

## Appendix 2 - Local Government Reorganisation in Somerset

### Spending Protocol and General Consent 2022/23

- 1.1 A new Somerset Unitary Council will come into existence on the 1 April 2023 and all of the financial resources and commitments from the predecessor Councils will transfer to the new Somerset Council at this date. It is important, therefore, that decisions and actions taken in the existing Councils are made against the background of avoiding adverse financial pressures for the new Council where possible.
- 1.2 On the 10 May 2022 the Secretary of State for the Department of Levelling Up, Housing and Communities (acting through a Senior Civil Servant) gave a direction under Section 24 of the Local Government and Public Involvement in Health Act 2007 (the “S24 Direction”), coming in to effect on the 16 June 2022 (S24 Effective Date), that the four District Councils (“the District Councils”) in Somerset are required to seek the consent of Somerset County Council (“the County Council”) before they:
1. Dispose of any land if the consideration for the disposal **exceeds £100,000**.
  2. Enter into any capital contract under which the consideration payable by the relevant authority **exceeds £1,000,000**; or which includes a term allowing the consideration payable by the relevant authority to be varied.
  3. Enter into any non-capital contract under which the consideration payable by the relevant authority **exceeds £100,000**, where:
    - a. the period of the contract extends beyond 1 April 2023; or
    - b. under the terms of the contract, that period may be extended beyond that date.
- 1.3 The above financial thresholds are hereafter referred to in this Protocol and General Consent as the “S24 Thresholds”. **Section 27 allows aggregation of these limits for disposals and contracts after 31 December 2006. The S24 Direction makes it clear that aggregation of the limits will apply. This Protocol and General Consent shall therefore be construed accordingly.**
- 1.4 The Secretary of State considers that the County Council’s Executive should have a say on agreements to be entered into by the four District councils, including consideration of whether those agreements will be in the best interests of the new Council or the residents of the area, and ensuring agreements do not undermine or diminish the benefits or savings anticipated as a result of unitarisation or which may have an effect on the financial position of the new Somerset council.
- 1.5 It is important that the financial pressures for the new Council are minimised to give the best possible start and that any residual financial pressures are identified at the earliest opportunity. In that way, effective financial planning can begin during 2022/23 for 2023/24 and beyond.
- 1.6 Each Council has a Section 151 Officer (“S151 or S151’s”) who has responsibility for the stewardship of the Council’s finances. Their duty is obviously to their employing Council. However, they also have a wider fiduciary duty concerning public funds. To ensure that the financial interests of the new unitary Council are protected but also to ensure that the District Councils are able to continue to operate in an agile manner without significant delays and risks to decision-making this Protocol and General Consent has been agreed and recommended for approval by the S151’s and Monitoring Officers (or their deputies).
- 1.7 The LGR Finance workstream shall formally take on the key role of ensuring application of this Protocol and General Consent and assisting with the application of the Section 24 Direction and processing of applications from the four District Councils.

1.8 This Protocol and General Consent will come into effect on 16<sup>th</sup> June 2022 and expire on the 31<sup>st</sup> March 2023 and will supersede and replace the Finance and Assets Protocol agreed by the Councils in February 2022.

## 1.9 Principles

The following principles shall apply: -

- A. The District Councils remain responsible for taking day to day decisions for spending on service delivery within agreed revenue and capital budgets for 2022/23.
- B. The District Councils are committed to ensuring that the new unitary Council (“the Unitary”) is in the best possible financial position.
- C. The District Councils should not enter into any new financial or asset-related expenditure beyond those specifically agreed within their approved budgets or create any new liabilities above the S24 Thresholds without the agreement of the County Council.
- D. The intention is for each District Council to undertake all business as usual and project activities that are within the revenue and capital budgets and funding arrangements agreed by each Council in February 2022.
- E. For the avoidance of doubt the term “*funding arrangements*” means approved budgets, approved use of reserves, undertaking borrowing, use of grants, use of capital receipts, use of provisions and contingency budgets that have been agreed in the budget or treasury management reports approved by the District Councils at their February/March 2022 budget meetings and those previously approved that carry forward into the 2022/23 financial year.
- F. That the agreed Protocol to control spending needs to be agile to avoid introducing delays in delivery and risks to decision making.
- G. It is recognised that there may be situations that arise that will need practical application of flexibilities whilst remaining within the spirit of this Protocol. Examples of this may include emergency response , unforeseen additional costs on capital schemes (where there is already commitment to deliver) and opportunities to bid for external funding, including where there may be some form of contribution from one or more of the councils. Rather than try to legislate for all possible eventualities, this Protocol will rely upon the principles set out, alongside the S24 Thresholds, as the basis for discussion where there are such scenarios. Trying to determine a set of “hard rules” for all scenarios is likely to be impractical, if not impossible, and an escalation approach has been set out should it be required.

1.10 For the purposes of this Protocol any “new expenditure” is deemed to be expenditure that arises outside of any existing approved 2022/23 revenue and capital budgets. Expenditure is calculated as the total life cost of any project excluding recoverable VAT. Any expenditure on a project or scheme which has been broken down into parts (whether through separate contracts or otherwise) must be aggregated.

1.11 Expenditure includes but is not limited to: purchase, disposal and transfer of assets, new contracts with significant on-going financial commitments, new capital schemes (including those with on-going financial commitments) and grants. For the

avoidance of any doubt such expenditure excluding recoverable VAT must exceed the S24 Threshold for it to be subject to the consent of the County Council.

- 1.12 Key financial decisions taken by the five authorities must include and record consideration of the financial implications of the decision for the Unitary.

## 2. Budget Monitoring

- 2.1 Each Council is responsible for monitoring its own 2022/23 Budgets and reporting in line with its own Constitution and management arrangements. The Section 151 Officer of each District Council will report any matters of concern to the Somerset County Council's Section 151 Officer as they are identified. This will ensure that all Councils and Section 151 Officers have a clear understanding of the overall financial picture and associated risks. A summary of these will be reported to the LGR Implementation Team and periodically to the Executive. It remains the responsibility of each sovereign council to manage their resources and budget variances for the financial year ending 31 March 2023.

- 2.2 A high-level review of the 2022/23 budgets for the 5 existing Councils will be conducted by the County Council's Section 151 Officer and the Section 151 Officers of the District Councils, including understanding all capital commitments and future borrowing requirements.

## 3. General Consent

- 3.1 General Consent is hereby granted to the District Councils to enter into new contracts (over £100k for revenue and over £1m for capital) and to dispose of land (over £100k) where the following criteria are met:

### Entering into new contractual arrangements:

1. Entering into new revenue funded contracts (over £100k excluding recoverable VAT ) which can be funded from within the individual Council's 2022/23 approved revenue budget **and** where the contract does not enable extensions beyond vesting day. This could be a contract for goods or services.
2. Any contract required as an essential response to a civil emergency, for example response to flooding.
3. Entering into new staffing contracts which can be funded from within the 2022/23 approved revenue budget **and** which comply with the agreed LGR staffing protocol.
4. **General Fund:** Entering into new capital funded contracts (over £1m excluding recoverable VAT) for projects/programmes that are included in the 2022/23 approved capital budget **and** can be funded from financing sources included within the budget reports and/or Treasury Management Strategies agreed by the Councils in February/March 2022. Such contracts can extend beyond vesting day **if** the individual project has an approved phased budget, and no revenue implications beyond 1<sup>st</sup> April 2023 e.g. a housing development scheme, decarbonisation programme, regeneration project.
5. **Housing Revenue Account:** Entering into new capital funded contracts (over £1m) for projects/programmes that are included in the 2022/23 approved capital budget/HRA Business Plan **and** can be funded from financing sources included within the budget reports and/or Treasury Management Strategies agreed by the councils in February 2022. Such contracts, e.g. social housing development scheme, housing stock decent homes works such as replacement windows, can extend beyond vesting day if within the approved budget for the contract and within HRA business plan value for money and affordability limits.

6. Points 1, 3, 4 and 5 above to include budgets previously approved before February 2022 that carry forward into the 2022/23 financial year (e.g. slippage of unspent but approved capital and revenue budget from 2021/22 into 2022/23).
7. Entering into a contract that relates to the operation of prudent treasury management and complies with the district councils' approved treasury management and investment strategies, prudential indicators, and treasury management practices, where any borrowing does not exceed £5m and 365 days. In the event of any long-term borrowing exceeding £5m and exceeding 365 days specific consent of the County Council S151 Officer is required.
8. Entering into a contract that is outside the existing approved budget but is fully funded by external grants / contributions, unless the grant conditions require match funding exceeding the S24 Threshold (not included in the agreed budget) and/or pose potential significant risks and significant obligations on the Unitary exceeding the S24 Threshold. Town Deals is an example of expenditure which would be included in the general consent as it is externally funded

#### **Land disposals:**

9. Disposals of council dwellings or grant or renewal of leases (over £100k) under the Right to Buy legislation and disposal of other housing revenue account assets in line with approved budgets, financial strategies and business plans.
10. All lease rental agreements for investment properties (over £100k and continuing past vesting day) at market value.
11. All lease rental agreements for non-investment properties (over £100k and continuing past vesting day) where the rental value secured is at least that contained within the approved rental income budget or within the Business Case previously agreed by the Council prior to issue of the S24 Effective Date. .
12. Completion of land and property disposals (over £100k) that are already approved through the District Council's governance arrangements prior to S24 Effective Date and in line with the 2022/23 approved budget and capital strategy. All capital disposal or land sales outside of those identified will need specific consent.

3.2 To aid interpretation the following are examples of financial activities **that can be carried out** by the District Councils without needing the consent of the County Council

- New use of earmarked reserves and reserves not included in the agreed budget (unless they are to fund new contracts above the S24 financial limits **and** which are outside of the general consent criteria).
- Raising new **and/or** changing 2022/23 fees & charges tariffs.
- Meeting staffing needs (new contracts) that have funding available within the agreed budget and follow the LGR recruitment protocol.
- Debt write-offs of any value in line with the existing Councils' approved constitutions, financial procedures and accounting policies.

#### **4. Specific Consent**

4.1 To aid interpretation, the following are examples of financial activities that **are not** included in the general consent set out in paragraph 3 above and which will require the approval of the County Council:

1. Granting of leases/easements/other rights over non-investment property where the consideration is more than £100k and which are not included/or are

significantly different than the agreed revenue budget or in a business case previously agreed by the District Council prior to the s24 Effective Date.

2. Freehold sale of assets (over £100k), for all assets including investment assets, where these have not been previously agreed by the District Council prior to the S24 Effective Date. A list of potential disposals are included in Annex A
3. Community transfers of assets over £100k where these have not been previously agreed by the District Council prior to the S24 Effective Date.
4. General Fund capital projects over £1m where no contract has been signed, it has revenue implications beyond vesting day and/or increased risk for the New Council. Examples from 2022/23 district Council Capital Programmes are included in Annex B

## **5. Procedure for obtaining County Council consent**

- 5.1 Where the S24 Thresholds apply and the expenditure does not fall within any of the General Consents at Paragraph 3 above, the following procedure shall apply: -
- 5.2 The S151 Officers shall agree a template for obtaining consent from the County Council (the "Application").
- 5.3 Applications for consent shall be submitted to the County Council's S151 officer using an agreed form.
- 5.4 In the absence of the County Council's S151 Officer the Application will be considered by the County Council's Deputy S151 Officer or the County Council's Chief Executive.
- 5.5 The S151 Officer (or the Chief Executive or Deputy S151 Officer in their absence) shall have delegated authority to give consent to Applications for the disposal of land the entering into of a capital contract or the entering into of a non-capital contract over the length of the contract up to £500,000 excluding taxation or recoverable VAT. Any application to be dealt with by the S151 Officer shall be considered, and the consent decision issued in writing expeditiously within five working days of the Application.
- 5.6 The S151 Officer (or the Chief Executive or Deputy S151 Officer in their absence) and the relevant Executive Lead Member shall have delegated authority to give consent to Applications for the disposal of land, the entering into of a capital contract or the entering into of a non-capital contract over the length of the contract up to and including £5 million excluding taxation or recoverable VAT. Such Application to be considered and the decision issued in writing expeditiously within five working days of the Application.
- 5.7 Applications seeking consent for the disposal of land with consideration or best value, the entering into of a capital contract or the entering into of a non-capital contract exceeding £5 million excluding taxation or recoverable VAT shall be determined by the Executive or where urgency demands by the Leader of the County Council .
- 5.8 It is recognised by the Councils that delays in applying for consent or responding to Applications may jeopardise a proposal. In the circumstances the S151 Officers shall work together in good faith to achieve a timely process which, whilst compliant with the decision-making rules, enables decisions in relation to Applications to be made as expeditiously as possible.

- 5.9 Applications for consent shall be determined by the County Council expeditiously and the outcome notified to the relevant District Council in writing.
- 5.10 Any decisions shall be taken in accordance with *The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000 NO. 2853)* (as amended).

## **6. Escalation**

- 6.1 In the event of any difference in opinion in relation to the interpretation of this Protocol and General Consent as regards those decisions delegated to the County Council S151 Officer, the relevant S151 Officers shall in the first instance consult with their own Chief Executive. If a consensus is unable to be reached, the matter shall be referred to the Executive for consideration.

## **7. Review**

- 7.1 This Spending Protocol and General consent will be kept under review by the Executive and amended if required.

Annex A – Potential Land Disposals in excess of £100k

Annex B – Capital Projects over £1m

Annex C – Non capital schemes over £ 100,000

Annex D – Levelling Up Bid – specific consent application