

# DECISION ITEM



REPORT OF		MEETING	DATE	ITEM NO
FINANCE		FINANCE AND DEMOCRACY COMMITTEE	28 SEPTEMBER 2015	5

## BUSINESS RATE POOLING 2016/17

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

#### SUMMARY

This report summarises the operation of a 'business rate pool' under the revised 'localisation of business rate' arrangements which have been in place since April 2013. The report notes the intention to establish such a pool for Lancashire authorities for the first time, commencing for the financial year 2016/17. The pooling prospectus for 2016/17 (which determines how a business rate pool should operate) has not yet been published by the Department for Communities and Local Government (DCLG) and consequently the scheme design, including participation eligibility, is not yet confirmed. However, if established it is anticipated that Fylde Council would have the opportunity to participate in the Lancashire business rate pool for 2016/17. The usual date for pool members to confirm their intention to form a business rate pool, which must be confirmed by DCLG, is 31<sup>st</sup> October in respect of the financial year which commences the following April. The report sets out the potential risks and rewards for Fylde Council of participation in the proposed Lancashire business rate pool.

In common with most other councils Fylde has a large number of business rate appeals which are yet to be determined by the appropriate agency, the Valuation Office. Many of these appeals were lodged prior to the commencement of the revised business rates arrangements and they often include an element of back-dating to the time of the original valuation which can significantly increase the potential cost to the Council. Due to the potential cost to the Council arising from the determination of these appeals, participation in a Lancashire business rate pool for 2016/17 would expose the Council to significant financial risk. Until these historic appeals are determined it is proposed that Fylde Council do not participate in a Lancashire business rate pool and that the position be kept under review.

#### RECOMMENDATIONS

##### The Committee is recommended to:

1. Agree that due to the financial risk arising from the potential cost to the Council from outstanding historic business rate appeals that Fylde Council do not participate in a Lancashire business rate pool for 2016/17; and
2. Agree that participation in a Lancashire business rate pool for 2017/18 and subsequent years should be kept under review and should be the subject of a report to the committee for consideration during next financial year.

CORPORATE PRIORITIES			
To Promote the Enhancement of The Natural & Built Environment ( <b>Place</b> )		To Encourage Cohesive Communities ( <b>People</b> )	
To Promote a Thriving Economy ( <b>Prosperity</b> )	√	To Meet Expectations of our Customers ( <b>Performance</b> )	√

## SUMMARY OF PREVIOUS DECISIONS

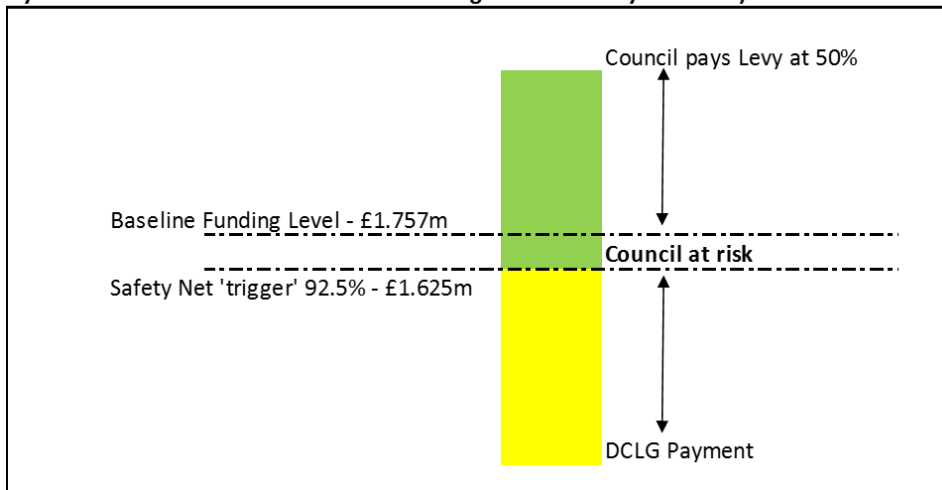
This is the first Committee item that relates to Business Rate Pooling.

## REPORT

### 1. INFORMATION AND BACKGROUND

- 1.1 Business rates are a key source of funding for local authorities. Under the business rates retention system each billing authority retains a share of the business rates for its area based on prescribed proportions. For Fylde, this is 40% retained with the remainder shared between Central Government, County Council and Fire Authority (50%, 9% and 1% respectively).
- 1.2 All district Councils in two-tier areas, like Fylde, are classed as ‘tariff’ authorities; this means the Council’s individual rates baseline is greater than its baseline funding level which results in the Council paying a tariff to the Government from its share of “retained” business rates. The Council’s tariff last year was £8.025m. Conversely, a local authority will receive a ‘top-up’ if its baseline funding level is greater than its individual business rates baseline. All two-tier county councils and single-purpose fire and rescue authorities receive a top-up grant.
- 1.3 The system provides for councils to benefit from a share of growth in their business rates base and exposes them to the risk of reduced income where changes are adverse (e.g. business closures, rating appeals). The system, as currently designed, includes mechanisms for both a **levy** and a **safety net** to moderate such variances. A **levy** applies where an authority’s retained share of rates income exceeds its baseline funding level, whereas a **safety net** operates when the retained share of rates income falls below 92.5% of the baseline funding level. The diagram below illustrates this and shows the values for Fylde for 2015/16.

#### Fylde Council Business Rate Baseline Funding Level & Safety Net 2015/16



- 1.4 The diagram shows that under the current system if the Council's share of retained business rate income exceeds the value of the Baseline Funding Level (which for 2015/16 is £1.757m as calculated by DCLG) the Council pays to the Government a levy on this additional amount at a rate of 50%, whilst retaining 50% of the growth.
- 1.5 Conversely the current system provides a degree of protection in that if the Council's share of retained income drops below the Baseline Funding Level (which for 2015/16 is £1.625m) the extent of this drop is 'capped' at a level equivalent to 92.5% of the Baseline Funding Level (the 'Safety Net' level). If the Council's share of retained income drops below this level the Council receives a grant to bring the income up to the safety net level.
- 1.6 The following table shows an extract of the Council's safety net calculation for 2014/15 for information:

**Table 1: Extract from Business Rates Outturn for 2014/15**

	£M
Net Business Rates Income for the Borough	23.220
Less: Amounts attributable to Central Gov, LCC, and Fire Authority	(13.932)
"Retained" Business Rates	9.288
Less: "Tariff" paid over to Government	(8.025)
"Retained share of business rate income"	1.263

The "Retained share of business rate income" of £1.263m above was then compared against the Council's "Baseline funding level" for 2014/15 of £1.723m and because Fylde's retained share of rate income fell below 92.5% of the baseline funding level (i.e. fell below £1.594m) the Council was in receipt of a safety net payment from the Government of £331k to take its retained income back up to a total of £1.594m.

## 2. BUSINESS RATE POOLING

- 2.1 A further feature of the revised business rates arrangements allows Councils to group together to form a 'business rates pool', and at the Lancashire Chief Financial Officers'

meeting of 30 January 2015 it was agreed to investigate the potential benefits of forming a pool across Lancashire to come into effect for financial year 2016/17. Under such an arrangement Council's will have the option of joining the pool, with members combining all of their funding calculations under the business rate scheme, effectively adding their numbers together for all elements of the funding calculation, including the calculation of the tariff and top-up amounts. Appendix A sets out details of the DCLG pooling prospectus issued for the current financial year. Any authority not joining the pool for 2016/17 will have the option of joining for subsequent years.

- 2.2 The business rates forecasts completed by potential pooling partners across Lancashire indicate that each is projected to pay a levy to central government for 2015/16, ranging from £145k to £810k per authority; in total approximately £5m across the potential pooling partner authorities within Lancashire. It is estimated that the effect of aggregating all the business rate calculations of all potential pooling partner authorities within Lancashire (i.e. the district councils which are 'tariff' authorities and Lancashire County Council which is a 'top-up' authority) which would have the effect of producing a position whereby **no levy to central government would be payable by any of the pooling authorities**. Each authority could continue to retain the growth in its business rates income that it would have retained as an individual authority outside of the pool but would no longer be required to pay any of this growth over to central government. This 'retained levy' amount could then be re-distributed between pool members according to an agreed formula.
- 2.3 However, a business rates pool arrangement is not without risk. As part of a pool, the Council would relinquish the security afforded by the 'Safety Net' mechanism as described above. i.e. **there would be no safety net protection** should the Council's share of retained income fall below a specified level.
- 2.4 In 2014/15 Fylde Council benefitted from the safety-net system in place, as set out in Table 1 at paragraph 1.6. Had Fylde Council been part of a business rate pool in 2014/15, it would have been **£331k worse-off** because business rate income was below the safety-net threshold by this amount and the central government protection that was paid in this amount would not have been received.
- 2.5 The main reason for the fall in the Council's share of retained income below the safety net level in 2014/15 was the requirement to provide for the estimated cost of historic business rate appeals which have not yet been determined by the Valuation Office. For 2014/15 the business rates appeal provision was increased from £1.216m at 31 March 2014 to £3.560m at 31 March 2015. The majority of these appeals remain unresolved and represent a significant on-going risk until they are finally determined by the Valuation Office. The provision for appeals is monitored on a month-by-month basis. As at 31st July 2015, the estimated liability stood at £4.448m.
- 2.6 Once the appeals have been determined the level of risk to the Council reduces. It is possible within the mechanism which governs the pool arrangements that Councils may join a pool at a later date other than when first established.
- 2.7 Indications to date are that those Lancashire districts which have experienced growth in their business rates over the last couple of years and have paid a levy over to the government are inclined to join the pool for 2016/17 such that they retain a share of their levy payment, whilst those such as Fylde which have fallen below that safety net are inclined to remain out of the pool initially.

### 3. CONCLUSIONS

- 3.1 The formation of a Lancashire wide pool presents both an opportunity (to retain levy payments which would otherwise be paid over to central government if there is growth in business rate income in the borough) and a risk (in that joining a pool removes the government's safety net protection system).
- 3.2 On balance it is recommended that because of the on-going risk from outstanding business rate appeals in the borough that Fylde Council do not participate in a business rate pool for Lancashire in 2016/17, assuming that one is established, and that this position is reviewed for future years determined in part by future levels of outstanding business rate appeals.

IMPLICATIONS	
Finance	Whilst it is impossible to project with any accuracy the 2016/17 financial position in terms of Business Rates Retention, it is considered that joining a pool at this stage presents a significant financial risk to the Council due to the potentially high value of Business Rate Appeals currently outstanding, and as such it is recommended that Fylde Council do not participate in a business rate pool for Lancashire in 2016/17.
Legal	The legal framework for the formation of a business rates pool is set out in paragraph 34 of Schedule 7B of the Local Government Finance Act 1988 (as inserted by schedule 1 to the Local Government Finance Act 2012). Each pool has to decide (and get approval from Government) on its governance arrangements. These cover, at the least: <ul style="list-style-type: none"><li>- the rights and obligations of pool members, including</li><li>- how money is to be disbursed to/between pool members and how payments to central government are to be funded by the lead authority</li><li>- the treatment of pool balances and liabilities following the pool's dissolution.</li></ul>
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	None
Health & Safety and Risk Management	None

LEAD AUTHOR	TEL	DATE	DOC ID
Paul O'Donoghue Chief Financial Officer	01253 658566	Date of report	September 2015

LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
N/A		N/A

Attached documents:

Appendix A – DCLG Pooling Prospectus

Appendix B – Principles of a Lancashire Wide Pool

### DCLG Pooling Prospectus

For the current financial year, DCLG issued a Pooling Prospectus in July 2014 inviting applications for pooling. It is anticipated that a similar document will be published for 2016/17. There are currently 27 pools comprising 194 authorities in 2015/16. The key points of the 2014 Prospectus were as follows:

- Proposals for 2015/16 should reach DCLG by 31/10/14.
- Benefits of pooling can be wide including promoting joint working, benefits from economic growth, making strategic decisions easier, retention of income above baseline funding, management of income volatility, etc.
- As the pool is treated as a single body, DCLG calculate only one number for the sum that is owed by the pool as a tariff or owed to the pool as a top-up payment. Therefore one member of the pool should act as lead authority.
- Management of a pool and its governance arrangements are entirely matters for the individual pool, but DCLG will need to ensure that they are in place, in particular:
  - Member rights and obligations including
  - How money is distributed to both Members and Central Government
  - The treatment of pool balances following dissolution

The DCLG selection criteria is based on:

- The likely benefits of the proposals for local authorities
- The proposed governance arrangements
- The extent to which the proposals are affordable in terms of the rates retention scheme as a whole (i.e. wider affordability)

### Principles of a Lancashire wide pool

- Initial indications are that the pool would include the County Council together with a number of district councils. The detailed arrangements including pool governance are expected to be worked up in the near future. This will include a distribution mechanism for the retained levy on a shared basis. To-date the suggestion has been that this be shared on the basis of 10% for the County with each District retaining 90% of its 'saved' levy.
- It will be necessary to appoint a 'lead' authority to administer the pool. No decision has yet been made on this albeit that it will most likely be a district council. The administering authority would receive a fee for acting in this capacity paid by the other pool members.
- All Councils will be required to confirm their position on membership of the pool by the 30th September in time for the assumed DCLG deadline of 31/10/15 based on the previous year's prospectus.
- Whilst no prospectus has been issued for 2016/17 applications, referring to the prospectus issued for 2015/16, an application had to be made to DCLG to establish a pool under paragraph 34 of Schedule 7B of the Local Government Finance Act 1988 by 31 October 2014 and acceptance was published as part of the draft Local Government Finance Report. Whilst authorities had the right to withdraw within 28 days of the draft publication, this meant that the whole pool could not continue. There was also an opportunity to exercise a request to withdraw during the course of a year to be effective the following year. A condition of joining the Lancashire pool, however, will be that if you have agreed to opt in for 2016/17 there will not be any opportunity to withdraw from the pool until 2017/18. Any authority not joining the pool for 2016/17 will have the option of joining for subsequent years.
- Members of the pool forfeit their right to a safety net payment – this is set at 92.5% of the Baseline Funding Level and withdrawal of the safety net for pool participation in effect means that the Government's guaranteed minimum level of income will be removed and each authority would be required to pay any shortfall below the safety net back into the pool.