

Somerset West and Taunton Council

Executive – 20 July 2022

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

This matter is the responsibility of the Portfolio Holder for Local Government Reorganisation, Cllr Sarah Wakefield

Report Authors: Paul Fitzgerald - Assistant Director Finance, Amy Tregellas – Governance Manager and Monitoring Officer and Kevin Williams – Solicitor and Deputy Monitoring Officer

1 Executive Summary / Purpose of the Report

- 1.1 The purpose of this 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).
- 1.2 The Executive is asked to note the proposed series of General Consents to be granted by Somerset County Council to the four Somerset 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.
- 1.3 The Executive is also asked to note the proposed process for Specific Consents.
- 1.4 SCC considered and approved the arrangements set out in this report on 15 June 2022 with the General Consents and process for seeking Specific Consents taking effect from 16 June 2022 to 31 March 2023.

2 Recommendations

- 2.1 That the Executive notes the following recommendations that were considered and approved by Somerset County Council Executive on 15 June 2022:
 1. The General Consents that Somerset County Council (SCC) intends to grant 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. That delegated authority to grant specific consents under the Section 24 Direction will be given to:
 - (i) the SCC Lead Member for Resources in conjunction with the SCC Section 151 Officer for all specific consents between £500,000 and £5,000,000; and
 - (ii) the SCC Section 151 Officer in consultation with the SCC Monitoring Officer and the Section 151 Officers of the District Councils for all specific consents up to £499,999.

3. The intention that SCC Executive approve in principle the specific consent for the proposals set out in Appendix 6 relating to a Levelling Up bid.
4. The intention to delegate authority to the SCC Section 151 Officer to agree minor changes to the General Consents in consultation with the SCC Lead Member for Resources
5. That any specific consents over £5,000,000 will need to be considered by either the Leader of SCC or the SCC Executive

3 Risk Assessment

- 3.1 If no general consent or specific consent process is in place, then many District Council activities supporting corporate actions may be delayed.

4 Background and Full details of the Report

Background

- 4.1 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 10 May 2022. A copy of the Direction and the accompanying letter and Guidance Note is attached as Appendix 1.
- 4.2 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.
- 4.3 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 of Somerset County Council have been 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.

The Section 24 Direction

- 4.4 The Secretary of State’s Direction provides that the District Councils will need approval of the newly elected Executive from 16 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.
- 4.5 The provisions of the legislation and the Direction means that in order to work out the value of contracts, the District Councils have had to look at how much has been spent with an individual/organisation from 1 January 2007 as a cumulative exercise. The implication of this is that a lot of routine contracts will be captured by the Direction.

- 4.6 The Direction also potentially applies to new contracts of employment from 16 June 2022 for the District Councils whereby the continuing salary will be more than £100,000 for the duration of the contract, this means that a number of permanent posts will be captured even though they will be on a relatively moderate salary.
- 4.7 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.
- 4.8 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.
- 4.9 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 came into force on 16 June 2022, the principles behind the Protocol were considered by the SCC Executive on 15 June 2022, and authority given to determine what financial decisions the District Councils can make prior to Vesting Date.

The Proposal

- 4.10 The proposal is that the SCC 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).
- 4.11 The SCC Executive met on 15 June 2022 and approved the General Consent. The County Council's Section 151 Officer issued 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.
- 4.12 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.
- 4.13 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.
- 4.14 As set out in the reasons for recommendations and Appendix 2, the proposed delegated authority arrangements 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 SCC website.
- 4.15 To assist in understanding the potential scale and value of specific consents that may be

required during 2022/23 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.

- 4.16 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.
- 4.17 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.
- 4.18 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.

Access to Information Regulations

- 4.19 The accompanying Appendices 3, 4 and 5 contain commercially sensitive information relating to the District Councils' financial and business affairs. It is therefore recommended 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. In this circumstance it specifically relates to Category 3 – *Information relating to the financial or business affairs of any particular person (including the authority holding that information)*. If Members wish to discuss any of the information contained within the confidential appendices, then a resolution will need to be passed for the meeting to go into confidential session.

5 Links to Corporate Strategy

- 5.1 The Proposed General Consent and Specific Consents process will help to ensure that the Corporate Priorities, as well as business as usual activities of the four Somerset District Councils are not hindered by over burdensome bureaucracy in the lead up to vesting day on 1 April 2023.
- 5.2 This decision is intrinsically linked to the Council's Corporate Strategy for 2020-2024 and the delivery of the Annual Plan for the 2022-23 financial year.

6 Finance / Resource Implications

- 6.1 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 Somerset County Council's Executive the power to veto any relevant financial decision which could bind the new authority in a potentially unfavourable way.
- 6.2 However, to enable the 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 from the SCC Executive.
- 6.3 The granting of a general consent will provide the opportunity for the SCC Executive to

concentrate on the relevant decisions that will need political oversight without creating additional bureaucracy by needing to approve every individual decision by the District Councils.

6.4 The lack of a general consent does not mean that the associated financial commitment cannot be made. It simply means that if there is not an automatic consent, approval will need to be sought. The relevant District Council will need to put forward their rationale for consideration and approval.

6.5 Any such request would initially be considered by the County Council's Section 151 Officer but, 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). This provides the opportunity to objectively consider the relative merits of any request through peer review.

7 Unitary Council Financial Implications and S24 Direction Implications

7.1 This report sets out the Unitary Council Financial Implications and S24 Direction Implications.

8 Legal 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 10 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 also sets out how the SCC Executive intends to use its transitional powers to give General Consents under the provisions of the Direction made on 10 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 Climate and Sustainability Implications

9.1 None arising from this report

10 Safeguarding and/or Community Safety Implications

10.1 None arising from this report

11 Equality and Diversity Implications

11.1 None arising from this report

12 Social Value Implications

12.1 None arising from this report

13 Partnership Implications

13.1 None arising from this report

14 Health and Wellbeing Implications

14.1 None arising from this report

15 Asset Management Implications

15.1 None arising from this report

16 Data Protection Implications

16.1 None arising from this report

17 Consultation Implications

17.1 None arising from this report

Democratic Path:

- **Corporate Scrutiny Committee/Community Scrutiny Committee – No**
- **Cabinet/Executive – Yes – this is for the Executive to note**
- **Full Council – No**

List of Appendices

Appendix 1	Department for Levelling Up, Housing and Communities (DLUHC) Direction and accompanying letter dated 10 May 2022
Appendix 2	LGR in Somerset Spending Protocol and General Consent – approved by SCC Executive on 15 June 2022
Appendix 3	Confidential as commercially sensitive – list of potential land disposals for specific consents
Appendix 4	Confidential as commercially sensitive – list of the capital schemes where specific consents are likely to be required
Appendix 5	Confidential as commercially sensitive – list of specific consents which are likely to be required for non-capital schemes
Appendix 6	Levelling Up bid

Contact Officers

Name	Amy Tregellas
Direct Dial	0300 304 8000
Email	a.tregellas@somersetwestandtaunton.gov.uk