

DRAFT FOR COMMENT
Business Rates Pooling 2014/15

Summary

This paper reviews the potential for an extended business rates pooling arrangement for Norfolk local authorities for 2014/15.

Recommendation

Norfolk Leaders are asked to support the establishment of an extended business rates pooling arrangement for Norfolk based on the principles outlined in this paper and charge Norfolk Chief Executives with the development of a more detailed worked up proposal for final consideration and agreement by the Norfolk councils.

Background

The Local Government Finance Act 2012 introduced changes to the funding system for local government, with funding from April 2013, via a mix of locally retained business rates and government grants that are allocated from centrally retained business rates.

The intention of the new business rates retention scheme is to provide incentives for local authorities to increase economic growth, through retention of a share of revenue generated from locally collected business rates. In order to provide opportunities for the same incentives across all areas, the Government has included an arrangement within the new funding scheme for councils to be allowed to pool business rate resources where it makes local economic sense to do so. Providing a county council is part of a pooling arrangement, the creation of a pool within a two tier area can reduce or remove the levy on business rates growth paid to the Government by billing authorities. This will enable more business rates growth to be retained locally and used as agreed by the authorities within the pool.

Last year expressions of interest in creating a pool were required by the end of July 2012. Following discussion at Norfolk Leaders' Group, most councils decided not to pursue pooling in the initial year. However, Broadland District Council and Norfolk County Council submitted an expression of interest to DCLG in July 2012, who confirmed designation of the pool for 2013-14. The aim of this pool is to help support the economic growth strategy through potential to use additional retained business rates to provide funding for joint projects, including key infrastructure and provide a pathway for future pooling arrangements with authorities across the county. Governance arrangements were agreed by both councils and included provision for dissolving and reforming a new pool, should other councils wish to pool business rates in future years.

In 2013/14, 13 pools were created involving 90 councils. Collectively, based on provisional forecasts of income, pooled authorities expect to see growth in their rates income of some £44m; the lower levy rates of pools mean that about £17m of growth will be retained locally that would otherwise have been returned to central government.

From information and discussion with other councils, most pools have been set up on a fairly straightforward basis, with business rates pooled for the purpose of Government calculation of tariffs, top-ups and levy payment, but with arrangements in place that means that only the saved amount in levy payment is 'pooled' in respect of joint decision making. The key opportunity from pooling is to enable funds to be created that can actively support local economic development and in turn generate new business growth.

Pooling Arrangements for 2014/15

The Government has just issued a prospectus for business rates pools for 2014-15, with a requirement for notification of new pools by 31 October 2013. As with last year, although pools are designated in the autumn, final decisions can be made after the local government finance settlement.

DCLG is apparently keen for local authorities to join pooling arrangements for business rates as it believes that it will "encourage" joint working on economic growth and service delivery.

In two tier areas such as Norfolk the upper tier authority, in this case NCC, will normally receive a top up from government and the district authorities will normally pay a tariff (levy) to government. The levy rate for any increase in business rates growth over and above the baseline funding level, adjusted for inflation for all Norfolk District authorities is 50%. The effect of pooling is that the levy rate will be reduced or eliminated completely. However, there are also financial risks associated with pooling. Some local authorities may find that a reduction in their local business rates income which would have qualified for a safety net payment (where business rates income falls by more than 7 ½% below the baseline funding position) if they are part of a pool, will no longer qualify where the overall pool is above its combined safety net threshold.

Clearly it is not possible to predict with certainty some five months before the start of a financial year the outturn position for the forthcoming period. For example, Borough Council of King's Lynn & West Norfolk had not predicted an increase in business rates for 2013/14 as it anticipated that the King's Lynn power station which has been mothballed would be taken out of the rating list. In fact, this did not occur and the Borough Council now expects that its business rates will in fact increase by £860,000 above its baseline, 50% of which will be paid over to government by way of a levy payment and hence not be available for investment in Norfolk.

Taken as a whole in 2013-14 Norwich, Great Yarmouth and Kings Lynn and West Norfolk councils initially forecast a reduction in business rates and for Great

Yarmouth this led to a safety net payment of £370k. Within a pool all business rates are considered collectively and increases and decreases in business rates are 'ironed out'. Therefore, at the outset for this financial year, a county wide pool involving all districts would not have generated an overall levy saving and additionally would need to provide financial support to Great Yarmouth, who would otherwise have lost out on the safety net payment.

In order to evaluate the likely position across Norfolk for future years Councils have provided the latest forecast of NNDR for 2013-14 and early forecasts for 2014-15. The table below shows the expected growth or reduction in business rates and the amount of levy or safety net payment for each council.

2013-14	Breckland	Great Yarmouth	King's Lynn & West Norfolk	North Norfolk	Norwich	South Norfolk	Total Norfolk Authorities outside the pool
	£m	£m	£m	£m	£m	£m	£m
(a) Levy Rate	50%	50%	50%	50%	50%	50%	50%
(b) Local Share Growth / Decline	0.154	-0.630	0.860	0.088	-0.022	0.109	0.559
[c] = (a) x (b) Levy Payment	0.077	0.000	0.430	0.044	0.000	0.054	0.605
Locally Retained Rates	*11.550	*11.408	17.422	*9.681	*31.040	11.017	92.118
Top Up / Tariff	-7.834	-8.582	-11.621	-6.690	-25.662	-8.100	-68.489
Levy payment to Government	-0.077		-0.430	-0.044		-0.054	-0.605
Safety Net Payment from Government		0.371					0.371
Total Income	3.639	3.197	5.371	2.947	5.378	2.863	23.395
Highlighted areas are figures that creating a pool would affect							

* Forecast figures not yet available and figures based solely on 2013-14 figures uplifted for RPI

Conclusions

A county council can only be part of one pool. Therefore decisions affecting pooling in 2014-15 will need to be made collectively. The business rates growth forecasts from councils for 2014-15 suggest that a Norfolk wide pool could have a net benefit of £0.234m after taking into consideration the safety net payment. However, in practice, as there are no restrictions on pooling arrangements a pool involving only councils expecting to incur levy payments could have a benefit in the region of £0.605m in 2014-15.

Recent discussion with DCLG has confirmed that pools can be created with considerable flexibility within the locally agreed governance arrangements.

Therefore, it is entirely possible for a council to be an associate member of a pool where it makes sense in relation to economic strategy, but not part of the designated pool where it does not make financial sense to do so. This provides greater opportunity for collaboration in areas such as Norfolk, where there is varying levels of business rates growth across the county area. In a situation where an individual district is predicting that it would have no business rates growth, and particularly if it expects to breach its safety net levels as Great Yarmouth did this year, then the Norfolk councils as a whole would financially benefit if that council received outside the pool and accessed safety net payments direct from DCLG.

In overall terms there would appear to potentially be considerable financial benefits to Norfolk from the creation of an extend business rates pooling arrangement for 2014/15.

If Norfolk Leaders are minded to support this approach in principle, it is suggested that the arrangement is established whereby the business rates are pooled for the purpose of the Government calculation of tariffs, top up and levy payments but in practice only the sum “secured” in levy payments is actually pooled for joint decision making, as is the arrangement for most of the existing business rates pools.

In order to reduce the risk to participating councils of the unanticipated loss of one or more major business rate payers in individual districts it would be prudent for the Norfolk pool to replicate the safety net support which the individual participating districts would lose access to, as a first call on the pooled payments.

Whilst change would be needed to the governance arrangements should a wider pool be formed, the governance arrangements for the Broadland District Council and Norfolk County Council pool are attached at Appendix A for information.

Governance

If a pool is to be established it will be important to be clear about the governance arrangements for the investment decisions with respect to the pooled funds. The following represents a “straw man” model for the purposes of discussion.

The purpose of the Norfolk business rates pool is to make strategic investments designed to “support Norfolk’s economic growth strategy”.

Decision making in relation to pooled funds to be determined by the Leaders of each authority participating in the business rates pool. Decision making to be by consensus.

Investment proposals to give priority for schemes which will:-

- Support delivery of the Norfolk Growth Plan
- Lever funding from LEP growth and European funds

- Support infrastructure projects which will lead to:-
 - Job creation
 - Further business rates growth
 - Housing growth
 - Improved skills and qualifications
 - New business creation/expansion

- Ready to start on site and have all relevant permissions, licences, land ownership arrangements in place.

Recommendation

Norfolk Leaders are asked to support the establishment of an extended business rates pooling arrangement for Norfolk based on the principles outlined in this paper and charge Norfolk Chief Executives with the development of a more detailed worked up proposal for final consideration and agreement by the Norfolk councils.

Dated 9th November 2012

AGREEMENT

relating to Business Rates Pooling in Norfolk

- (1) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, NR1 2DH ("**NCC**")
- (2) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Norwich, Norfolk NR7 0DU ("**BDC**")

together "the Parties"

Background

- i. Local Authorities are currently required to pay a percentage of their Business Rate collection to Central Government
- ii. The Parties have agreed to establish a Business Rates Retention Scheme Pool for Norfolk in accordance with the Local Government Finance Act 2012 in order to target retained revenue from additional business rates growth and promote actively and invest in economic development projects for the support and creation of new economic growth for the benefit of their respective constituencies.
- iii. The Parties have agreed to enter into this Agreement to formalise their commitment and to set out their respective roles and responsibilities
- iv. This Agreement sets out:
 - the key objectives of their pooling arrangement;
 - the principles of collaboration;
 - the governance structures the Parties will put in place; and
 - the respective roles and responsibilities the Parties will have during the term of their pooling arrangement.

Interpretation

"Commencement Date" means 1st April 2013

"Lead Authority" means 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

“Local Volatility Fund” means in relation to the Pool an element of the Net Retained Levy set aside in a fund to provide protection for Pool members from falls in business rate income

“Net Retained Levy” means the amount of levy retained locally. This is calculated as the sum of levies to be paid by individual Parties if the Pool did not exist less the levy to be paid by the Pool less any safety net funding that would have been due to individual Pool members if the Pool did not exist and less the administrative costs of the Pool

“No Loss” means the principle that a Member will be no worse off by being a Member of the Pool than it would have been had it not been a Member of the Pool. In so far as is possible each Member shall retain the income it would have received had it not been a member of the Pool

“Pool” means the voluntary arrangement amongst the participating local authorities to pool the business rates generated locally to ensure at least some of any levy is retained locally for jointly agreed purposes

“Safety Net” means the additional funding received by a local authority from central government, and calculated using its national formula, in the event that the decline in business rates is below the level set within the Business Rates Retention Scheme

Agreement

1. Principles of the Pool

1.1 The Parties agree to adopt the following principles in regard to their participation in the Pool:

- (1) Fairness: The Parties agree to share the costs, risks and benefits of the Pool between the Parties in equal shares. In so far as is possible Pool Members should be no worse off than if they were outside the Pool;
- (2) Transparency, Openness and Honesty: The Parties 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 the Pool; and
- (3) Reasonableness of Decision Making: The Parties agree that all decisions made in relation to this Agreement shall be made by them acting reasonably and in good faith.

2. Duration and Participation

2.1 This Agreement shall commence on the date when it has been signed by all the Parties and continue unless terminated in accordance with its terms.

2.2 The Pool shall be effective from the Commencement Date.

2.3 The Pool Board shall review the participation in the Pool annually and will consider requests for new parties to join or existing Parties to leave whereupon the Pool shall be dissolved in

accordance with the provisions of this Agreement provided applications to join or leave are made at least 2 months prior to the Department for Communities & Local Government ("DCLG") deadline for pre-designation of a Pool each year.

- 2.4 Once the Pool has been formally designated by DCLG, the period of participation will be for a minimum of the forthcoming financial year. Thereafter a Party may withdraw the Pool with effect from 1st April of the following financial year subject to:
- (1) Written notice in accordance with DCLG guidance being given to other Parties being 2 months' notice prior to the DCLG deadline for notification of expressions of interest to form a pool for the subsequent financial year;
 - (2) Settlement of all liabilities to and from the Pool
- and the Pool and this Agreement shall terminate.
- 2.5 Following agreement to terminate this Agreement any surpluses or liabilities arising in respect of the Pool at financial year end shall be allocated between the Parties on an equal basis.
- 2.6 The Lead Authority shall be responsible for notifying DCLG of termination of the Pool and thereafter all payments and transactions in relation to Business Rates Retention Scheme shall be the responsibility of the Parties individually.
- 2.7 Should a Party withdraw from this Agreement during the settlement consultation period the Pool will be dissolved in accordance with DCLG rules and the provisions of this Agreement and this Agreement shall thereafter terminate.
- 2.8 Should a new party wish to join the Pool and form a new agreement the Parties may dissolve the Pool in accordance with DCLG rules and the provisions of this Agreement and this Agreement shall thereafter terminate.

3. Governance

- 3.1 A Pool Board consisting of a representative from each of the Parties will be responsible for the governance arrangements of the Pool and shall meet on regular basis as required by each of the Parties. The Pool Board shall prepare an annual report on behalf of the Parties for their respective Cabinets' approval and ratification detailing in respect of the Pool (a) accountability in respect of finance and funds available; and (b) decisions taken by the Pool Board in respect of allocation of the Pool's resources.
- 3.2 The Parties shall agree terms of reference for the Pool Board, subject to the provisions of clause 3.1 of this Agreement.

4. Lead Authority, Reporting and Cash Management

- 4.1 The Parties nominate Norfolk County Council as Lead Authority.
- 4.2 The Lead Authority shall be responsible for all accounting and administration of the Pool, the Pool's Contingency Fund and the Central Investment Fund.
- 4.3 Each Party provide all relevant information to the Lead Authority as it shall require in order to carry out its responsibilities pursuant to this Agreement and in accordance with DCLG guidance.

- 4.4 Each Party shall transfer the relevant funds to the Lead Authority enabling the Lead Authority to carry out its responsibilities under this Agreement.
- 4.5 The Parties agree that the Pool will operate on a cash flow neutral basis. Payments should be made in accordance with the dates as determined by DCLG (as reasonably practical) on a net basis.
- 4.6 Each Party shall provide medium term forecasts and monitoring information as determined by the Pool Board.
- 4.7 The Lead Authority shall procure delivery of the annual report referred to in clause 3.1 and other such reports as required from time to time by the Parties' Cabinets.
- 4.8 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.
- 4.9 The Pool shall be responsible for the distribution of tariffs and top up payments which shall be effected by the Lead Authority making payment of the central share of business rates to DCLG and receiving DCLG top up payments.
- 4.10 Information and payment obligations pursuant to this Agreement shall be carried out by the Parties on a timely basis in accordance with DCLG requirements relating to the Pool.
- 4.11 Monitoring shall be included as part of the routine budget monitoring process.
- 4.12 Where retained funds are held on behalf of the Pool, the Pool shall ensure it receives interest annually at the average investment rate of the Lead Authority. Such interest shall be added to the retained resource of the Pool.
- 4.13 Late payments may be subject to interest at the base rate set by the Bank of England.

5. Distribution of Pooled Resources and Management of Financial Loss

- 5.1 The Pool will be operated on the basis of:
 - (1) No Loss; and
 - (2) 100% of the Net Retained Levy being shared by the Parties for joint allocation to economic development projects, subject to any allocation of funding and application of a Local Volatility Fund pursuant to clause 6.3.
- 5.2 A forecast of the Net Retained Levy shall be made by the Parties at the Commencement Date and thereafter annually to be confirmed at year end. For the purposes of the first year of the Pool it is agreed that allocations of the Net Retained Levy shall not be committed to until there is agreement by the Parties as to the confidence required that the actual resources shall be realised.
- 5.3 Billing authority Parties will retain their own collection funds and will retain their existing responsibility for bearing any shortfall in collected business rates.

6. Contingencies

- 6.1 In the first year of the Pool the Parties acknowledge and agree that they do not have the scope to share volatility in business rates revenues across several billing authorities and accordingly accept the risk of funding losses equivalent to the Safety Net. In the event that BDC does experience a shortfall in business rates growth in the first year of the Pool and, as a consequence of income dropping by more than the DCLG determined Safety Net trigger, to the extent that it would have received a DCLG Safety Net payment a payment shall be made by NCC to BDC being 50% of the value of the Safety Net payment that BDC would have received.
- 6.2 The Parties shall be reimbursed in the following financial year for any such payments made pursuant to clause 6.1 from the Local Volatility Fund except where the Parties agree not to seek such reimbursement or if the Pool is dissolved and in such cases for the avoidance of doubt the Parties will not be entitled to obtain any reimbursement pursuant to this clause 6.2.
- 6.3 In order to manage variations between actual business rate growth and forecast in subsequent years of the Pool and make up the Parties' shortfalls due to volatility in business rates revenues 5% of the Net Retained Levy shall be set aside annually in the Local Volatility Fund
- 6.4 The Local Volatility Fund will be reviewed on an annual basis by the Pool Board. Where the existing Local Volatility Fund is, or is anticipated to be, insufficient, the distribution of the Net Retained Levy will be amended to increase the proportion allocated to the Local Volatility Fund
- 6.5 Clause 6.3 of this agreement shall not apply to the first year of the Pool or if the Pool Board unanimously agrees that it shall not apply.
- 6.6 In the event that the Pool is terminated the Pool Board must unanimously agree how any balances on the Joint Investment Fund and the Local Volatility Fund are shared amongst the Parties. For the avoidance of doubt this will include both positive and negative balances which will be netted off each other. The purpose is to ensure a net nil balance on each of the Joint Investment Fund and the Local Volatility Fund

7. Binding Agreement

- 7.1 Pool Members have approved this Agreement in advance of the Secretary of State designating the Pool for the purposes of the Business Rates Retention Pool. If the Secretary of State adds conditions to the designation, either initially or at any point in the future an immediate review of this Agreement will be triggered.

8. Dispute Resolution Procedure

- 8.1 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 Agreement. If this cannot be resolved by the Section 151 officers it will be referred to a meeting of all Parties' Heads of Paid Service for resolution.

9. Variation

9.1 This Agreement may only be varied by written agreement of the Parties

10. Governing Law And Jurisdiction

10.1 This Agreement shall be governed by and construed in accordance with English law and, without affecting the dispute resolution procedure set out in clause 8, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.