

## MEMBER BRIEFING: YORKSHIRE COAST BID LEVY

### BID Levy Arrangements

1. The Council as billing authority is legally required to comply with the BID Levy arrangements. The Local Government Act 2003 states:

#### 44 Duty to comply with arrangements

Where BID arrangements are in force, the billing authority which made the arrangements must comply with them.

2. The Secretary of State has made regulations pursuant to section 48 of the Local Government Act 2003 in respect of the imposition, administration, collection, recovery and application of the BID Levy (the Business Improvement Districts (England) Regulations 2004). Regulation 15 of the 2004 Regulations provides as follows:

#### Administration of the BID levy etc

15. The relevant billing authority shall, by the commencement date, provide for the imposition, administration, collection, recovery and application of the BID levy and Schedule 4 shall have effect with respect to those matters.

3. Schedule 4 of the 2004 Regulations sets out the requirements for demand notices as well as notices which are considered Invalid Notices.
4. The 2004 Regulations do not specify whether the Council should be referred to as billing authority or collection agent and the Council has complied with the requirements of the Regulations in serving the demand notices for the BID levy. The narrative stated in demand/non-payment notices aligns to the terminology published in HM Governments technical guidance relating to Business Improvement Districts. This sets out in a plain-English manner that the councils' duty is to collect funds on behalf of the BID and involves no retention aspect.

### Liability for payment of the YCBID Levy

5. Section 46 of the Local Government Act 2003 creates a statutory liability on non-domestic rate payers to pay the BID levy:

#### 46 Liability for BID levy

(1) BID arrangements must specify the description of non-domestic ratepayers in the business improvement district who are to be liable for BID levy for a chargeable period.

(2) A person is to be liable for BID levy for a chargeable period if he falls within that description at any time within the period.

(3) The amount of a person's liability for BID levy for any chargeable period is to be determined in accordance with the BID arrangements.

(4) Any amount of BID levy for which a person is liable is to be paid to the billing authority which made the arrangements.

6. Payment becomes due when the notice is served. Paragraph 7(6) of Schedule 4 of the 2004 Regulations provides:

"No payment in respect of the amount payable by a person who is liable for the BID levy in relation to a hereditament for any chargeable period need be made unless a notice served under this Schedule requires it."

7. Primary legislation therefore imposes a liability on ratepayers, and that charge becomes payable by the ratepayers when the Council serves notice under Schedule 4 of the 2004 Regulations.

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### Non-Payment of the Levy

8. Paragraph 9 of Schedule 4 of the 2004 Regulations applies Part III and Schedules 2 to 4 of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 to the enforcement of the BID levy subject to a number of modifications. In so far as is relevant Part III of the 1989 Regulations is applied as follows:
  - i. The references in regulations 10(2) and 20(1) of the 1989 Regulations to a sum which has become payable to a billing authority under Part II of those Regulations includes a sum which has become payable to a billing authority as BID levy under Schedule 4 to the 2004 Regulations. Accordingly, such BID levy is recoverable inter alia under a liability order made by a magistrates' court under regulation 12 of the 1989 Regulations;
  - ii. Following the service of a demand notice (under regulation 2 of the 2004 Regulations), a "reminder notice" must be served under regulation 11 of the 1989 Regulations before an application may be made for a liability order (regulations 11(1) and 12(1) of the 1989 Regulations);
  - iii. Regulation 12(5) of the 1989 Regulations requires the magistrates' court to make a liability order if satisfied that the sum has become payable by the defendant and has not been paid; and
  - iv. Where a liability order is made, non-payment may be dealt with under the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 for seizure of goods (regulation 14 of the 1989 Regulations), or by committal to prison (regulation 16 of the 1989 Regulations).
9. The Council has served a reminder under the 1989 Regulations and non-payment entitles the billing authority to a liability order.

### Operating Agreement

10. In addition to the legislation governing BID arrangements, the Council and the BID body, Yorkshire Coast BID Limited, have also entered into a levy collection agreement covering the BID term and referred to as an Operating Agreement. The principle of this agreement is to define the principles and processes for collecting the levy; enforcing the payment of the levy; reporting on collection and bad debt; monitoring provisions between then BID and the local authority; and providing regular detailed and summary information on the service to the BID as the client.
11. The content of the operating agreement sets out the relationship between the Council and the Yorkshire Coast Bid Company and has no relevance to the liability of a levy payer to pay the BID levy and the Council's entitlement to a liability order.

### Principal / Agent

12. The queries as to whether or not the Council is acting as the principal or agent in relation to the billing for or collection of the levy or in the context of the Operating Agreement are not relevant to the Council's legal obligations to collect the levy.
13. **In addition, in the context of the Yorkshire Coast Bid, this also does not affect the Council's ability to terminate the Bid arrangements which are prescribed by the Bid Regulations. The Council's ability to terminate is limited to the grounds set out in the Regulations. At this time, the Council does not have grounds to terminate the Bid arrangements.**

### VAT Treatment

14. The Council sought clarification of the VAT treatment of the Bid levy at the time that the operating agreement was entered into and adhered to the advice given. In light of the fact that some levy payers have now raised queries relating to this treatment, the Chief Executive has deemed it prudent to seek external advice to further clarify the VAT position.