

Key Decision Required:	Yes	In the Forward Plan:	Yes
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LEADER

24 OCTOBER 2017

REPORT OF CORPORATE DIRECTOR (CORPORATE PERFORMANCE)

A.1 JOINING AN ESSEX BUSINESS RATES POOL AND PILOT IN 2018/19

(Report prepared by Richard Barrett)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek agreement to the Council participating in a revised Essex business rates pool in 2018/19 and to support an application to the Government to become a pilot area in the same year.

EXECUTIVE SUMMARY

- The Local Government Finance Act 2012 changed how local authorities are financed by introducing local retention of non-domestic rates from April 2013. The Government felt it important to incentivise authorities to pursue economic growth by allowing them to retain some of the benefit from growth in business rates.
- By combining in a pool it is possible to retain more of the additional funds from growth in business rates within a county wide area.
- Since 2015/16, the Council has been a member of an Essex Business Rates Pool which has seen financial benefits of **£0.6m** over 2015/16 and 2016/17, with further forecast gains of **£0.4m** in 2017/18.
- Essex authorities would ordinarily be seeking to continue with pooling arrangements in 2018/19, albeit subject to annual review which could see members leave or new members join.
- However for 2018/19, the Government have invited authorities to form pools and then apply to become pilot areas in 2018/19.
- Financial analysis has been undertaken to set out the potential financial benefits of not only forming a new Essex Pool in 2018/19, but also the impact of applying for Essex to become a pilot area.
- Maximising income is a key element of the financial forecast and although the offer made by the Government is for only 2018/19, one-off income of potentially **£1.5m** could be receivable by the Council in 2018/19 if it participated in a revised business rates pool within a pilot area.(or one-off income of potentially **£0.3m** if only in a pool)
- A number of risks are associated with being a member of an Essex pool / pilot, which have been set out along with mitigating responses.
- Applications for new pools and pilot status must be received by the Government by 27 October 2017.

- After considering all of the relevant factors, including external specialist advice, and after reflecting on the various risks, there remains strong confidence that the Council is likely to be in a financially advantageous position if it participates in an Essex business rates pool / pilot in 2018/19 compared to acting alone.

RECOMMENDATION(S)

It is recommended that:

- (a) **Cabinet confirms the Council's participation in an All Essex Business Rates Pool in 2018/19 and supports the application to the Government to become a pilot area in the same year;**
- (b) **delegation be given to officers to continue to work with the other Local Authorities in the Pool to develop the final pooling agreement and application to become a pilot area;**
- (c) **subject to a) and b) above, delegation be given to the Corporate Director (Corporate Services) in consultation with the Portfolio Holder for Finance and Corporate Resources to agree the final pooling agreement and application to become a pilot area in 2018/19;**
- (d) **subject to a) and b) above, delegation be given to the Corporate Director (Corporate Services) in consultation with the Portfolio Holder for Finance and Corporate Resources to withdraw from the pool / pilot if disadvantageous for the Council to remain a member.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Maximising financial opportunities and financial planning are essential to support the delivery of financial stability and resilience especially in the context of the current and challenging financial climate and in supporting the 10 year financial forecast. Such an approach underpins the Council's capacity to deliver on its commitments, objectives and priorities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

As set out later on in this report the Council has received **£0.6m** in total over the last two years from being a member of the existing Essex business rates pool and it is forecast that there will be further income of **£0.4m** in 2017/18.

Further benefits if successful in applying to become a pilot area along with the formation of a revised pool has the potential to deliver one-off income to the Council of **£1.5m** In 2018/19.

There are a number of risks set out in a separate section of this report and based on a review of these, and how they are mitigated / managed, a strong case for becoming a member of a revised Essex business rates pool along with supporting the application to the Government for the Essex pool to be designated as a pilot in 2018/19 is set out.

A business rates resilience reserve is held by the Council which provides further mitigation

to the risk associated with business rates which would be extended to underwriting the risks of being a pool member within a pilot area in 2018/19. This reserve totals **£1.6m**.

The actual benefits of an Essex Pool and pilot status will depend on a number of assumptions. Such assumptions include the amount of growth in business rates in each of the pooling authority's areas during 2018/19 and the level of business rate appeals. Further / detailed information is set out further on in this report, which supports the proposals.

At present the Council receives section 31 grants to reimburse the cost of the various reliefs announced by the Government such as small business rate relief. These will continue and therefore will not have a direct impact on the decision to become a pool member and apply for pilot status in 2018/19.

Risk

As highlighted when the original Essex Pool was formed, there is a significant risk that by not pooling, the resources available to Essex authorities are not being maximised. This has been brought into even sharper focus given the continued financial challenges faced by authorities.

Further detailed considerations are set out in a separate section further on in this report.

LEGAL

The Local Government Finance Act 2012 creates the ability for authorities to pool their non-domestic rates. In constructing a scheme it will be necessary to agree the terms of governance. This will be finalised as part of the application process to become a pilot area in 2018/19 and subject to the right to withdraw from the pool before it comes into effect as part of the Government's Local Government Finance reporting processes later in the year.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

There are no implications directly arising from this report.

PART 3 – SUPPORTING INFORMATION

NNDR POOLING 2018/19 AND APPLYING TO BECOME A PILOT AREA

The Council has been a member of an Essex Business Rates pool since 2015/16 with 2017/18 being the third year of such arrangements.

The benefit of pooling is derived from the fact that any growth in business rates income above a 'baseline' level is retained across the pooled area rather than it being paid to the Government via a levy that would be the case if the pool did not exist. There are complex calculations that underpin this concept, which for the Essex Pool is based on setting off tariffs paid to the Government by District Councils against the 'top up' paid by the Government to Essex County Council (ECC).

Although membership of the pool has changed over the last three years, this Council has always been a member and at the centre of the pool's governance arrangements is an agreement that all members have signed up to, and amongst a number of issues, it sets

out how any gain from being in a pool is apportioned across its members. The current agreement uses the following approach to apportioning gains:

- 25% of any gain be distributed using each authority's baseline funding level.
- 25% of any gain be distributed using each authority's local share of business rates income.
- 50% of any gain be distributed based on the growth in business rate income achieved in each District.

A further key concept underpinning the existing pooling agreement is that no authority should be worse off within the pool than it would have been if it had chosen not to join the pool. This also takes into account the safety net position where the Government 'protect' each authority's income position by funding any loss in income greater than 7.5% of its business rates baseline in any year, which is extended and applied to the pool as a whole.

Using this Council as an example, **Appendix A** sets out the various calculations and compares the financial position if the Council was not in a pool with the position with being a pool member in 2016/17 under the existing 50% Business Rates retention arrangements:

Although **Appendix A** only sets out the position for 2016/17, a summary of the benefit over three years of being a pool member is as follows:

2015/16 - **£0.223m**

2016/17 - **£0.377m**

2017/18 - **£0.400m** (forecast)

What are the Options for 2018/19?

Ordinarily, the existing Essex Pool arrangements would have continued, albeit subject to the annual review whereby members may wish to leave or other authorities may wish to join the pool. However the Government have invited authorities to apply to become pilot areas in 2018/19. The invitation states that the Government wishes to expand on the existing pilot programme for 100% business rates retention to run alongside the five current 100% pilots which have been in operation from 1 April 2017. The Government wish to use the pilots to help them explore options for the design of future local government finance reforms.

In addition to the above there would also be the default position of the Council not being part of any pool in 2018/19.

Appendix B therefore sets out the impact on TDC and the proposed pool as a whole, based on the following 3 scenarios:

- 1) TDC does not join a pool in 2018/19
- 2) TDC joins a revised Essex Pool in 2018/19 but the pool is not successful in its bid to become a pilot area or decides not to bid for pilot status.
- 3) TDC joins a revised Essex Pool and pilot status is applied for and granted by the Government in 2018/19.

The Government have set a deadline of 27 October 2017 as the date that applications to become pilot areas must be received. Applying to become a pilot is based on the requirement that Local Authorities will need to establish pools across common economic areas. Essex is therefore in a strong position given it has operated a pool over the past three years, The only disadvantage is that not all Essex Authorities are members of the

existing Pool and it is understood that if all authorities did not join an Essex pool, then the application for pilot status would be weakened. However conversations to date indicate that all 11 District Authorities, 2 Unitary Authorities along with ECC and the Essex Fire Authority are considering joining the pool and applying for pilot status, although this informal commitment is subject to their own decision making processes. This report therefore seeks approval for this Council to join the revised pool and apply for pilot status.

Considerations around the membership of the pool have also been considered and there is consensus amongst finance officers across Essex that an all Essex Pool would be the fall-back position if the bid to become a pilot is unsuccessful as it would be a difficult argument to make why we would have one pool to support the application to become a pilot but a different pool if we were not successful.

Given the complexities and risks associated with applying for pilot status, external consultants have been commissioned jointly by the Essex Authorities. The main advantage identified from becoming a pilot area is that 100% business rate growth above the baseline would be retained within Essex rather than 50% being paid to the Government. Using the figures in **Appendix A**, this would mean that the **£1.515m** growth above the funding baseline for this Council would be retained by the pool. However Local Authorities would no longer receive revenue support grant or rural services delivery grant, which would be adjusted for in the overall calculations to ensure a cost neutral position before income growth is taken into account. Extrapolating the above position across all Essex Authorities would provide the potential benefit from achieving pilot status of **£36.6m** as set out in **Appendix B**.

In respect of the revenue support grant, this would only be 'given up' by authorities in 2018/19 during the pilot year. As the Government have stated that the pilot is for only one-year, revenue support grant would be reinstated in 2019/20. This is in line with the current 4 year deal with Government that the Council signed up to in 2016/17, which sees 2019/20 as the last year any revenue support grant will be receivable.

If the bid to become a pilot area was unsuccessful but an all Essex Pool was retained, then the financial benefit to the pool area would potentially be **£9.4m**

The obvious question that springs to mind is why would the government offer to forgo this level of income – will there be additional burdens passed down to pool members? This question has been asked of the Government directly and they have stated that the offer for pilot status is only for 2018/19 and there will be no new burdens passed down to local authorities. A statement set out in the invitation to apply for pilot status states that the Government wish to extend pilot areas to test administration, technical planning and implementation, data collection, system maintenance and IT systems, especially within two tier areas.

Consideration has been given to how the overall gains set out above would be shared across the potential 16 member authorities in the pool. Given the success of the existing pool, it is proposed to continue with the current method which is set out earlier on in this report. However discussions remain on-going amongst the pool members as there may be a need to 'fine-tune' the arrangements given the complexities involved and the ensure a strong case is put forward to the Government who have set out expected criteria when applying, which is discussed further on in this report. A delegation is therefore set out in the recommendations above to provide enough flexibility to work in consultation with the pool members in developing the bid to become a pilot given the time constraints of the application deadline of 27 October 2017.

As summarised in **Appendix B**, based on the existing basis for sharing gains, the Council's potential share from being in an all Essex Pool but not a pilot area would be **£0.3m**. If in an all Essex pool and pilot status was granted by the Government then the total potential gains would be **£1.5m**.

The above amounts would therefore represent the 'lost' financial opportunity to TDC if it was not in a pool or pilot area.

Based on this, it would therefore be financially advantageous for the Council to be in an all Essex Pool and support the application for pilot status.

Clearly there are a number of risks and factors that will influence the potential gains set out above but even after taking these into account, it is still expected that being in an Essex pool and pilot would generate an overall financially advantageous position for the Council. Risks and how they will be mitigated are set out in the next section of the report.

Other Issues

Within the Government's invitation to become a pilot area, they have set out various criteria that should be addressed in the application such as:

- Agreement must be secured locally from all relevant authorities to be designated as a pool / pilot and put in place arrangements to pool their additional business rates income;
- proposed pooling arrangements to operate across a functional economic area;
- the proposals should promote the financial sustainability of the authorities involved;
- evidence of how pooled income from growth will be used across the pilot area.

Proposals to become a pilot must also include:

- Explanation as to the relevance to the economic geography of the area;
- the designation of a lead authority;
- what pooling arrangements would participating authorities like to see if the application to become a pilot was unsuccessful;
- governance agreement including how business rates income to be used;
- demonstration that growth will be used to promote financial stability and sustainability and invested to encourage further growth across the area;
- collaboration on use of pooled income and how the area will work together in the longer term

It is expected that bids to become a pilot area will be a competitive process and the Government have acknowledged that affordability constraints may result in further assessment criteria being applied.

The application to become a pilot area that includes the required information set out above remains an on-going action being discussed between the relevant authorities across Essex. In terms of the use of pooled resources, it is proposed to set out in the application that this will be used to support financial sustainability along with key projects already being undertaken by all of the authorities such as regeneration, economic development and housing initiatives.

As is currently the case, it is proposed that ECC act as the pool's lead authority.

If the application to become a pilot area is unsuccessful then the bid will specify that the same authorities still want to be designated as a pool for 2018/19.

Although it is acknowledged that it may weaken the application, it is proposed that if any authority withdraws from either the pilot application or the pool, then the remaining members will still pursue pilot /pool designation in 2018/19.

Within the application to become a pilot area, the Government have asked applicants to express their preference for a 'no detriment' clause. Although it would make logical sense to secure such a clause to ensure that no authority is worse off under the pilot arrangements, as applications are expected to be subject to a competitive process, it may be a disadvantage to request such a clause. Therefore given the management of risks set out below, it is proposed to state in the application that the Essex Pool would be willing to operate without such a clause.

MANAGEMENT OF RISKS

As already mentioned, the risk to each authority is limited by the scheme being constructed on the basis that no authority is worse off than if they had remained outside of the pool.

However risks within a pilot area would increase as authorities will be giving up their revenue support grant in return for retaining more of the business rates income raised locally. The primary risk is that income projections are not achieved, or worse, business rate income reduces in 2018/19. This risk along with other considerations have been set out along with the proposed response as follows:

Risk	Response
<p>One or more authorities see a significant reduction in the forecast business rates income in 2018/19</p>	<p>There are a number of mitigating factors:</p> <ul style="list-style-type: none"> • Current Forecast gains are £36.6m above the business rate baseline position. This would have to be 'eroded' before the pool went into a negative position, which provides significant 'headroom'. • It is estimated that each authority would have to be faced with 10% reductions in their income to erode all benefits from being in a pool/pilot. Such significant reductions are unlikely and would perhaps only be seen in a recessionary period, which is not expected. Also the impact from recessionary factors are usually delayed and even if something economically significant happened it is unlikely to have a significant impact in 2018/19.
<p>The safety net applies to the pool as a whole so there could be a loss that would</p>	<p>As previously highlighted, a safety net trigger of 7.5% is applied by the</p>

<p>otherwise have been met by the Government in an un-pooled area.</p>	<p>Government. Any reductions in income below this amount in any one year would be supported by Government funding and applied to the whole pool.</p> <p>As part of the becoming a pilot area, the Government have stated that they will increase this to 3%. Therefore the pilot area would receive greater protection from reductions in income compared to that offered to only pooled areas.</p> <p>Notwithstanding this additional support, the positive position currently being experienced across Essex, as set out in the point above already provides a significant 'buffer' to the potential for a negative income position compared to the baseline.</p>
<p>There could be a negative impact on income from business rate appeals</p>	<p>This is an extension to the risk associated with reduced income as any additional funding required to settle appeals would in effect be funded from income received in the year.</p> <p>An appeals provision is already held by the Council which is adjusted each year based on the number and success of appeals made. Given the positive points already made above in respect of income growth, it is unlikely that appeals will reach a level that would start to have an overall negative impact on the pool / pilot.</p>
<p>Some authorities do not agree to join the pool or support the bid to become a pilot.</p>	<p>It is still planned to go ahead with the revised Essex pool and apply to become a pilot area even if some authorities do not join. This will have an impact on the expected financial benefits and would depend on which authorities remained in the pool. Unless a significant number of members withdraw, including the 'top up' authorities who enable a pool to work financially, there would still likely be a financial benefit to the Council.</p> <p>In the unlikely event that the membership of the pool changed significantly, the Council may need to consider its own position which would require the flexibility to make timely decisions to potentially withdraw and therefore an associated delegation is set out in the</p>

	<p>recommendations.</p> <p>If an authority withdraws from the pool/pilot after the application is submitted on 27 October 2017, then the pool / pilot cannot go ahead and no revised pools / pilots would be possible for 2018/19 as the 'window' to apply would have closed. Further comments are set out below this table in terms of the reputational risks associated with this situation.</p>
<p>Gains from pool / pilot are not spent in time or in accordance with the agreement / pilot application</p>	<p>It is understood that there will be no time limit placed on spending any gain from being in a pool / pilot.</p> <p>As highlighted earlier on in this report, the government want to see any gains being committed to additional growth and financial sustainability. The application to become a pilot will set out this commitment whilst retaining the flexibility on how the funding is applied locally.</p>

In the unlikely event of an overall loss being experienced by the pool/pilot, this would be allocated to each authority based on similar principles to gain sharing highlighted above.

As set out above, if an authority decides to pull out of the pool after the application has been made then the pool cannot go ahead as there would be no opportunity to form a revised pool. Therefore it is essential that all pool / pilot members have undertaken the necessary decision making processes by the deadline of 27 October and as far as is practicable, undertaken the necessary due diligence in respect of the their forecast business rates position for 2018/19 along with understanding the risk of being a pool member. For this Council, this work has been undertaken and there are no significant issues arising to date that indicate that it would not be financially advantageous to be a member of the pool / pilot. Once the Government have confirmed the pool / pilot for 2018/19 and the period to withdraw has ended, the pool / pilot will be formed and authorities would no longer be able to withdraw.

It is however recognised that in the event of any arrangements that put the Council at a financial disadvantage, the first priority would be to protect the Council's position and take the necessary action. Such action is not expected, and if there were reasons to withdraw from the pool / pilot after the 27 October 2017 then it would be due to risks that all participating authorities are likely to be experiencing so it would be by mutual agreement that the pool/pilot is dissolved rather the responsibility resting on only one authority. This issue is however a reputational risk for the Council given the significant financial consequences to other authorities if TDC withdrew from the pool, but a delegation is included in the recommendations above to give the flexibility to react in a timely manner if unfavourable events occur.

On balance and taking all of the above into account, enough financial confidence is established to support becoming a member of a revised business rates pool along with an application to the Government to be considered for pilot status in 2018/19.

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BACKGROUND PAPERS FOR THE DECISION
None

APPENDICES
Appendix A – An Analysis of Business Rates Income 2016/17
Appendix B - Analysis of Pooling / Pilot Options 2018/19