POLICY & RESOURCES COMMITTEE	Agenda Item 110 Brighton & Hove City Council

Subject:		**ADDENDUM to Business Rates Retention forecast 2013/14 Report**	
Date of Meeting:		**24th January 2013**	
Report of:		**Director of Finance**	
Contact Officer:	**Name:**	**Mark Ireland**	**Tel: 29-1240**
	Email:	**Mark.ireland@brighton-hove.gov.uk**	
Ward(s) affected:		**All**	

FOR GENERAL RELEASE

1. SUMMARY

1.1 The original business rates forecast for 2013/14 was prepared on the basis of guidance issued on by the Department for Communities and Local Government (CLG) on 15th January 2013. Following discussions with the Society of Metropolitan Treasurers CLG issued further clarification on 22 January 2013 on the adjustment to be made for rating appeals and indicated that new regulations will be published very shortly. It is clear from this clarification that the business rates forecast for 2013/14 as set out in the proposed NNDR1 2013/14 form in the original report needs to be changed. The changes are explained in the background information section below.

1.2 The council must agree a business rates forecast for 2013/14 which must be sent to the government and the fire authority by 31st January 2013. In order to ensure that we are able to reflect any further updating of the business rates guidance and regulations that may be available by the 31st January it is now proposed that this Committee delegate the completion of the final forecast and NNDR1 form to the Director of Finance in consultation with the Chair of this Committee. The final figures will still be based on the principles set out in the original report.

2. REVISED RECOMMENDATION 2.1:

That Policy & Resources Committee:

2.1 Agree to delegate the agreement of the business rates forecast and the NNDR1 2013/14 form to the Director of Finance in consultation with the Chair of this Committee.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

DCLG Clarification issued on 22nd January 2013

3.1 The clarification contained important statements regarding business rates forecasts and about what to include for successful appeals and refunds (shown in line 35 of the NNDR1 form:

- “In working out their non domestic rating income for 2013-14 authorities should make a reasonable estimate of the Rateable Value that might be lost from their local list following successful appeals - whether the appeal decisions are in 2013-14 or later years.”
- “However, this will not deal with the repayments that have to be made to ratepayers in respect of overpayments in respect of the years before 2013-14 (on the assumption that some appeals, at least, will be backdated to the start of the 2010, or even the 2005 rating lists). The second element of the appeals adjustment, therefore, is to recognise the liability that this creates.”
- “The regulations that we make to give effect to this will confer on authorities a broad discretion. Hence authorities will be able to choose whether to recognise the liability in full in 2013-14, or spread the cost over five years. We aim to provide further details about the regulations very shortly.”

3.2 In the original report it was assumed based on earlier guidance that the provision for appeals was required to cover only the impact of appeals likely to be settled during 2013/14. It is now clear that this provision now needs to cover the impact of successful appeals in future years as well. Paragraph 3.16 of the report set out the forecast for the council’s share of the ongoing income lost to successful appeals of £3m and that the anticipated refunds relating to pre 1st April 2013 are forecast to be £7.6m. These figures now need to be reflected in the forecasts for 2013/14.

3.3 Authorities can choose whether to reflect refunds in full in 2013/14 or spread the cost over 5 years. On the basis of the currently available information and guidance it is our view that by reflecting the refunds of £7.6m in full in 2013/14, rather than spreading the cost over 5 years, the council should qualify for safety net grant of just under £4m. This would make a significant contribution towards the cost of future refunds so this approach provides the best financial outcome for the council. It is important to note however that there is continual update and clarification of the guidance and this is simply an assessment based on the best available information at the time of writing this report. Hence it is proposed that delegated authority be given to the Director of Finance to agree the final forecast in order to ensure that we can adapt and properly respond to any further changes that may emerge, particularly in the new regulations which are to be published. There will remain an element of uncertainty even after the deadline of 31 January has passed for setting of the business rates forecast as to whether or not this approach will trigger a safety net payment.

3.4 The budget report to the February meeting of this Committee will set out the implications for the 2013/14 revenue budget and the medium term financial strategy.

4. Legal Implications

4.1 The legal framework for non-domestic rates is governed by national legislation, mainly the Local Government Act 1988 and regulations made thereunder, including the Non-Domestic Rates (Collection and Enforcement) (Local Lists) Regulations 1989, the Non-Domestic Rates) (Chargeable Dwellings) (England) Regulations 2009 and the Non-Domestic Rating (Rates Retention) Regulations 2013.

4.2 The above provisions, taken together, mean that, although the rateable value for properties is set by the Valuations Office Agency with appeals to the Valuation Tribunal, and the NNDR multiplier is set by national government, the Council, as a collection authority, remains solely responsible for the administration and enforcement of business rates, including the payment of refunds.

4.3 The legal impact of a successful appeal against a valuation determination is that the rate-payer is deemed not to have been liable to pay the rates to the extent that they are attributable to the difference between the original valuation and the revised valuation on appeal. They are therefore entitled to have that refunded and the Council has a mandatory legal obligation to implement that irrespective of who (as between local and national government) bears the ultimate financial burden.

4.4 There may be differing views as to whether this cost should be borne by the Council or national government . What is clear however is that the primary legal obligation sits with the Council and any possible legal challenge against the government based on equity or general administrative law principles would be unlikely to succeed as (a) the government is simply allowing the law, as provided by national legislation, to take its course, and (b) this cannot be seen in isolation but as part of a very complex set up for funding local authority services and the government may be able to argue that the financial settlement for local authorities takes account of a variety of factors, including the possibility of business rate refunds.

4.5 Given the fact that we do not yet have the full information, the deadline for submitting the estimates and the relatively technical nature of the task, it would be appropriate for the decision to be delegated to the Director of Finance.