scheme. However, the 2018/19 prospectus states that proposals for the 2018/19 pilots should include details of how authorities will work together to manage risk in line with their proposed pooling arrangements in the event that the 2018/19 pilots programme does not include a 'no detriment' clause.
- 2.6 In order for a 'no detriment' clause to be triggered, in relation to not being worse off as compared to the current 50% scheme for the Staffordshire wide pilot, there would need to be a loss of 7% (£12 million) in 2018/19.
- 2.7 To be accepted as a pilot for 2018/19 all parties must be designated as a pool to share business rates income. It is considered that the prospectus criteria would only be met if all eleven authorities covering the full Staffordshire geography committed to being part of the pool. Existing pools would require to be ceased.

- 2.8 If the pilot application is successful, the pool itself will operate with a 'no detriment' policy funded from the additional growth retained in Staffordshire. No member of the pool will be worse off than if they were not a member of the pool or compared to previous pooling arrangements. The Council will still receive separate allocations from Central Government, will set its own budget for Business Rates Retention and will collect and retain Business Rates.
- 2.9 The greatest risk in relation to net Business Rates Income is that the level of Business Rates appeals exceeds the Government expectations or the provisions made by each Authority. This is particularly important given the close proximity to the 2017 Revaluation, the backlog of appeals and the risk of changes in policy or treatment of hereditaments.
- 2.10 It is therefore recommended that whilst the proposed arrangements will accept the risk of volatility due to changes in circumstances and its share of appeals, the Council, and indeed the other potential Authorities within the pilot, are unwilling to become a pilot unless a 'no detriment' clause applies for the loss of business rates income due to:
- The consolidation of hereditaments as a single assessment
 - Transfer from the Local Rating List/Central Rating Lists
 - Changes in Mandatory Relief Policy
 - Changes in the basis of determining the basis of Rateable Values
 - The backdated cost of new appeals post 1st April 2018
- 2.11 Expressions of interest are required by 27th October 2017. Successful pilots will be announced as part of the Draft Local Government Settlement in December and will come into effect from the 1st April 2018. As part of the expressions of interest submission the Council is required to specify what pooling arrangements should apply in 2018/19 if the application to be a pilot was unsuccessful.

3. **Proposal**

- 3.1 That the Council participates in the Expression of Interest to form a Staffordshire and Stoke-on-Trent Pool based upon piloting the 100% Business Rates Scheme.
- 3.2 That the Chief Executive and Section 151 Officer are authorised (in consultation with the Leader and Portfolio Holder) to submit a firm Expression of Interest to be a member of the Staffordshire and Stoke-on-Trent Pool based upon piloting the 100% Business Rates Scheme.
- 3.3 That if the pilot application is unsuccessful, the Council continues to be part of the existing Staffordshire and Stoke-on-Trent pool. If the pilot application is successful then the Council would then cease to be a member of the current pool.

4. **Reason for Preferred Solution**

- 4.1 The pilot scheme would enable all future growth in Business Rates to be retained within Staffordshire. A minimum of £200,000 additional resources would be generated for the financial year 2018/19 for the Council due to the estimated 'growth position' of the participating authorities.

5. **Financial and Resource Implications**

- 5.1 In accordance with the 'no detriment' clause the Council will not only receive the same level of resources as determined by the current 50% Business Rates retention scheme and the Councils current pooling arrangements but also minimum additional resources of £200,000 for the financial year 2018/19 and any further years that the pilot continued for.

6. **Major Risks**

- 6.1 The pilot would be responsible for the Government's share of business rates if business rates contracted below the current level of business rates.
- 6.2 The level of appeals could fluctuate significantly, hence the caveat that the pilot required a 'no detriment' clause in relation to changes in policy/the basis of determining rateable values and successful backdated appeals received after 1st April 2018.

7. **Key Decision Information**

- 7.1 This is a key decision; it has been included in the Forward Plan.

8. **List of Appendices**

Appendix 1 – Memorandum of Understanding – Subject to Contract

**Memorandum of Understanding - Subject to Contract
Business Rates Pooling Agreement
Pilot Arrangements**

- (a) All Local Authorities are currently obligated to pay a percentage of their Business Rate collection to Central Government. In accordance with the proposed 100% Business Rates Retention Scheme all Business Rates will be retained by Local Government
- (b) In order to pilot the 100% scheme Members have agreed , subject to designation by DCLG, to join together the net Business Rates collected and establish a Business Rate Retention Scheme in accordance with the Local Government Finance [Bill July 2012] (“the Pool”).
- (c) The rationale of the Pool is
 - (i) To utilise the additional resources available to the pool, resources that would otherwise have been returned to central government, to:
 - deliver sustained economic growth by building on and strengthening its partnership arrangements reflecting the economic geography of Staffordshire
 - the generation of additional resources for both direct service provision, and preventative, social care
 - (ii) To utilise tier splits to manage the risks and rewards across the pool

1. Membership

1.1 Membership of the pool is open to the following Councils/ authorities;

Cannock Chase District Council
East Staffordshire Borough Council
Lichfield District Council
Newcastle-under-Lyme Borough Council
South Staffordshire District Council
Stafford Borough Council
Staffordshire County Council
Staffordshire Fire and Rescue Service
Staffordshire Moorlands District Council
Stoke-on-Trent City Council
Tamworth Borough council

1.2 The Pool Board will review its membership annually and will consider requests for new members to join or existing members to leave provided applications to join or leave are made at least 2 months prior to the Department for Communities and Local Government (“DCLG”) deadline for pre designation of a Pool each year.

1.3 The Pool is open to the possibility of accepting additional members to its pooling arrangement. New members, as existing members, will be accepted subject to:

- there being a unanimous decision of the Pool Leaders to accept the new member(s)
- new membership will begin from 1 April of the following financial year
- consultation and designation requirements of DCLG
- their full acceptance of the DCLG’ s Business rates retention scheme – pooling prospectus and any subsequent amendments to or iterations thereof

2. Duration

2.1 Subject to the pool being designated by DCLG, the pool will come into effect from 1 April 2018. The period of membership will be for a minimum of the 2018/19 financial year.

2.2 The Pool is a voluntary arrangement and Members will be able to review their continuing membership up to [2 months] prior to the annual nomination of the forthcoming year's Pool in accordance with DCLG's timetable.

2.3 Should a Member withdraw from the Pool during the annual settlement consultation period the Pool will be dissolved in accordance with DCLG rules.

3. Governance

3.1 A Pool Board consisting of a representative from each of the Members will be responsible for the Governance arrangements of the Pool.

3.2 The Pool Board will be made up of one nominee from each of the Members, being the Leader/Chief Executive or nominated substitute.

3.3 Each Member will have equal voting rights and voting will be by a simple majority. If there are an equal number of votes for/against a decision, the Chair will provide a casting vote.

3.4 A schedule of meetings will be agreed annually in advance of each financial year and a quorum for meetings will be 50% of the Membership of the Pool Board.

3.5 The Board will be hosted in each turn by each Member and chaired by the host Member.

3.6 The Pool Board will receive appropriate Legal and Financial support as required from the Lead Authority.

3.7 The Members shall at its first meeting agree terms of reference for the Pool Board, subject to the clauses as contained in Section 4 of these Heads of Terms.

4. Pooled Fund

4.1 The Pool will be based upon a "No Loss" basis for each Member.

4.2 "No loss" is determined to be that a Member will be no worse off:

- by being a Member of the Pool than they would have been if they had not been a Member of the Pool. Each Member will retain the income they would have received if they were not a member of the Pool
- no Member will be worse off as compared with previous pool arrangements for Staffordshire and Stoke on Trent Business rates Pool (2012) or Greater Birmingham and Solihull Business Rates Pool
- **no Member will be worse off as a result of the increased retained % arising from the Pilot Scheme**

4.3 Each Member will retain the net Business Rates calculated in accordance with the 50% Business Rates Scheme (before any Levy Deduction). Member authorities will pay the same level of tariff or receive the same level of top up and receive the same level of safety net payment as if they were not in the pool;

4.4 Tariffs/Top ups for each Member as determined by the Annual Settlement, as adjusted for the consolidation of Revenue Support Grant and Rural Services Grant will be paid into/ received from the Pool via the Lead Authority in accordance with the timetable as approved by the Board. The Lead Authority will be responsible for payment/ receipt of the net Tariff or Top Up due to/from Central government.

4.5 Additional income in excess of the amount that would have been retained under the 50% Business Rates Scheme will be paid into the pool via the Lead Authority no later than the point at which they would otherwise have been paid to the Government had no pool existed.

4.6 The pool will be distributed in accordance with the following methodology

- The Lead Authority will receive a fixed annual sum of £XX,000
- Each Member Authority will receive a guaranteed payment of £200,000 per annum
- Compensation to a Member arising from the change in tier splits between the 50% and 100% scheme

4.7 The residual balance representing “ongoing growth” to 31 March 2018 and new growth thereafter will be split in accordance with the following Tier Splits reflecting the growth achieved by that Member:

Two Tier Authorities	Proposed 2018 Pool	Current (50% Scheme)
Staffordshire County Council	59%	9%
Staffordshire Fire and Rescue Service	1%	1%
District /Borough Councils	40%	40%
Central Government	Nil	50%
Unitary Authority	Proposed 2018 Pool	Current (50% Scheme)
Stoke-on-Trent City Council	99%	49%
Staffordshire Fire and Rescue Service	1%	1%
Central Government	Nil	50%

4.8 The above distribution mechanism will remain in place for the duration of the pool.

4.9 The distribution of pooled funds will be made by 30 June following the end of the relevant financial year.

4.10 Billing authority Members will retain their own collection funds and will retain their existing responsibility for bearing any shortfall in collected business rates.

5. Levy Savings

5.1 The amount retained by each Member is gross of the 50% levy payments that would have been paid to the Government. Each Member will determine how such Levy savings are distributed and are outside of the remit of the pool. However the pool is to operate on a “no detriment” basis with other partners/stakeholders.

5.2 Each Member should agree with the relevant partner or body how/whether existing arrangements are to be addressed

	S&SOT (2012)	GBS Pool
Local Retention- Tariff	40%	32.5%
- Top Up		7.5%
Economic Development	40%	
Contingency	20%	20%

6. Safety Net / Contingency Fund

6.1 If a Member’s business rate income drops by more than the Government determined safety net trigger, then a Party will be entitled to receive a Safety Net Payment from the Pool.

6.2 The overall Pool, under pilot arrangements, will receive a Safety Net payment that guarantees 97% of its Baseline figure. Individual Members are not protected by the Government Safety Net provision. However in accordance with the “no detriment provision” existing 50% Business Rates Retention safeguards will apply.

- 6.3 Safety Net payments ensuring each authority receives 92.5% of its Business Rates Baseline will be paid from the Pool. The payment will match any safety net payments that would otherwise be made if they were outside the Pool.
- 6.4 At the formation of the pool each Member will be required to transfer to the Lead Authority their proportion of the Contingency Fund held within the Staffordshire and Stoke on Trent Business Rates (2012) Pool or Greater Birmingham and Solihull Business Rates Pool.
- 6.5 In addition, in accordance with previous pooling arrangements, Members will make a contribution amounting to 20% of its Levy Saving to the Contingency Fund.
- 6.6 The amount of the Contingency Fund will be reviewed on an annual basis by the Pool Board.
- 6.7 If in a Financial Year there are insufficient sums in the Contingency Fund then Staffordshire County Council and Stoke-on-Trent City Council will transfer an amount equal to the shortfall to enable the Contingency Fund to make the Safety Net Payments. This payment will be split on a pro rata basis, based on respective population sizes in the two areas.
- 6.8 Staffordshire County Council and Stoke-on-Trent City Council will be reimbursed for any such payments made from the contingency in the following financial year.
- 6.9 Safety net payments will be made as a first call on sums in the contingency fund, before reimbursements are made.
- 6.10 The Contingency Fund will be reviewed on an annual basis by the Pool board. Where the existing contingency fund is, or is anticipated to be, insufficient, the % of the "levy savings" will be amended to increase the proportion allocated to the contingency fund and to reduce the allocation to the local incentive fund accordingly on a pro rata equal basis as agreed by the Pool Board.
- 6.11 If Staffordshire County Council and Stoke City Council are required to make Payments to the Contingency Fund in two (plus) consecutive Financial Years then they may notify the Members that a Variation to or Termination of the pool is needed.

7. The Lead Authority

- 7.1 The Pool Board will nominate Cannock Chase District Council as Lead Authority.
- 7.2 The Lead Authority is responsible for all accounting and administration of the Pooled Fund and the Contingency Fund.
- 7.3 The Lead Authority is responsible for all auditing and accounting requirements as set out in legislation.
- 7.4 Each Member is required to provide all relevant information to the Lead Authority as required to carry out its responsibilities (to be determined by DCLG).
- 7.5 Each Member will transfer the relevant funds to the Lead Authority enabling the Lead Authority to carry out its responsibilities under this agreement.
- 7.6 The Members agree that the Pool will operate on a cash flow neutral basis. Payments should be actioned in accordance with the dates as determined by DCLG (as reasonably practical) on a net basis.
- 7.7 In addition Members will be required to provide medium term forecasts and monitoring information as determined by the Pool Board.

7.8 The Lead Authority will be accountable for producing as a minimum an annual report to the Pool Board or other such reports as required by the Pool Board.

7.9 The Lead Authority will be subject to no additional burdens other than those required to meet the normal requirements associated with the administration of the Pool and shall meet those within its own resources.

8. Termination

8.1 A Pool will remain in place for each financial year that it has been designated by DCLG. Once designated, Members are not able to withdraw from the Pool for that financial year.

8.2 Prior to designation, the Pool is on a voluntary basis and all members will be able to choose to be a Member of the Pool for the forthcoming year's designation. In considering their continued Membership, Members will need to have due regard to the Pool Fund aims and objectives and the impact on remaining Members.

8.3 Members must give a minimum of 2 months' notice of intention to withdraw from the Pool prior to the provisional designation of the Pool in accordance with DCLG' s timetable.

8.4 If a Member or Members leave the Pool without the required notice set out in 8.3 and it is not possible for other Members to form an alternative pool for the forthcoming year then the exiting Member or Members, in addition to sums due under clause 8.6 below (contingency payments) shall pay 50% of the lost benefit to the Member Authorities directly affected in accordance with the Tier splits. The lost benefit relates to the additional retained growth as compared to the 50% scheme that would have been available to the Members in the forthcoming year had the Member or Members not exited.

8.5 Clause 8.4 of this Memorandum of Understanding shall not apply to the first year of the Pool or if the Pool Board unanimously agrees that it shall not apply.

8.6 Should a Member leave the Pool having provided the required notice then the only liability shall be in respect of sums due under clause 7.6 if any.

8.7 In the event that the Pool is terminated the Pool Board must unanimously agree how any balances in the Pooled Fund or the Contingency Fund are shared amongst the Members. For the avoidance of doubt this will include both positive and negative balances which will be netted off each other. If the pool board cannot reach a unanimous decision then the matter will be referred to mediation and/or arbitration as per the dispute resolution procedure set out in the pooling agreement.

9. Other Terms

9.1 The Pooling Agreement will also include other terms standard in documents of this type e.g. Freedom of Information Act, anti-discrimination, Data Protection Act, etc.

9.2 Each Member will be responsible for its own legal fees in the connection with the drafting, negotiation and completion of the Pooling agreement.

9.3 A dispute resolution shall be included in the Pooling agreement.

Signed (for and on behalf of):.....

Name:.....

Title:.....

Date:.....