

Decision Report - Non-Key Decision

Forward Plan Reference: N/A

Decision Date – 15/06/22



Proposed General Consent and specific consents process in response to Direction issued under Section 24 of the Local Government and Public Involvement in Health Act 2007

Lead Member(s): Cllr Liz Leyshon, Lead Member for Resources

Local Member(s) and Division: all

Lead Officer: Jason Vaughan, Director of Finance and Governance

Author: Scott Wooldridge, Head of Governance and Democratic Services

1. Summary / Background

- 1.1.** The purpose of the report is to consider the Secretary of State's Direction restricting certain transactions and made under the Local Government and Public Involvement in Health Act 2007 (the 2007 Act).

The Executive is asked to consider granting a series of General Consents to the four District Councils to enable the business of existing District Councils to continue to proceed in the run up to Vesting Day for the new Somerset Council on 1 April 2023.

The Executive is also asked to consider the proposed process for Specific Consents.

2. Recommendations

2.1. The Executive is recommended to approve:

- 1) The General Consents to the District Councils under the Direction made under Section 24 of the Local Government and Public Involvement in Health Act 2007 as set out in Appendix 2;**
- 2) The case for Appendices 3 and 4 to be regarded as exempt information and to be treated in confidence;**
- 3) The exclusion of the press and public from the meeting where there is any discussion at the meeting regarding exempt or confidential information; and**
- 4) Delegated authority to grant specific consents under the Section 24 Direction to:**
 - (i) the Lead Member for Resources in conjunction with the**

Section 151 Officer for all specific consents between £500,000 and £5,000,000; and

(ii) the Section 151 Officer in consultation with the Monitoring Officer and the Section 151 Officers of the District Councils for all specific consents up to £499,999.

5) Approve in principle the specific consent for the proposals set out in Appendix 6 relating to a Levelling Up bid

6) Delegate authority to the Section 151 Officer to agree minor changes to the General Consents in consultation with the Lead Member for Resources

Note – any specific consents over £5,000,000 will need to be considered by either the Leader of the Council or the Executive

3. Reasons for recommendations

- 3.1** The proposals being recommended seek to ensure that the right balance is met in giving the newly elected Members the oversight of decisions made by the District Councils that can bind the future unitary council and also allowing the District Councils to continue to function, it is therefore recommended that the General Consents are approved as attached at Appendix 2.
- 3.2** The proposed delegated authority arrangements will be essential in ensuring that the five councils can respond effectively to business and local government reorganisation needs during the transition year 2022/23. There may be instances where a minor change may be required to the General Consent and delegated authority is being recommended. A minor change is defined as one which would not have a financial implication of more than £499,999. Therefore a proposed change to the General Consent with a financial implication higher than would require approval by the Executive.
- 3.3** The accompanying Appendices 3 and 4 contain commercially sensitive information relating to the District Councils' financial and business affairs. Officers therefore recommend that this is treated as exempt information. "Exempt information" is defined by Section 100 of the Local Government Act 1972, by Schedule 12A to that Act.

4. Other options considered

- 4.1.** The alternative options for the Council are :
- 1) to vary the proposed General Consent or Specific Consents process
 - 2) not to agree any General Consent and for all relevant matters to be dealt with as applications for Specific Consents

- 4.2.** Option 1 - the Executive could choose to provide greater or lesser consent as detailed in Appendix 2. However it is proposed that the attached Appendix provides the appropriate level of balance in ensuring oversight by the Executive responsible for the new unitary council whilst enabling freedom of the District Councils to continue running their services prior to vesting.
- 4.3.** Option 2 - the Executive could choose not to grant a General Consent and seek to grant individual decisions for every decision that fall under the Direction. However due to the wording of the legislation and the Direction, this would mean that a large and unmanageable number of decisions would come to the Executive for approval and provide a bureaucratic burden for the District Councils in running their services and cause a significant delay.

5. Links to County Vision, Business Plan and Medium-Term Financial Strategy

- 5.1.** The proposals set out in this report seek to support the delivery of the unitary council business case and consider the matters covered by a Section 24 Direction in the context of any financial implications for the new Somerset Council.

6. Consultations and co-production

- 6.1.** Engagement

7. Financial and Risk Implications

- 7.1.1** Prior to Vesting Date of 1 April 2023, the four District Councils within Somerset will continue to operate and make decisions for their residents, businesses and visitors. The Secretary of State has issued a Direction which gives the County Council's Executive the power to veto any relevant financial decision which could bind the new authority in a potentially unfavourable way. However to enable those District Councils to continue to function it is suggested that there will be many decisions that will be made by the District Councils which should continue without requiring individual permissions to be sought of the Executive.

Therefore it is proposed that those decisions listed in the General Consent document at Appendix 2 should be approved. This will provide the opportunity for the Executive to concentrate on the relevant decisions that will need political oversight without creating additional bureaucracy in needing to approve every individual decision by the District Councils.

- 7.2.** The lack of a general consent does not mean that the associated financial commitment cannot be made. It simply means that there is not an automatic consent and approval will need to be sought following the

relevant District Council putting forward their rationale. Any such request would initially be considered by the County Council's section 151 officer but, in order to ensure a collaborative and inclusive approach, it is intended that he will consult with the District Councils' Section 151 officers to consider the request(s) so a collective approach can be considered. This provides the opportunity to objectively consider the relative merits of any request through peer review.

8. Legal and HR Implications

- 8.1.** Following the making of the new Somerset Council (Structural Changes) Order 2022 the Department for Levelling Up, Housing and Communities (DLUHC) made a Section 24 Direction on 10th May 2022. The Direction is made under the Local Government and Public Involvement in Health Act 2007.
- 8.2.** This report sets out the legal position with regards to the District Councils being able to enter into contracts from 16 June 2022 up until 1 April 2023. The report further asks the Executive to use its transitional powers to give General Consents under the provisions of the Direction made on 10th May 2022 under the Local Government and Public Involvement in Health Act 2007 in the form set out in Appendix 2 to this report.

9. Other Implications

9.1.1. Equalities, Community Safety, Sustainability, Health and Safety, Health and Well-Being and Social Value Implications

No specific implications for the County Council have been identified in relation to the proposed General Consent. The proposal covers all areas of Somerset and provides a framework to allow District Councils to continue to make financial commitments. Those Councils will be responsible for considering the impact of their decisions.

10. Scrutiny comments / recommendations:

- 10.1.** It has not been possible for the proposals in this report to be considered by the Scrutiny Committee for Policies and Place following the issue of the Section 24 Direction and this matter being considered by the Executive.

11. Background

- 11.1.** Section 24 of the 2007 Act permits the Secretary of State to issue a Direction against all Authorities being dissolved under a Structural Change Order. Following the making of the new Somerset Council (Structural Changes) Order 2022 the Department for Levelling Up, Housing and Communities (DLUHC) made such a Direction on 10th May 2022. A copy of the Direction

and the accompanying letter and Guidance Note is attached as Appendix 1. Essentially, the Direction will restrict District Councils from entering into revenue contracts and disposals of land over £100,000 or “capital contracts” exceeding £1m (or where the term of such contracts is variable) without the consent of the Executive of the County Council.

- 11.2.** The purpose of the Direction is to ensure that the elected Members for the new unitary council have oversight and control of decisions that will financially bind the new authority from 1 April 2023. The newly elected members have oversight of the County Council’s budget and the Executive are asked to consider which decisions they are content with giving a general consent to allow the District Councils to commit the new unitary council to spend.
- 11.3.** The Secretary of State’s Direction provides that the District Councils will need approval of the newly elected Executive from 16th June 2022 for the following transactions:
- dispose of any land worth over £100,000;
 - enter into any capital contracts over £1,000,000;
 - enter into any capital contract where a term can be varied on how much the District Council pays,
 - enter into any non-capital contract over £100,000 where the contract has a potential to go over 1 April 2023.
- 11.4.** The provisions of the legislation and the Direction means that in order to work out the value of contracts, the District Councils will need to look at how much has been spent with an individual/organisation from 1 January 2007 which means that a lot of routine contracts will be captured by the Direction.
- 11.5.** The Direction also potentially applies to new contracts of employment from 16th June for the District Councils whereby the continuing salary will be more than £100,000 for the duration of the contract, which means that a number of permanent posts will be captured even though they will be on a relatively moderate salary.
- 11.6.** The sanctions for not complying with the Direction and consent regime are severe. Any contracts entered into by an authority without the required consent will be legally unenforceable by, or against, the authority in question and its successor new unitary council, and any transfer or acquisition relating to land will be void.
- 11.7.** Accordingly, and in order to ensure a continuance of business in all affected Authorities in the lead up to Vesting Day, it has been acknowledged that a General Consent would be helpful. Currently the Councils have been working under a local Finance and Assets Protocol where the relevant Section 151 Officers would highlight and review any

relevant expenditure which could potentially bind the new unitary authority in the future. As the Secretary of State's Direction will come into force on 16 June, the principles behind the Protocol will need to be formally considered by the Executive and authority given to determine what financial decisions the District Councils can make prior to Vesting Date.

- 11.8.** It is proposed that the Executive give a General Consent as drafted in Appendix 2. This Draft has been the subject of consultation with Chief Executives, Section 151 Officers (Chief Finance Officers) and Monitoring Officers within the four District Councils (as they are affected by the Section 24 Direction).

If the General Consent is agreed then the County Council's Section 151s will issue Guidance, in conjunction with district councils' Section 151 Officers, to relevant officers in all affected authorities in relation to the Direction itself; the contents of any General Consent; and the processes and procedures for obtaining specific consents where the terms of the particular transaction are outside the limits set. Legally the requirement for seeking permission as a result of the Direction only applies to the District Councils. The County Council is the decision maker for any General or Specific Consents as it is a continuing authority and therefore acting on behalf of the future new Somerset Council.

The Monitoring Officers of the five councils have reviewed the basis of the General Consent and Specific Consent decision making for the County Council and have concluded these will be treated as non-key decisions. This is because the district councils are taking any required key decisions relating to the actual disposals and / or contracts as they relate to their functions during the transition year.

As set out in the reasons for recommendations and Appendix 2, there are proposed delegated authority arrangements in order to ensure the effective and expedient operation of certain matters seeking specific consents. In accordance with Access to Information regulations, decisions taken using those delegated arrangements will be published on the council's website.

- 11.9.** To aid the Executive in understanding the potential scale and value of specific consents that may be required during 2022/23 then Appendix 3 sets out Annex A which lists the potential land disposals for specific consents, Appendix 4 sets out Annex B which lists the capital schemes where specific consents are likely to be required and Appendix 5 sets out Annex C where specific consents are likely to be required for non-capital schemes. It should be highlighted that all three appendices include details

of schemes where Section 151 Officers of the five councils consider that specific consents are not required.

The estimated total value of likely specific consents during 2022/23 are £ 3.8m in land disposals, £ 98.6m in capital schemes and £ 7.8m in non-capital schemes.

Appendices 3, 4 and 5 also set out the value of schemes where specific consents are not required. These amount to £ 17.4m in land disposals and £ 106.4m in capital schemes.

- 11.10.** Appendix 6 sets out proposals that are being progressed by Sedgemoor District Council in partnership with Mendip District Council and Somerset West & Taunton Council in relation to two constituency based Levelling Up Fund bids. Specific Consent approval in principle from the County Council is being sought.

12. Background Papers

- 12.1.** Somerset Structural Changes Order 2022
Section 24 Direction issued 10th May 2022

Report Sign-Off

		Date completed
Legal Implications	Honor Clarke, Head of Legal Services	27/05/22
Governance	Scott Wooldridge, Monitoring Officer	27/05/22
Corporate Finance	Jason Vaughan, Director of Finance	27/05/22
Human Resources and ICT	Chris Squire	27/05/22
Property	Paula Hewitt / Oliver Woodhams	27/05/22
Procurement	Claire Griffiths	N/A
Senior Manager	Jason Vaughan	27/05/22
Commissioning Development	Sunita Mills / Ryszard Rusinek	N/A
Lead Member	Cllr Liz Leyshon	27/05/22
<u>Consulted on report</u>		
Opposition Spokesperson	Cllr Mandy Chilcott	07/06/22
Scrutiny Chair	Cllr Gwil Wren	07/06/22