

North East Derbyshire District Council

Council

27 October 2014

National Non Domestic Rate (NNDR) Pooling

**Report No PRK/31/14/BM of Councillor P R Kerry, Portfolio Holder with
Responsibility for Economy, Finance and Regeneration**

This report is public

Purpose of the Report

- To recommend to Council that delegated powers be granted to the Executive Director of Operations in consultation with the Leader of the Council to enter into a Derbyshire Business Rates Pool arrangement, in order to help promote growth in the area and to maximise the level of NNDR retained locally.

1 Report Details

Background

- 1.1 Under the rates retention scheme, which came into effect on 1 April 2013, local authorities are able to keep a proportion of the business rates that they collect. As a result, authorities now have a direct financial interest in the rating system together with an incentive to work with their business community to grow the local economy.
- 1.2 As part of the rates retention scheme, authorities are able to join together, on a voluntary basis, to pool their business rates, giving them scope to generate additional growth through collaborative effort and to smooth the impact of volatility in rates income across a wider economic area. This not only allows them to pool their resources under the scheme, but ensures that they are treated as if they were a single entity for the purposes of calculating tariffs, top-ups, levies and safety net payments.
- 1.3 Government policy is designed to promote pooling and the adoption of a pool does provide a number of potential benefits to participating local authorities. The Government has summarised these as follows:
 - In many cases, authorities that pool may be better off as a group. This is because the levy rate for a pool as a whole can be lower than that for individual pool members if they remain outside the pool. This was the case in each of the 18 pools in existence in 2014-15, benefitting 111 authorities that choose to pool.

- Pooling the rates income from growth across a wider and economically coherent area ensures that all authorities can benefit from economic growth across the wider area. This can serve to promote co-operation and make strategic decisions concerning infrastructure investment easier.
- By pooling their retained rates, pool authorities can help manage the inherent risk arising from natural volatility in rates income. Variations in annual rates income are normal, reflecting the nature of the rating system and, particularly, the risk of rating appeals. By pooling their rates retention resources, authorities can collectively manage these variations by balancing gains and losses across the pooled area.
- The act of establishing pools can help further the process of joint working and could result in wider benefits that go well beyond pooling e.g. collaboration over economic development or service delivery or resulting in improved value for money. Given the progress that has recently been made in working towards establishing a Combined Authority for Derbyshire this is a significant consideration locally as a successful Combined Authority would put the Derbyshire area in a stronger position to secure an increased level of national resources in order to promote economic development.

- 1.4 Each authority must decide whether pooling is appropriate for them. The consequences of forming a pool will be different in each case, depending on the membership of the pool, their individual circumstances (i.e. the balance of top-ups and tariffs) and the rate of growth in business rates income over the life of the pool. Local authorities will therefore need to undertake their own due diligence, modeling the individual position alongside the pool position.
- 1.5 The financial benefits from pooling arise because the pool rate levy is generally lower than the levy rates that would have been paid by members individually, thereby increasing the amount of rates income kept locally. While this is a key advantage which underpins the financial case for joining a pool there are a number of factors which may undermine that advantage. The main risk is that a local authority may find that a reduction in their local business rates income, which would otherwise have qualified for a safety net payment, will no longer do so because overall the pool is above its safety net threshold. In these circumstances local authorities in the pool will need to decide whether and how they support members seeing significant reductions in their business rates income.

2015/16 Position

- 1.6 The decision as to whether it is advantageous for North East Derbyshire District Council to enter into a pooling arrangement needs to be taken against the background of the Government's Business Rates Pooling Prospectus 2015/16. With respect to next financial year (2015/16) any Council's who wish to enter into pooling arrangements need to submit a proposal by 31st October 2014. Submissions after that date will not be considered in respect of 2015/16. Once the Council enters into a pool then it has made a commitment for a period of one financial year. A council can withdraw from the arrangements at any stage after the first financial year, although any decision to withdraw can only take effect at the end of a future

financial year. Once an authority withdraws from a pool then it will be put back into the position that it would have been in had it never participated in pooling arrangements.

- 1.7 Authorities across Derbyshire have commissioned an independent advisor to provide detailed financial exemplifications together with a draft pooling agreement. The financial exemplifications which were based upon 2014/15 data input into the 2015/16 prospectus demonstrates clear financial advantages for all authorities across Derbyshire. On the basis of the data available to date the gain across Derbyshire is one of £2.8m. Of that £2.8m the exemplifications suggest that North East Derbyshire District Council would benefit by an amount of £0.326m, the County Council and Fire Service gain an extra £0.9m. With respect to other District Councils there is a projected minimum gain of £0.150m in the level of resource available. Details of the indicative gain for each authority are provided at Appendix 2 to this report. There are a number of underlying reasons why the outcome is so positive including the fact that all authorities in the area are exhibiting economic growth, all the individual authorities are operating above their safety nets and the number of outstanding appeals against individual Rateable Value are relatively limited. In reaching any decision it does, however, need to be recognised that the figures are at this stage exemplifications based on current trends.
- 1.8 While Council needs to be aware that the exact level of financial benefits that will accrue to North East Derbyshire will change as the figures are updated the extent of the benefit is such that the Council is unlikely to lose out financially as a result of joining a pool. In reaching any decision Council needs to be aware of the following:
- A core principle is that all individual authorities will continue to receive the benefits of the growth that arises in their area. Because the method of calculating the tariff will be more favourable individual authorities will receive increased growth enhancement reflecting the more favourable tariffs arrangements which apply under pooling arrangements.
 - While the benefits of 'growth' are protected and enhanced under pooling there are disadvantages should the 'growth agenda' falter. In particular an authority operating outside of the pool has its own safety net which protects its income should local businesses close resulting in a loss of rateable value. Once within a pool, however, the safety net that is established is in relation to the wider pool meaning that it is less likely to provide protection against a reduction in rateable value. While this is an issue which Council needs to be aware of the risk should be place in context. In the first instance North East Derbyshire District Council has income that is significantly above its safety net and therefore has that level of 'protection' before the safety net would apply. Secondly, the indications are that rateable value will continue to grow locally. Thirdly, when a major company closes there is normally a significant period before the closure comes into effect and NNDR remains payable on an empty building. The other issue which could potentially give rise to an issue is where a number of appeals against the rateable value are awarded. As part of the due diligence exercise that has been undertaken consideration has been given to the major outstanding appeals which indicates that the appeals currently

outstanding are unlikely to cause any issues which undermine the Business Case for the Pool.

- 1.9 A related risk is that other members of the pool could suffer significant losses in their rateable value. While this does not have the same direct impact upon North East Derbyshire as would a decline in its own rateable value it is an issue which needs to be taken into account. While this is a risk the same protections that operate against North East Derbyshire suffering a significant reduction in its rateable income also apply across the pool. These risks need to be considered against the background of the financial uplift which will result for the Derbyshire authorities from entering into a pool. It would take a significant level of business revaluation or business failure to undermine these financial advantages. Given that the authorities are free to leave the pool on an annual basis the fact that a major appeal or a business closure takes a significant period of time offer a significant protection against a financial impact arising from a wider business failure across the County area.
- 1.10 In addition to considering the financial exemplifications Council needs to be aware that in order to submit an application to become a pool the Council's need to agree Governance arrangements for a pool. The advisor commissioned has drafted out appropriate Governance agreements based upon those currently operating in other pooled arrangements. The current draft agreement is attached as Appendix 1 to this report. At officer level these have been broadly accepted at the initial meetings but there does remain the possibility that one or more of the member authorities will seek to have these terms amended. The main issues that are likely to arise include the following:
- The Pool needs to appoint an administering authority to manage the cash flow payments between central government and the pool along with accounting arrangements, etc. An indicative management fee of £50,000 has been agreed for this role. Given the large scale of the cash flows involved this would be easier to manage in a larger authority. Provisional agreement has been reached that Derby City would administer the pool. However, because of the limited financial advantage that would accrue to Derby City they may decide not to participate as a pool member in which case the role would be undertaken by Derbyshire County Council.
 - The provisional agreement has been made on the basis that all authorities will hold any reserves that they consider appropriate locally in order to protect against a fall in NNDR income. Some pools nationally, however, have an approach based upon holding such reserves within the pool itself and some of the Derbyshire authorities may request that this approach be adopted.
 - Within the Pool there would be an agreement seeking to protect the level of funding for each individual authority should the funding from within the pool be insufficient for that authority to achieve the same level of funding within the pool as it would receive outside the pool. That would potentially reduce the level of gains that other authorities could secure.

- 1.11 While this report recommends that North East Derbyshire District Council should participate in a proposed NNDR pool covering the Derbyshire area there are a number of issues which remain outstanding. These include further due diligence work on the figures used and assumptions made within the exemplifications, on which authorities agree to be part of the pool (although Derby are currently the only authority which may decide to opt out), on whether significant changes are proposed to the Governance arrangements, etc. In the light of the number of factors that could change before the decision to join needs to be made at the end of this month (October 2014) it is appropriate that the recommendation is that delegated powers are granted to make this decision in the light of any further information that becomes available. While the information currently available – which is unlikely to change significantly – strongly supports the view that there is a significant financial benefit to North East Derbyshire District Council and its residents it is appropriate that the Council retains its flexibility to respond in the light of any further information that may emerge.
- 1.12 Finally, Council should note that even in a situation where North East Derbyshire District Council applies to join the pool further information concerning the Council's position will be provided in the draft Local Government Finance Report for 2015/16 which it is anticipated will be available in December 2014. This will enable local authorities to confirm if pooling is still of benefit to them. Local authorities can withdraw from a designated pool before the pool comes into effect, if after seeing the draft Local Government Finance Report they no longer believe that pooling provides the opportunities they had previously thought. To exercise this option a local authority must write to the DCLG within 28 days of the publication of the draft Report and before the final Report is laid before the House of Commons. The Secretary of State will then revoke the designation. Once a designation has been made it cannot be amended so if one local authority chooses to exercise this option it will mean that the pool cannot continue. While this is an option for the Council at that stage it should be noted that if other participants in the pool stood to gain then they are likely to prove critical of an authority which took a unilateral decision to end the pool.

2 Conclusions and Reasons for Recommendation

- 2.1 This report considers the case for entering into a voluntary pooling arrangement and concludes that the financial advantages to North East Derbyshire District Council and its residents strongly support a decision to enter into a voluntary pooling arrangement. The proposal will enable the Council to retain a higher proportion of its NNDR income and to gain additional benefits from any further growth. In addition it will strengthen the position of a Derbyshire Combined Authority which should put the area in a stronger position to negotiate with central government for higher funding levels to promote economic growth. Against this there is a limited risk that a faltering of growth either within North East Derbyshire or the wider County region could result in a reduction in the level of NNDR below what would have been the case if the Council had not entered into a pooling arrangement. Both the independent advisor together with the Council's own officers are of the view that the scenario in which NNDR is higher within a pool is by far the most likely outcome. The national experience also strongly supports the view that those authorities which participate in a pooling arrangement do secure financial advantage as a result. On

balance therefore it is in the financial interests of both the Council and our residents to enter into a voluntary pooling arrangement with other Derbyshire authorities.

3 Consultation and Equality Impact

- 3.1 The proposals within this report are concerned with increasing the level of funding from NNDR. This is largely a technical issue which is considered to be unlikely to have any requirement for external or partner consultation. There is likewise no direct impact upon equality issues.

4 Alternative Options and Reasons for Rejection

- 4.1 The alternative options are to join or to remain outside a Derbyshire wide pool for NNDR. The reasons for rejecting the option of remaining outside the NNDR pool are set out within the report.

5 Implications

5.1 Finance and Risk Implications

- On the basis of the information currently available North East Derbyshire District Council should receive an additional level of NNDR income of £326,000. The actual level of income received will change depending on such items as changes in the level of rating income in 2015/16, etc. On the basis of the information currently available it is, however, clear that North East Derbyshire will see an increase in its level of income if it decides to join the Derbyshire NNDR Pool.
- While there remains a risk that changes in the NNDR level either within the North East Derbyshire area, or in the wider Derbyshire area may result in a reduction in the level of NNDR received by North East Derbyshire in practice this is a very limited risk. In the unlikely scenario that such changes had a detrimental impact upon North East Derbyshire's financial position then there are a number of actions which could be taken including withdrawing from the NNDR pool in order to safeguard our financial position.

5.2 Legal Implications including Data Protection

- There are no Data Protection issues arising directly from this report. The Governance issues are covered in the main body of the report with the current draft governance structure attached as Appendix 1 to this report

5.3 Human Resources Implications

- These are none arising directly from the report.

6 Recommendations

- 6.1 That Council approves in principle to join a Derbyshire Pool in respect of NNDR with effect from 2015/16.

- 6.2 That delegated powers be granted to the Executive Director – Operations in consultation with the Leader and Deputy Leader of the Council to take the decision on whether to enter the Derbyshire NNDR pool at the end of October 2014 in the light of any further information that may be available at that stage.

7 **Decision Information**

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	N/A
District Wards Affected	
Links to Corporate Plan priorities or Policy Framework	

8 **Document Information**

Appendix No	Title
Appendix 1	Draft Government Agreement
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
DCLG “Business Rates Retention Pooling Prospectus 2015-16”. https://www.gov.uk/government/publications/business-rates-retention-scheme-pooling	
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DRAFT GOVERNANCE AGREEMENT

Proposal for a Business Rates Pool in Derbyshire from April 2015

Membership

To be Agreed. Open to all Derbyshire authorities.

None of the councils listed is either part of an existing pool or proposed pool.

Benefits of the pool

The make up of the proposed pool was agreed following consideration of a number of options. All eight shire districts in Derbyshire were invited to express an interest in joining the pool along with the county council, Derby City and Derbyshire Fire & Rescue.

[Add reasons for membership, contiguous or not etc.].

Members of the proposed pool believe that the arrangements will be an important enabler to drive forward economic growth and create a positive framework for investment across the county by improving business rates incentives and minimising the prospect of wasteful competition between authorities. It is the express intention of the pool members to improve the well being and prosperity of the communities we serve.

A pool also provides the intended benefits of sharing the benefit from economic development across a wider area and benefit the individual members but also spreading the risk of any volatility in business rates income.

Lead Authority

The lead authority will be Derby City Council / Derbyshire County Council.

Governance Agreement

1. Pool Membership

Potentially all Derbyshire Authorities – to be agreed.

2. Introduction

This pooling proposal has been agreed by all pool members and signed by their Chief Executives and Section 151 Officers.

The proposal sets out various key principles and addresses the key governance areas to ensure that a robust framework is in place for the effective management of the pool. Governance arrangements will stay in place until the pool is fully dissolved.

Each time a new member joins or an existing member leaves the pool the governance arrangements will need to be reviewed, renewed and agreed with the Department for Communities and Local Government (DCLG and its successors).

3. Key principles of the pool

- The aim will be to ensure that no participant receives less funding than if they had not pooled
- Any dividend remaining or any shortfall will be calculated in accordance with the detailed clauses below
- Outside of this agreement, individual authorities will retain their decision making powers

4. Definition of Pooled Funds

Pooled funds will include monies involved in the Local Government Business Rates Retention Scheme. Subject to the requirements of the 2012 Local Government Finance Act and its related regulations which must take precedence, authorities involved will pay into the pool all the business rates collected by each authority EXCEPT the rates yield or growth from any local Enterprise Zone or from renewable energy schemes or similar exemptions, as set out in current or future legislation, where an individual authority is allowed to benefit directly without deductions for levies or others' shares.

5. Governance Structure

The key element in the governance structure will be the lead finance officers of the authorities that are in the pool. They will form a governance board and will be responsible for guiding and managing the operational day-to-day running of the pool. The officers will seek to find unanimous agreement on all issues involving the pool.

If unanimity cannot be reached after a number of options have been considered, the circumstances and difficulties arising will be reported to and guidance sought from the Chief Executives of the councils that are in the pool. If unanimity cannot be reached by the Chief Executives then a decision will be sought from the leaders of authorities that are in the pool.

An annual review of the pool arrangements will take place to determine whether the pool should be dissolved. For example one or more members may wish to withdraw and the remaining members may wish to resubmit an amended pooling proposal.

6. Duration of the pooling agreement

Pooling is voluntary and members will be able to leave the pool in accordance with this agreement and the DCLG timescales that will be published from time to time.

7. Lead Authority

The Lead Authority for accounting purposes will be Derby City Council / Derbyshire County Council.

Responsibilities for the Lead Authority and individual pool members are outlined in Appendix 1.

8. Pool Administration Costs

Pool set-up and administration costs will be included within the share of any pooling benefit assigned to Derby City Council / Derbyshire County Council.

9. Pool 'Dividend'

The pool dividend is defined as the amount remaining in the pool after:

- Any tariff payment to Government
- Any levy payment to Government
- Any safety net payment from Government
- Payment to each participant of the amount they would have received should the pool not have existed
- Any interest payments to or from the pool
- Any agreed contribution to or from reserves

10. Allocating any Pool Dividend

Any pool dividend will be distributed on the following basis:

- £150,000 to Derby City Council

And from any remainder:

- 30% to the county council
- one-thirtieth to the Derbyshire Fire & Rescue Authority

- one-third to districts in proportion to their growth above the DCLG target. There will be no deduction for any district below its rates target
- one-third to districts in proportion to their funding targets

The pool will not retain a reserve. Instead, participants will maintain their own provision against future pool shortfalls.

11. Pool Shortfall

If there is a shortfall on the pool – i.e. there is insufficient funding to allow each authority to receive what it would have received outside the pool - it shall be met as follows:

- 30% from the county council
- one-thirtieth from the fire authority
- one-third from any district that failed to achieve its rates collection target. This shall be in proportion to the cash amounts that it/they is/are below the target
- one-third from all districts in proportion to their funding targets
- If this is insufficient then a further deduction will be made in proportion to each district's funding in excess of its safety net amount outside the pool
- No district shall receive less than its safety net level outside the pool from these three preceding steps
- If this is still insufficient then a further deduction shall be made pro rata to every authority's funding target. This is the only step at which an authority may receive less than its safety net level outside the pool

If a shortfall seems likely to continue, consideration will be given to the future of the pool, including dissolution.

12. Dissolution

The pooling arrangement will remain in place until any single authority or authorities say that they wish to leave the pool. Pool members should consider the impact on the remaining members when making this decision.

Pool membership will be reviewed on an annual basis to determine whether a significant change in business rates is expected and consequently whether the pool is still financially viable.

Authorities will be required to notify pool members of their decision to leave the pool in accordance with the notice period outlined below.

DCLG will be notified of any decision to dissolve the pool in accordance with their published process and timetable.

Any subsequent decision to re-form a pool, for example, if one member wishes to leave and the other authorities wish to continue in a new pool, will be made in a timely manner to ensure that a formal pooling proposal is submitted to the DCLG in line with their process and timetable.

13. Notice Period to Dissolve the Pool

Authorities will be required to advise the pool of their intention to leave and consequently dissolve the pool giving a minimum of one month's notice in advance of the DCLG deadline. This will allow remaining pool members to consider whether they wish to submit a new pooling application.

14. Requests to join the pool

If a new authority wishes to join the pool it will be required to provide three months' notice prior to the DCLG deadline. This will allow time for existing pool members to consider their continuing membership of the pool.

15. Distribution of Pool Assets / Liabilities on Dissolution

Pool members will be jointly and severally liable for the assets and liabilities of the pool. However this should not override any of the detail included in this agreement.

16. Payment schedules and cash flow

Payment schedules will need to be agreed and payments made on time so that the pool can meet the payments required by central government and to share business rates collected. Payments into the pool will include various payments and these will all need payment schedules as announced by DCLG or as agreed locally.

Payments to the lead authority will be made by direct debit on the day preceding the payment date to central government. All funds will be retained in the lead authority's own bank overnight.

The pool shall charge interest at a rate of four percentage points above the prevailing Bank of England base rate on all payments from participants that are received after the scheduled day.

Safety net payments are to be made in-year to provide some immediate protection to the authority involved. The pool will attempt to replicate the timing and amount of any safety net payment that would have been due to its members if there was no pool.

Levies are not finalised until after the year has ended. Thus any pool dividend or shortfall cannot be finalised until after the year has ended. Forecasts of various elements such as the likely levy payments and dividends will be needed so that authorities can make their decisions about whether to remain in the pool.

Costs (or benefits) may arise from the cash flow into and out of the pooling fund will be offset against (or added to) the pool dividend.

Appendix 1

Roles and Responsibilities

The Lead Authority will be responsible for the following:

- An estimate for consideration of the budget for setting up and administering the pool
- All finances in relation to the pool including payments to and from central government, the other members of the pool and preceptors
- Calculating the funding position if all councils had not been part of the pooling arrangement and any dividend or shortfall
- Agreeing the various schedules of payment with other pool members
- All communications with the DCLG including year-end reconciliations
- All information and external reporting requirements for the pool, details of which will be shared with all members of the pool
- The collation and submission of information required for planning and monitoring purposes by the governance structure, the DCLG or any other party
- All audit requirements in relation to the pool
- Year-end positions for the Statements of Accounts for each member authority
- The administration of the dissolution of the pool

Pool members (including the lead authority as appropriate) will be responsible for:

- The collection of relevant business rates to transfer to the pool run by the Lead Authority
- The implementation of their own collection funds
- The submission of NNDR forms to DCLG
- The provision of any information...

Appendix 2

Pooling scenarios in Derbyshire: Distributing gains: 2014/15

	£000's
Derby City	0.150
Derbyshire CC	0.818
Derbyshire Fire	0.091
Amber Valley	0.256
Bolsover	0.233
Chesterfield	0.262
Derbyshire Dales	0.143
Erewash	0.254
High Peak	0.201
North East Derbyshire	0.326
South Derbyshire	0.142
Total	2.876