

Hertfordshire, East Hertfordshire, Hertsmere North Hertfordshire, Three Rivers, Welwyn Hatfield Business Rate Pool.

Memorandum of Understanding

This Memorandum of Understanding is made on the 7th day of October 2021

Between:

Hertfordshire County Council of County Hall, Pegs Lane, Hertford, SG13 8DQ
East Hertfordshire District Council of Wallfields, Pegs Lane, Hertford, SG13 8EQ
Hertsmere Borough Council of Civic Offices, Elstree Way, Borehamwood, WD6 1WA
North Hertfordshire District Council of Council Offices, Gernon Road, Letchworth, SG6 3JF
Three Rivers District Council of Three Rivers House, Northway, Rickmansworth, WD3 1RL and
Welwyn Hatfield Borough Council of Council Offices, The Campus, Welwyn Garden City, AL8 6AE
(collectively referred to as the 'Pool' or 'Pool Members').

1. Purpose

1.1. The purpose of the Pool is to enable the member authorities to maintain capacity to continue to invest in local developments that promote business growth, by reinvesting within the geographical area of Hertfordshire the business rates growth devolved through the localisation of part of the Non-Domestic Rates income. The Pool will work alongside and complement developments undertaken by the Local Enterprise Partnership in Hertfordshire.

1.2. The Pool is founded on a basis of cooperation and partnership, working together not only to retain a greater proportion of business rate growth within the Pool area, but also to identify opportunities to collaborate in the promotion of economic development, between County and Districts and across administrative boundaries, sharing the benefits of growth.

1.3. Pool members represent the key centres of economic activity, where opportunities for further growth are clearly identified. These members give the greatest benefit for retaining resources to be used to promote economic development across the geographical county of Hertfordshire.

1.4. It is the purpose of this Memorandum of Understanding to act as a Statement of Intent that will support the realisation of these benefits. The Pool Members have agreed to enter into this Memorandum of Understanding to formalise their commitment and to set out their respective roles and responsibilities in relation to the Pool.

2. Glossary of Key Terms

2.1. Definitions and Constructions:

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| Economic Growth Fund | A proportion of the Lead Authority's Net Retained Levy set aside to fund projects and initiatives across the county of Hertfordshire which promote economic growth and the growth of the NNDR taxbase. |
| Lead Authority | The Pool member (Hertfordshire County Council) who will act as the lead in managing the Pool's resources and being the key contact between central government and the Pool. |
| Levy | A charge made by central government on any increase in business rates income above the NDR Baseline. It is calculated using a nationally set formula, with an upper limit of 50 pence in the pound. All tariff authorities within Hertfordshire are currently liable for levy at this upper limit. |
| Memorandum of Understanding | Means this Memorandum of Understanding including these clauses. |
| NNDR | National Non-Domestic Rates |
| NDR Baseline | The expected level of business rates to be collected, as calculated by central government. |
| NNDR1 | A central government form used to estimate a future year's business rates. Prepared on an annual basis by all billing authorities. |
| Net Retained Levy | The amount of levy retained locally. This is calculated as the sum of levies to be paid by individual Pool members if the Pool did not exist, less the levy to be paid by the Pool, less any safety net funding that would have been due to individual Pool members if the Pool did not exist and less the administrative costs of the Pool. |
| Pool | A voluntary arrangement amongst a group of local authorities (Hertfordshire County Council, East Hertfordshire District Council, Hertsmere Borough Council, North Herts District Council, Three Rivers District Council and Welwyn Hatfield Borough Council) to pool the business rates generated locally to ensure at least some of any levy is retained locally. |
| Safety Net | The additional funding received by an authority from central government if, in the government's opinion, the decline in business rates in any financial year would leave an authority with insufficient resources. Calculated using a national formula. |
| Tariff Authority | A local authority whose Baseline Need is lower than their NDR Baseline, assessed by central government under the Business Rates Retention Scheme (in this pool, East Hertfordshire District Council, Hertsmere Borough Council, North Herts District Council, Three Rivers District Council and Welwyn Hatfield Borough Council). Under the Scheme, the authority pays a Tariff to central government equal to the difference between Baseline Need and NDR Baseline. |

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| Term | means the term of this Memorandum of Understanding as specified in Clause 5. |
| Top Up Authority | A local authority whose Baseline Need is higher than their NDR Baseline, assessed by central government under the Business Rates Retention Scheme (in this pool, Hertfordshire County Council). Under the Scheme, the authority receives Top Up grant equal to the difference between Baseline Need and NDR Baseline. |

3. Key Principles

3.1. The Pool Members agree that they will operate the Pool in accordance with the following principles:

- Increase in Resources

The Pool Members recognise that the fundamental objective of the Pool is to generate increased resources for the region, and for individual Pool Members.

- Risk Management

The Pool Members agree to protect and mitigate as far as possible the risks associated with the level of business rate income.

- Fairness

The Pool Members agree to share the costs, risks and benefits of local business rate retention proportionately. Costs are the administrative expenses incurred in operating the Pool. Subject to available resources, Pool Members should be no worse off than if they were outside the Pool.

- Transparency, Openness and Honesty

Pool Members will be open and trusting in their dealings with each other, make information and analysis available to each other, discuss and develop ideas openly and contribute fully to all aspects of making the Pool successful. It also includes sharing data and intelligence outside of the formal reporting mechanisms on any substantive issues relating to business rate retention within their area.

- Reasonableness of Decision Making

Pool Members agree that all decisions made in relation to this Memorandum of Understanding shall be made by them acting reasonably and in good faith.

4. Binding Memorandum

4.1. This Memorandum of Understanding is intended to be legally binding and to create obligations between Pool Members with immediate effect from the execution of this Memorandum of Understanding.

5. Term of Memorandum

5.1. This Memorandum of Understanding shall continue to be in place unless terminated in accordance with these terms.

5.2. Any Pool Member can leave the Pool from 1 April of the following Financial Year providing:

- Written notice is given to other Pool Members and the Ministry of Housing, Communities and Local Government (MHCLG) in at least sufficient time for the Pool to remain in place for the remaining Pool Members, should they wish it to continue. Sufficient time is taken to be at least the time specified by MHCLG in regulations and/or guidance.
- All liabilities to and from the Pool existing at the date of exit are paid.

5.3 Pool Members may not leave the Pool before 1 April of the following Financial Year.

5.4 Pool Members have approved this Memorandum of Understanding in advance of the Secretary of State designating the Pool for the purposes of the Business Rates Retention Scheme. If the Secretary of State adds conditions to the designation, either initially or at any point in the future, an immediate review of this Memorandum of Understanding, as outlined in Section 12, will be triggered.

6. Decision Making

6.1. The Section 151 Officers shall be responsible for overseeing the operation of the Pool and making recommendations to their respective authorities about the way forward. Section 151 Officers will meet as required to review the operation of the Pool.

6.2. The Lead Authority shall ensure that reports are sent to the Section 151 Officers of each Pool Member as a minimum at end of September, December and March, updating them on the performance of the Pool and advising them of any issues. These reports should be available within six weeks of the quarter end.

6.3. For the avoidance of doubt, any substantive decision on the commitment of resources, changes in governance or major operational changes shall be referred to each Pool Members' decision making regime.

7. Dispute Resolution

7.1. The Pool Members shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection to this Memorandum of Understanding. If this cannot be resolved by the Section 151 Officers it will be referred to a meeting of all Pool Members' Heads of Paid Service for resolution.

8. Resourcing

8.1. Each Pool Member will provide the appropriate resources and will act with integrity and consistency to support the intention set out in this Memorandum of Understanding.

8.2. £10,000 per annum is allocated to the Lead Authority in recognition of the additional workload the administration of the pool places on the Lead Authority, subject to an annual review by Pool Members. This allocation will be the second call, after the fee payable to LG Futures, on the Net Retained Levy before any allocations are made.

9. Roles and Responsibilities

9.1. Hertfordshire County Council will act as the Lead Authority for the Pool.

9.2. The responsibilities of the Lead Authority are:

- To make payments on behalf of the Pool to central government and Pool Members on time and in accordance with a Schedule of Payments to be agreed by the Pool Members,
- To liaise with and submit all formal Pool returns to central government on behalf of Pool Members,
- To keep Pool Members informed of all communications with central government,
- To manage the resources of the Pool in accordance with this Memorandum of Understanding,
- To prepare regular monitoring reports and consolidate intelligence on future resource levels on behalf of the Pool,
- To prepare the annual report of the Pool's activity,
- To co-ordinate the annual review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources,
- To consult on and administer the schedule of payments between Pool Members in respect of all financial transactions that form part of the Pool's resources, and
- To lead on the timely provision of the information required, by Pool Members, in order to prepare their annual Statement of Accounts in relation to the activities and resources of the Pool.

9.3. To assist the Lead Authority in fulfilling this role, the responsibilities of individual Pool Members are:

- To make payments to the Pool on time and in accordance with a Schedule of Payments to be agreed by the Member Authorities,
- To provide accurate, timely information to the Lead Authority to enable all formal Pool returns to central government to be completed,
- To inform the Lead Authority, as soon as is practical, of any intelligence that may impact of the resources of the Pool either in the current year or in future years,
- To provide such information as the Section 151 Officers agree is reasonable and necessary to monitor/forecast the Pool's resources within the timescales agreed,
- To provide such information as the Section 151 Officers agree is reasonable and necessary on the use of the Pool's resources for inclusion in the Pool's annual report, and
- To provide accurate and timely information on the end of year financial performance of the business rates collection fund to enable the Lead Authority to calculate the end of year accounting entries needed.

10. Cash Management

10.1. The governing principle for the cash management of the Pool is that no individual Pool Member, including the Lead Authority, should incur a treasury management gain or loss as a result of the transfer of funds between Pool Members.

10.2. The Pool will receive and pay interest annually on any retained resource at the average investment rate of the Lead Authority.

10.3. The Lead Authority will make payments to the Secretary of State for Housing, Communities and Local Government, on behalf of the Pool Members.

10.4. Any late payment may be subject to a late payment interest charge at Bank of England Base Rate plus 4%.

11. Allocation of Pool Resources

11.1. Principles

The allocation of resources will be based on the following principles:

- No authority will receive a lower level of funding than they would have received without the Pool,
- Any additional resource, after meeting this “no worse off” principle plus any costs of operating the pool, is shared between the Top-up Authority and the Pool Members where growth above NDR baseline has been generated,
- A balance between the level of risk and reward for individual Pool Members will be maintained, by ensuring that any loss of Safety Net is shared between Pool members, while gains are allocated proportionately to each Pool Member’s growth,
- The rationale for the Pool is to encourage economic growth therefore Pool Members are encouraged to use the additional resource to promote further economic growth.

11.2. Basis of Allocation

The underlying basis of allocation is first to ensure that no member is worse off than they would have been outside the Pool. This is achieved in the calculation of the Net Retained Levy, which comprises:

- the sum of levies to be paid by authorities if they had been outside the Pool; **less**
- the total levy to be paid by the Pool; **less**
- any safety net payments due to members that would have been paid if they were outside the Pool; **less**
- fee payable to LG Futures
- administrative costs charged to the Pool.

The Net Retained Levy is then allocated:

- 30% to the Top-up Authority (Hertfordshire County Council);
- 70% to be allocated to Tariff authorities (East Hertfordshire, North Herts and Three Rivers District Councils and Hertsmere and Welwyn Hatfield Borough Councils), pro rata to their levy that would have been paid outside the Pool i.e. proportionate to the extent to which their business rate income exceeds their NDR Baseline.

In the event that Net Retained Levy is negative, the shortfall will be borne:

- 30% to the Top-up Authority (Hertfordshire County Council);
- 70% to be allocated to Tariff authorities (East Hertfordshire, North Herts and Three Rivers District Councils and Hertsmere and Welwyn Hatfield Borough Councils), pro rata to the cash amount that would have been received from central government as part of the annual settlement, if the Pool arrangement was not in operation.

11.3. Subject to budgetary constraints, Pool Members intend to allocate additional resources from the Net Retained Levy allocated to them for spending that supports economic growth. In making these allocations Pool Members are emphasising their commitment to at least maintaining their underlying business rate base in real terms.

11.4 Specifically, Hertfordshire County Council will set aside 50% of its share (15% of the total Net Retained Levy) in an Economic Growth Fund, to be allocated to projects and initiatives that support economic development and the growth of the NNDR taxbase in Hertfordshire.

11.5 Bids to the Economic Growth Fund may be made by any local authority within Hertfordshire. Decisions on the allocation of funds will be made by the S151 Officer of Hertfordshire County Council and Pool Members, which may be in consultation with the S151 Officers of all District Councils within Hertfordshire. If agreement cannot be reached on the allocation of the Economic Growth Fund, such will be resolved in accordance with the Dispute resolution provisions set out in the Memorandum of Understanding.

11.6 Any balance in the Economic Growth Fund will be invested in accordance with the Lead Authority's Treasury Management Strategy and interest will be allocated on the basis of average interest earned by the Lead Authority.

11.7 On termination of the Pool arrangements, any monies held from the balance of Net Retained Levy shall be distributed in accordance with the allocation calculated for that financial year.

12. Review Arrangements

12.1. A review and refresh of the Pool's governance arrangements and the methodology for the allocation of resources will be undertaken on an annual basis. It will be co-ordinated by the Lead Authority on behalf of the Section 151 Officers of each Pool Member and in sufficient time for any changes in Pool Membership to be in place before the start of the following financial year.

13. Signatories on Behalf of the Pool Members

In witness whereof the parties have signed this Memorandum of Understanding the day and year first before written:

Signed on behalf of Hertfordshire County Council:

Scott Crudgington
Director of Resources
Hertfordshire County Council

Signed on behalf of East Hertfordshire District Council:

Steven Linnett
Head of Strategic Finance and Property
East Hertfordshire District Council

Signed on behalf of Hertsmere Borough Council:

Matthew Bunyon
Head of Finance and Business Services
Hertsmere Borough Council

Signed on behalf of North Herts District Council:

Ian Couper
Service Director – Resources
North Herts District Council

Signed on behalf of Three Rivers District Council:

Alison Scott
Director of Finance
Three Rivers District Council

Signed on behalf of Welwyn Hatfield Borough Council:

Richard Baker
Head of Resources
Welwyn Hatfield Borough Council
