

# DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
MANAGEMENT TEAM	FINANCE AND DEMOCRACY COMMITTEE	28 <sup>th</sup> OCTOBER 2016	3
<b>BUSINESS RATE POOLING 2017/18</b>			

## 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 existence of such a pool for Lancashire authorities which came into being for the 2016/17 financial year.

At the meeting of 26th September 2016 this Committee considered whether Fylde Council ought to participate in the Lancashire Business Rate Pool for 2017/18. The Committee recommended that Fylde Council should not be a member of the Lancashire pool for the 2017/18 financial year and that the position would be kept under review.

Since the recommendation further information has become available which changes the Business Rates forecast for 2017/18 and beyond from the previously known position in September 2016, to such an extent that it is considered appropriate and proper for the additional information to be put before the committee and the recommendation to be reviewed before the deadline for determining membership of a Business Rates Pool for 2017/18 is reached, that being 31<sup>st</sup> October 2016.

The Committee is invited to reconsider this matter and either confirm the recommendation of this Committee of 26<sup>th</sup> September 2016 that Fylde Council will not be a member of the Lancashire Business Rates Pool for 2017/18, or determine that due to changes in the circumstances of the Business Rates forecast for 2017/18 and beyond that Fylde Council will join the Lancashire Business Rates Pool for 2017/18.

### RECOMMENDATIONS

#### The Committee is recommended to:

1. Approve the recommendation from Management Team, in light of the updated information regarding future expectations of Business Rate income as contained within the body of this report, and determine that Fylde Council will participate in the Lancashire Business Rate Pool for 2017/18;
2. Approve that sufficient resources are retained within a specific reserve for the duration of the Council's inclusion in the pool in order to mitigate against the possibility of losses as a result of the removal of safety-net protection; and
3. Agree that participation in the Lancashire Business Rate Pool for future years beyond 2017/18 should be kept under review and should be the subject of a report to the committee for consideration during next financial year.

## SUMMARY OF PREVIOUS DECISIONS

At the meeting of 26th September 2016 this Committee considered the participation by Fylde Council in a Lancashire Business Rate Pool for 2017/18 and determined:

1. 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 2017/18; and
2. That participation in a Lancashire business rate pool for 2018/19 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

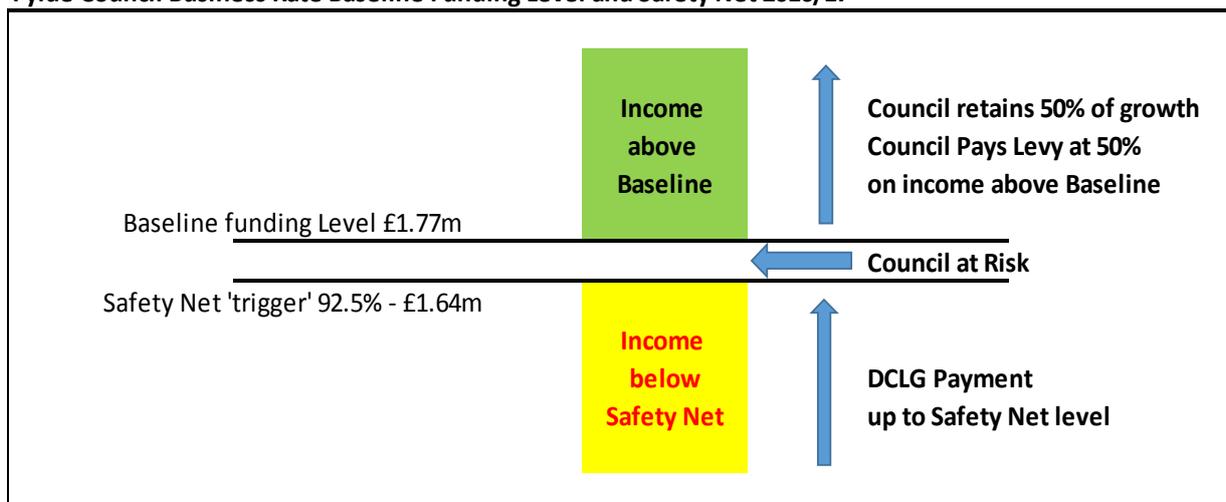
Spending your money in the most efficient way to achieve excellent services <b>(Value for Money)</b>	√
Delivering the services that customers expect of an excellent council <b>(Clean and Green)</b>	√
Working with all partners <b>(Vibrant Economy)</b>	√
To make sure Fylde continues to be one of the most desirable places to live <b>(A Great Place to Live)</b>	√
Promoting Fylde as a great destination to visit <b>(A Great Place to Visit)</b>	√

## 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 is effectively the Council's 'need' as calculated by central government) which results in the Council paying a tariff to the Government from its share of "retained" business rates. Therefore Fylde pays a tariff over to the government from its retained 40% share of business rate.
- 1.3 The business rates retention system also 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 2016/17.

## Fylde Council Business Rate Baseline Funding Level and Safety Net 2016/17



- 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 2016/17 is £1.77m as calculated by DCLG) the Council retains 50% of the growth and pays the remaining 50% to the Government by way of a levy.
- 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 the extent of this drop is 'capped' at a level equivalent to 92.5% of the Baseline Funding Level (the 'Safety Net' level - which for 2016/17 is £1.64m). 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.

## 2. BUSINESS RATE POOLING

- 2.1 A feature of the business rates arrangements allows Councils to group together to form a 'business rates pool'. Under such an arrangement Councils in a pool combine 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.

For 2016/17 a number of the Lancashire district Councils formed a business rate pool together with Lancashire County Council. This contained all of the district Councils in Lancashire with the exception of Fylde Council, Preston City Council and Lancaster City Council. As unitary Councils, Blackpool and Blackburn-with-Darwen Councils have very different business rates profiles under the localisation of business rates arrangements and neither were part of the Lancashire pool.

- 2.2 For 2016/17 it has been estimated that the effect of aggregating all the business rate calculations of the Lancashire pooling authorities (comprising a number of the district councils which are 'tariff' authorities and Lancashire County Council which is a 'top-up' authority) will have the effect of producing a position whereby no levy to central government would be payable by any of the pooling authorities. Each authority will continue to retain the majority of the growth in its business rates income that it would have retained as an individual authority outside of the pool (subject to agreed pool management arrangements, any central pool contributions and after administration costs have been met) but would no longer be required to pay any of this growth over to central government through the levy system. It is estimated that participating Councils within the Lancashire pool would retain 95% of their Business Rate

growth compared to the 50% that is retained where a Council is not within a Business Rate pool.

- 2.3 However, a business rates pool arrangement is not without risk. As part of a pool, a Council relinquishes 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 the situation in which a Council that is a member of a pooling arrangement (and which has therefore forfeited the protection of the safety-net mechanism) estimates that their business rate income for the following year will be below the safety net level they are able to give notice of their intention to withdraw from the pool for the following year. The notice is usually required to be given by 31<sup>st</sup> October of the preceding year i.e. for 2018/19 financial year notice would need to be given by 31<sup>st</sup> October 2017. This effectively limits the risk to any pool member to one financial year in the event of an unexpected and substantial in-year loss of income.
- 2.5 In common with most other councils Fylde has had a large number of business rate appeals. Many have yet to be determined by the appropriate agency, the Valuation Office, whilst others have already been determined. A number 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.
- 2.6 The Council is required to make adequate provision to meet the estimated cost of rating appeals. As a result of the scale of the potential cost to the Council arising from historic appeals the business rate appeal provision was increased from £3.560m at 31<sup>st</sup> March 2015 to £9.613m at 31<sup>st</sup> March 2016 as part of the 2015/16 outturn process. This judgement was based upon information held about the volume and potential value of outstanding appeals at that point in time and after having taken specialist financial advice.
- 2.7 The effect of this was that for 2015/16 Fylde Council's share of the business rates income fell below the safety net level. The Council will therefore receive a Safety Net payment in respect of 2015/16 of £0.953m from the DCLG to bring the Council back to the safety net funding level.
- 2.8 For the previous year, 2014/15, the Council received a Safety Net payment of £0.331m from DCLG to bring the Council back to the safety net funding level.

### **3. THE LATEST POSITION**

- 3.1 In September 2016 this Committee considered Fylde's membership of a Lancashire Business Rate Pool for 2017/18 and concluded that on balance, in light of the continuing presence of historic appeals back-dated to 2010 and the fact that the Council had been below the safety net level in previous years, Fylde Council should remain outside the pool for 2017/18 and retain the benefit of safety net protection.
- 3.2 The September report included confirmation that the largest outstanding appeal (in respect of the Springfields site had been heard and dismissed by the Valuation Office Tribunal, although at that time an appeal was being considered against the decision.

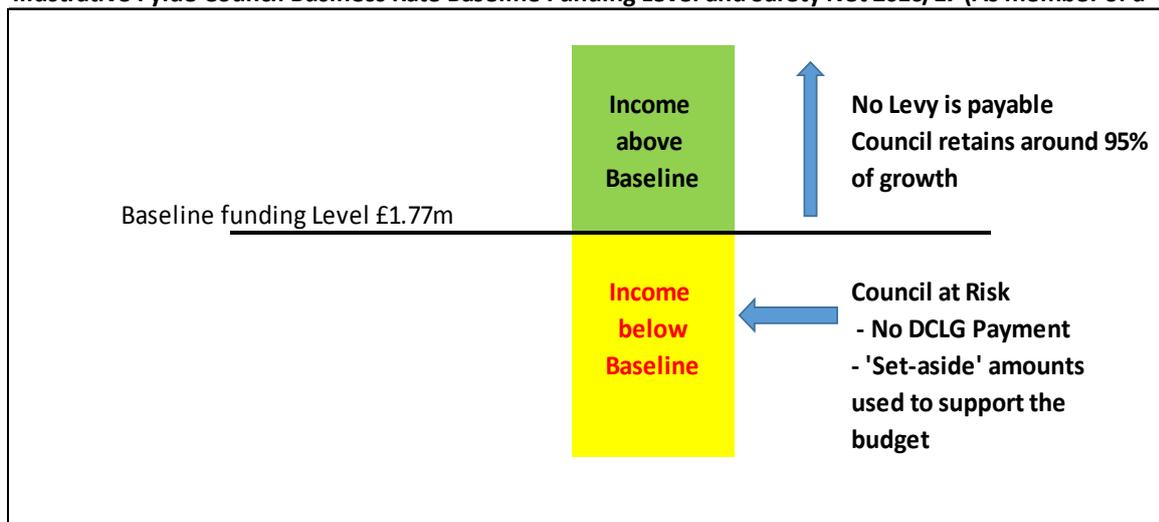
The report stated:

*"This represents a significant reduction in the overall value of appeals for which the Council has had to make provision and is likely, depending upon the outcome of other appeals within*

*estimated cost-parameters, to lead to some benefit to the Council in the form of the release of monies from the provision in the coming years.”*

- 3.3 In the subsequent period officers have had further confirmation an appeal against the Valuation Office decision in respect of Springfield’s is unlikely and that the number of other outstanding appeals has reduced as the Valuation Office clears the backlog of national appeals. In addition to this the external rating expert engaged by the Council to estimate potential losses on appeal has reduced their assessment of the required level of provision against remaining appeals. This further reduction in the total appeals provision can also be released as it is no longer considered necessary as part of the overall provision.
- 3.4 An additional benefit arising from the settlement of long-outstanding appeals is that it has the effect of making the underlying in-year Business Rates position clearer in terms of real growth as compared to earlier years. A number of known upward revaluations of existing businesses for Business Rates and a number of additions as a result of new developments in the borough have also been reflected on the rating list.
- 3.5 These changes have resulted in a thorough review of in-year monitoring and the underlying assumptions and options in respect of pooling. This analysis has shown that the potential one-off windfall from release of cumulative appeals provisions amounts to an estimated £1m (which is forecast to be realised in 2017/18), with an estimated additional recurring underlying growth of approximately £900k per annum from 2017/18 onwards.
- 3.6 If the Council remains outside of the pool for 2017/18 and growth of £900k above the baseline occurs in 2017/18 the Council will pay half the growth (by way of a 50% levy in the sum of £450k) to the Government and retain the remaining £450k to fund Council services. Conversely, if growth of £900k above the baseline occurs in 2017/18 and the Council enters the pool for that year then 95% of the growth will be retained by Fylde in the sum of £855k and the remaining 5% (being £45k) will be paid to LCC as part of the pooling arrangement.
- 3.7 It would be possible to create a reserve using the 2017/18 favourable variances to effectively act as a local ‘safety-net’ to mitigate against potential future losses should the Council opt to be part of a Business Rate pool and lose the benefit of a national safety-net protection mechanism. This is illustrated in the diagram below.

**Illustrative Fylde Council Business Rate Baseline Funding Level and Safety Net 2016/17 (As member of a ‘Pool’)**



- 3.8 In light of the potential benefits to Fylde Council of Business Rate pool membership for 2017/18 as a result of the additional information available to the council, together with the option to mitigate against the potential risk to Business Rate income by the ‘set-aside’ of

additional receipts in 2017/18 it is considered appropriate to reconsider the question as to whether Fylde Council should be part of the Lancashire business rate pool in order to retain a larger share of any potential future growth. Under the committee system of governance it must be the elected members of the appropriate committee that respond to this change of circumstance and reconsider the recommendation previously made.

#### 4. CONCLUSIONS

- 4.1 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).
- 4.2 The decision on whether or not to join the pool comes down to a judgement call on whether or not the Council’s income from business rates is likely to be above or below the safety net level for 2017/18. Such an assessment has been problematic in the past due to the large fluctuations caused by movements in the provision for appeals. For both 2014/15 and 2015/16 the Council’s income has been below the safety net level, largely as a result of the annual increases in the appeals provision, and the Council has therefore benefitted from being outside any pooling arrangement and has been in receipt of safety net payments from DCLG totalling £1.284m which would not have been receivable had the Council been in a pool.
- 4.3 However the recent settlement of significant appeals (largely in favour of the Council) has helped to clarify the position and the underlying growth in business rates income that this has revealed has shifted the balance of probabilities, such that it is now considered reasonable and appropriate that the recommendation reached by this Committee in September 2016 be reviewed.
- 4.4 Management Team have considered in detail both the risks and opportunities presented by joining the pool for 2017/18 and on balance, in light of the latest monitoring and forecasting information available, have concluded that the potential benefits outweigh the potential risks and therefore recommend that Fylde Council join the pool for 2017/18.
- 4.5 If the Committee were to agree with this recommendation that the Council be part of the Lancashire business rate pool for 2017/18 it is also recommended that the initial gains from membership of the pool (in terms of business rate income retained over and above the baseline level) are utilised to create a “local safety net” to provide replacement funding in the event that actual income received fails to meet the baseline level.

IMPLICATIONS	
Finance	Whilst it is impossible to accurately predict the 2017/18 financial position in terms of Business Rates Retention, the facts have changed sufficiently since this issue was considered by the Finance and Democracy Committee in September 2016 such that it is now regarded as reasonable that the Council would consider joining a Business Rate pool and benefitting from the consequential greater proportion of business rate income that is retained by Fylde Council, so long as mitigating actions were also taken in the form of the creation of a reserve to replicate the effect of a safety net payment as exists under the current arrangements outside

	of pooling. Current projections of income for 2017/18 indicate underlying growth of approximately £900k per annum from 2017/18 onwards and it is therefore considered financially beneficial to join the pool for that year.
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
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LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
N/A		N/A