

**SCARBOROUGH BOROUGH COUNCIL**

**ECONOMY, COMMUNITIES & COMMERCIAL  
PORTFOLIO - URGENT DECISION  
INDIVIDUAL CABINET MEMBER DECISION**


Wednesday, 31st July, 2019

These details are published for information only. The decision will be taken by the Cabinet Member who will receive Officer advice in private. A statement of the decision taken, with any appropriate supporting information, will be published as soon as reasonably practicable afterwards.

1. **BID LEVY OPERATING AGREEMENT** (Pages 1 - 22)  
To consider the report of the Director (NE) (reference 19/164 attached).

*(N.B. If you have any questions or need further information, please contact St John Harris, Democratic Services Manager , Town Hall, St. Nicholas Street, Scarborough – Tel: 01723 383556, Fax 08702384159 or email [stjohn.harris@scarborough.gov.uk](mailto:stjohn.harris@scarborough.gov.uk))*

## NOTES

	<p><b>URGENT REPORT TO THE PORTFOLIO HOLDER FOR ECONOMY, COMMUNITIES &amp; COMMERCIAL</b></p> <p><b>31 JULY 2019</b></p>	
	<p><b>Key Decision</b></p>	<p><b>NO</b></p>
	<p><b>Cabinet Portfolio Holder</b></p>	<p><b>Cllr Liz Colling</b></p>
<p><b>Corporate Aims People/Place/Prosperity/ Council</b></p>	<p><b>Date of Decision</b></p>	<p><b>31 JULY 2019</b></p>
	<p><b>Implementation Date</b></p>	<p><b>31 JULY 2019</b></p>

**REPORT OF: DIRECTOR (NE) – 19/164**

**WARDS AFFECTED: All**

**SUBJECT: BID LEVY OPERATING AGREEMENT**

**RECOMMENDATION (S):**

The Portfolio Holder is recommended to:

- (1) Approve signing the operating agreement between Scarborough Borough Council and the Yorkshire Coast BID Ltd; and
- (2) Approve receipt of the payments associated with this agreement for the billing and collection of the BID in accordance with The Business Improvement Districts (England) Regulations 2004.

**REASON FOR RECOMMENDATION (S):**

- (1) To comply with the Council's Constitution
- (2) To formalise the agreement between Scarborough Borough Council and the Yorkshire Coast BID Ltd.

**HIGHLIGHTED RISKS:**

The Council fails to bill those businesses identified as subject to the levy as required by The Business Improvement Districts (England) Regulations 2004.

## **1. INTRODUCTION**

- 1.1 The Business Improvement Districts (England) Regulations 2004 state that the relevant billing authority shall, by the commencement date, provide for the imposition, administration, collection, recovery and application of the BID levy.

## **2. CORPORATE AIMS**

- 2.1 The operating agreement ensures that income is received to administer the BID so that the delivery of the Council's Corporate Aims and Priorities are not affected.

## **3. BACKGROUND AND ISSUES**

- 3.1 The operating agreement is attached at Appendix 1.
- 3.2 The Yorkshire Coast BID Levy Rules are attached at Appendix 2 (Appendix A the main agreement)
- 3.3 The Yorkshire Coast BID Schedule of Billing & Enforcement is attached at Appendix 3 (Appendix B to main agreement)
- 3.4 The Yorkshire Coast BID payments to Scarborough Borough Council is attached at Appendix 4 (Appendix C to main agreement)

## **4. CONSULTATION**

- 4.1 The BID was the subject of a ballot process and was discussed at length in Council.

## **5. ASSESSMENT**

- 5.1 The Council has a legal requirement to administer the BID and this operating agreement is part of that process.

## **6. IMPLICATIONS**

- 6.1 **(a) Policy**  
There are no policy implications
- 6.2 **(b) Financial**  
The financial elements are contained in Appendix 4
- 6.3 **(c) Risks**  
The Council fails to bill those businesses identified as subject to the levy as required by The Business Improvement Districts (England) Regulations 2004
- 6.4 **(d) Legal**

The document has been reviewed by the Council's legal department

**6.5 (e) Equalities and Diversity**

This has been considered and is not applicable to this report.

*Nicholas Edwards*

**Nick Edwards**  
**Director**

**Author: Sherri Williamson, Local Taxation Manager**

Telephone No: 01723 232379

E-mail address: [sherri.williamson@scarborough.gov.uk](mailto:sherri.williamson@scarborough.gov.uk)

**Background Papers:**

Please give details of all publicly accessible (non private) background papers applicable to the report.

**IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR**

## Risk Matrix

<b>Risk Ref</b>	<b>Date</b>	<b>Risk</b>	<b>Consequences</b>	<b>Mitigation</b>	<b>Current Risk Score</b>	<b>Target Score</b>	<b>Service Unit Manager/ Responsible Officer</b>	<b>Action Plan</b>
1	July 2019	The Council fails to bill those businesses identified as subject to the levy as required by The Business Improvement Districts (England) Regulations 2004	Legal action against the Council		C3	A3	Local Taxation Manager	To bill for the BID levy as required.
2								

**Glossary of Terms**

Risk	An event which may prevent the Council achieving its objectives
Consequences	The outcome if the risk materialised
Mitigation	The processes and procedures that are in place to reduce the risk
Current Risk Score	The likelihood and impact score with the current mitigation measures in place
Target Risk Score	The likelihood and impact score that the Council is aiming to achieve
Service Unit Manager	The Service Unit or Officer responsible for managing the risk
Action Plan	The proposed actions to be implemented in order to reduce the risk to the target score

**Risk Scoring**

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

- A = Very Low
- B = Not Likely
- C = Likely
- D = Very Likely
- E = Almost Certain

Impact

- 1 = Low
- 2 = Minor
- 3 = Medium
- 4 = Major
- 5 = Disaster





**APPENDIX 1**



**THE MOSAIC PARTNERSHIP**  
**PEOPLE TRANSFORMING PLACES**



BID Operating Agreement  
Template

For

THE MOSAIC PARTNERSHIP  
MOOR FARM | PRESTONS LANE, COALVILLE  
LEICESTERSHIRE LE67 8FR | UNITED KINGDOM  
+44 (0)7789 792454 | THEMOSAICPARTNERSHIP.CO.UK



**Dated**

**BID LEVY OPERATING AGREEMENT**

*Scarborough Borough Council*

**- and -**

*Yorkshire Coast BID Ltd*



## 1. Statutory Authorities

This Agreement is made pursuant to Part IV Local Government Act 2003 and section 111 Local Government Act 1972 and all other enabling powers.

## 2 Commencement

This Agreement shall not take effect until the Ballot Result Date and in any event shall determine and cease to be of any further effect in the event that:

- the *Yorkshire Coast BID Ltd* fails to secure approval of the Proposals, Renewal proposals or Alteration Proposals in a ballot, renewal ballot, alteration ballot or rebalot;
- the Secretary of State declares void a BID ballot renewal ballot alteration ballot or re-ballot;
- Scarborough Borough Council exercises its veto and there is no successful appeal against the veto;
- the BID Term expires save where the *Yorkshire Coast BID Ltd* secures approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a rebalot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal Proposals, Alteration Proposals or the Proposals set out in the rebalot provided, in relation to Renewal Proposals and Alteration Proposals the Council consents to such continuation;
- Scarborough Borough Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations.

## 3 Setting the BID Levy

As soon as possible upon the Ballot Result Date Scarborough Borough Council shall:

- calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and
- confirm in writing to the *Yorkshire Coast BID Ltd* the BID Levy payable by each BID Levy payer

## 4 The BID Revenue Account

As soon as is reasonably practicable following the Ballot Result Date *Scarborough Borough Council* shall keep a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to *Yorkshire Coast BID Ltd* of the same.

As soon as reasonably practicable following the Ballot Result Date the *Yorkshire Coast BID Ltd* shall provide Scarborough Borough Council with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which Scarborough Borough Council may reasonably require.

Scarborough Borough Council will pay to the BID Company on account for services provided in administering the BID arrangements on behalf of the Scarborough Borough Council, each month a sum equal to the monies collected in the month and properly credited to the BID Revenue Account net of cost of collection and refunds. The payment to be made within 10 working days of the month end.

Annually Scarborough Borough Council will pay to the BID Company or receive from it the balance of monies having taken account of the monthly on account payments and balance on the BID Revenue Account at the year end. The final payment to be made by 30 June following the year end.

All sums will be subject to Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time.

The Yorkshire Coast BID Ltd and Scarborough Borough Council as appropriate will issue VAT receipts, where applicable under VAT legislation and regulations in force at the time, for monies received within 7 working days of receipt of the monies.

Debits from the BID Revenue Account

The Council shall be entitled to debit directly from the BID Revenue Account:

- the collection charges;
- the enforcement expenses;
- any deductions which in the Council's opinion are Bad and Doubtful debts

## **5 Collecting the BID Levy**

As soon as reasonably practicable following the Ballot Result Date Scarborough Borough Council shall confirm in writing to the Yorkshire Coast BID Ltd the anticipated date of the despatch of Demand Notices for the initial Chargeable Period and the anticipated Single Installment Due Date.

Scarborough Borough Council shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.

Scarborough Borough Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID Levy and shall make the list available to the Yorkshire Coast BID Ltd upon its reasonable request.

Scarborough Borough Council shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after Scarborough Borough Council receives notice of a change that affects liability for the BID Levy.

Scarborough Borough Council shall use all reasonable endeavors to collect the BID Levy throughout the BID Term.

The Council shall collect the BID Levy in a manner which is consistent with its usual procedures for the collection of non-domestic rates (save that the BID Levy collection shall be on an annual rather than monthly basis)

## **6 Procedures available to the Council for enforcing payment of the BID Levy**

Procedures for the enforcement and recovery of the BID Levy will be in line with the enforcement procedure for NNDR and Scarborough Borough Council shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BID

Levy against BID Levy Payers.

## **7 Enforcement Mechanisms In The Event That The Council Fails to Enforce Collection of the BID Levy**

In the event that Scarborough Borough Council fails to enforce payment of the BID Levy pursuant to Clause 8 the Yorkshire Coast BID Ltd shall be entitled to serve an Enforcement Notice on Scarborough Borough Council requesting that:

- Scarborough Borough Council serve a Reminder Notice or
- In the event that the Scarborough Borough Council has already served a Reminder Notice that the Scarborough Borough Council applies for a Liability Order and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.

If *Scarborough Borough Council* fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within 21 days of the issue of the Enforcement Notice the Yorkshire Coast BID Ltd shall be entitled to serve an Appeal Notice on the Director of Finance of Scarborough Borough Council and such notice shall:

- detail the Sum Unpaid;
- confirm that Scarborough Borough Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the Sum Unpaid; and
- include written notice requesting that a meeting of the Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the Sum Unpaid such meeting to take place no later than 28 (twenty eight) days from the date of the Appeal Notice.
- The monitoring group to be set up to monitor the collection and enforcement of the BID Levy to consist of both Scarborough Borough Council Business Rates Manager and senior representative from the BID Company.

## **8 Accounting Procedures and Monitoring**

Within 21 working days of the end of the month and every month thereafter (for the duration of BID Term) Scarborough Borough Council shall provide the BID Company with:

- (i) the amount of the BID Levy for each BID Levy Payer;
- (ii) the amount of the BID Levy collected for each BID Levy Payer;
- (iii) details of BID Levy Payers who have not paid the BID Levy;
- (iv) details of Reminder Notices issued;
- (v) details of Liability Orders made or applied for;
- (vi) details of agreement made, if any, between Scarborough Borough Council and BID Levy Payers where it has been agreed that payment of a Demand Notice can be made over a period of 3 (three) months or more from the date of such Demand Notice.

Within one month from the Ballot Result Date the parties shall agree the dates when there will be meetings of the Monitoring Group and there will be at least two such meetings in each Financial Year (throughout the duration of the BID Term) and on all other occasions further meetings of the Monitoring Group shall be arranged by the service of written notice by either party.

At each meeting the Monitoring Group shall only:

- review the effectiveness of the collection and enforcement of the BID Levy; and
- if required by either party review and assess information provided by the parties.

Within 3 (three) months after the end of each Financial Year (for the duration of the Bid Term) Scarborough Borough Council shall provide an Annual Report to the Yorkshire Coast BID Ltd

Within 1 (one) month from the date of receipt of the Annual Report in each financial year (for the duration of the Bid Term) the Yorkshire Coast BID Ltd shall provide a BID Company Report to Scarborough Borough Council

The BID Revenue Account will be subject to the normal internal & external audit arrangements of Scarborough Borough Council. Scarborough Borough Council will make available to the Yorkshire Coast BID Ltd and its appointed auditors such information as requested by the Yorkshire Coast BID Ltd and its appointed auditors and that it is able to do so under legislation and regulation

## **9 Confidentiality**

Both Scarborough Borough Council and the Yorkshire Coast BID Ltd shall keep confidential and not divulge to any person without the prior written consent of the other party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties which it shall have obtained or received as a result of operating the BID and this obligation shall survive the termination or lapse of the BID Arrangements.

## **10 Notices**

Any notice or other written communication to be served or given to or upon any party to this Agreement to the other shall be in writing and shall be sent to the address provided for above or such substitute address in England as may from time to time have been notified by that party upon 7 days written notice

A notice may be served by;

- delivery to the Director of Finance at the address of the Scarborough Borough Council specified above; or
- delivery to the Company Secretary at the address of the Yorkshire Coast BID Ltd specified above;
- registered or recorded delivery post to such addresses;
- electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses.

Any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

## **11 Contracts (Rights Of Third Parties)**

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.



## 12 Arbitration

(a) In the event of any dispute arising between the Parties the Authorised Representatives, the Council's appointed BID Company Director and the BID Company's Executive Director shall attempt in good faith to resolve that dispute;

(b) If the Authorised Representatives are for any reason unable to resolve the dispute within 30 days, the dispute will be referred to the Council's Chief Executive and the BID Company's Independent Chair who shall attempt in good faith to resolve it;

(c) if the dispute still remains unresolved after a further period of 30 days then the dispute shall be referred to arbitration

The following provisions shall apply in the event of a dispute:

- any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed shall be referred to arbitration before a single arbitrator;
- the parties shall jointly appoint the arbitrator not later than 28 (twenty eight) days after service of a request in writing by either party to do so and each party shall bear its own costs;
- If the parties are unable to agree within 28 (twenty eight) days the appointment of such arbitrator then such arbitrator (hereinafter referred to as "the Tribunal") shall be appointed on the application of either party to the President for the time being of the Law Society;

In the event of a reference to arbitration the parties agree:

- to prosecute any such reference expeditiously; and
- to do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable;
- that the award shall be in writing signed by the Tribunal and shall be finalised within 21 (twenty one) days from the date of such award;
- the award shall be final and binding both on the parties and on any persons claiming through or under them.

**Signed by**

**(Scarborough Borough Council )**

**Date:**

**(Yorkshire Coast BID Ltd)**

**Date:**

***Appendix (to be attached)***

*A: BID Levy Rules*

*B: Schedule of Billing & Enforcement*

*C: Fee Breakdown*

# APPENDIX 2

## Appendix A: Yorkshire Coast BID Levy Rules

The BID legislation approved by the Government in 2004, sets out a legal framework within which BIDs have to operate, including the way in which the levy is charged and collected, and how the ballot is conducted.

### The Levy

1. The levy will be a fixed rate of 1.5% of the rateable value as at 1 August each year using the most current Non-Domestic Ratings list. It will be updated for any changes in ratepayer appeals, additions or removals
2. Only properties or hereditaments with a rateable value of £12,000 or more will be liable for payment of a levy
3. The BID levy will be paid by any new ratepayer occupying any existing hereditaments (a business rate property) within the BID area
4. New hereditaments will be charged from the point of occupation based on the rateable value at the time it enters the rating list, even though they did not vote on the initial proposal.
5. If a business ratepayer occupies premises for less than one year, the amount of BID levy payable will be calculated on a daily basis
6. Empty properties, those undergoing refurbishment or being demolished will be liable for the BID levy via the property owner/registered business ratepayer with no void period
7. The levy is fixed and will not be subject to variation by the annual rate of inflation
8. VAT will not be charged on the BID levy
9. The levy will be charged as one amount annually at the start of August, with the chargeable period being August to July each year. No refunds will be available on the levy charged
10. The owners of untenanted properties or hereditaments will be liable for payment of the levy
11. Eligible ratepayers within a managed estate such as a shopping centre, arcade or paying a service charge are eligible for a discount of up to a maximum of , 0.25% annually. This will be dependent on the management providing a service charge schedule annually for the BID to assess the actual level of discount. If no satisfactory service level schedule is provided no satisfactory service level schedule is provided then the full levy rate will apply in those Managed Estates.
12. Museums and Galleries will be eligible to apply for a maximum 75% discount from their levy through submission of accounts and company profile to the BID Board to assess against set criteria on an annual basis, and voluntary members supporting the ongoing running of these organisations
13. The BID levy will not be affected by the small business rate relief scheme, service charges paid to landlords, exemptions, relief or discounts prescribed in the Non-Domestic Rating(Collection and Enforcement)(Local Lists) Regulations 1989 made under the Local Government Finance Act 1988
14. Under the BID regulations 2004, Scarborough Borough Council and East Riding of Yorkshire Council are the only organisations that can collect the levy on behalf of the BID Company.

## APPENDIX 2

15. The levy income will be kept in a separate ring-fenced account and transferred to the BID on a monthly basis. Collection and enforcement arrangements will be similar to those for the collection and enforcement of non-domestic business rates with the BID Company responsible for any debt write off
16. The levy rate or boundary area cannot be increased without a full alteration ballot. However, if the BID Company wishes to decrease the levy rate during the period, it will do so through a consultation which will, as a minimum, require it to write to all existing BID levy payers. If more than 25% object in writing then this course of action will not proceed.
17. None of the costs associated with the development of the BID, or the ballot will be recovered through the levy
18. The term of this BID will be for a period of five years.

# APPENDIX 3

## Appendix B – Yorkshire Coast BID Schedule of Billing & Enforcement

### Annual Billing Schedule

Action	Timescale	Provisional date year 1
Bills Issued	Day 1	30 July 2019 – payment date 15 August 2019.
Reminder 1	1 month from day 1	15 September 2019
Reminder 2	2 months from day 1	15 October 2019
Determine Non Payers*	3 Months from day 1	30 Oct 2019 – list to BID company to review
Final Notice (Enforcement Action Confirmation)	4 Months from Day 1	15 November 2019
Magistrates Court Summons issued	5 Months from Day 1	15 December 2019
Liability Court & Enforcement	6 Months from Day 1	Possible Court date 21 January 2020

\*Further action undertaken by Local Authority to be agreed with the BID Company.

## NOTES

# APPENDIX 4

## Appendix C

### Payments to Scarborough Borough Council from Yorkshire Coast BID

	Description	Amount	Frequency
1	Annual Collection Fee (Including Account Management) (excluding VAT) – set at 3% of levy raised at annual billing	£23,032 (variable)	Per Annum
2	Initial purchase costs associated with acquisition of Northgate system to bill for and administer BID	£6,000 plus VAT	One off initial cost
3	Annual Support & Maintenance for Northgate system	£1,500 plus VAT	Per Annum
4	Consultancy and initial set up costs from Northgate	£6,175 plus VAT	One off initial cost
5.	Ad Hoc additional costs such as printing inserts for bill	At cost	Ad hoc

### Other payments to Scarborough Borough Council

	Description	Amount	Frequency
1.	Court fees associated with applications for liability Orders to Magistrates Court	£130.00 per case	As required

## NOTES