

CABINET

Agenda Item: 8

Ward: All

Portfolio: Cross Cutting

Report Author(s): Head of Law & Governance Services and The Monitoring Officer

Meeting Date: 20 June 2022

SUBJECT: **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**

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	Seen by:	Name	Date
Officer Sign off	Chief Executive/ Deputy Chief Executive(s)	Stuart Brown	09/06/2022
	Legal	Lesley Dolan	08/06/2022
	Finance	Richard Bates	09/06/2022
	Group Manager	David Clark	07/06/2022
Elected Member Sign off	Portfolio Holder/ Leader of the Council	Cllr Ros Wyke	09/06/2022
	Ward Member(s) (if appropriate)	N/A	
Summary:	<p>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).</p> <p>Cabinet 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.</p> <p>Cabinet is also asked to note the proposed process for Specific Consents.</p>		
Recommendation:	<p>Cabinet is asked to note:</p> <ol style="list-style-type: none"> 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; 		

	<ol style="list-style-type: none"> 2. That delegated authority to grant specific consents under the Section 24 Direction will be given to: <ol style="list-style-type: none"> (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. 3. The intention that Somerset County Council 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 Somerset County Council 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 the Somerset County Council or the SCC Executive
<p>Direct and/or indirect impact on service delivery to our customers and communities:</p>	<p>The 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 will help to ensure that the creation of the new unitary Council for Somerset is carried out efficiently and that the related decisions of the five councils are collaborative, transparent and democratically accountable.</p>
<p>Contribution to Corporate Priorities:</p>	<p>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 stymied by over burdensome bureaucracy in the lead up to vesting day on 1 April 2023.</p> <p>This decision is intrinsically linked to the recently adopted Corporate Delivery Plan and specifically to the theme of Transition - First Phase, regarding Local Government Reorganisation in Somerset.</p>
<p>Legal Implications:</p>	<p>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.</p> <p>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</p>

	in the form set out in Appendix 2 to this report.
Financial Implications:	<p>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.</p> <p>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 of the SCC Executive.</p> <p>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 in needing to approve every individual decision by the District Councils.</p> <p>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.</p> <p>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.</p>
Climate Change Risk and Opportunities:	None as a result of the report
Impact on Service Plans:	The proposed process will help to ensure that any service plan activities caught by the Section 24 Direction will not be delayed by additional bureaucracy.
Value for Money:	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.
Equalities Implications:	No equalities implications have been identified as a result of this report
Risk Assessment and Adverse Impact on Corporate Actions:	If no general consent or specific consent process is in place, then many District Council activities supporting corporate actions may be delayed.

Scrutiny Recommendation (if any)	N/A
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INTRODUCTION

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).

Cabinet 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.

Cabinet is also asked to note the proposed process for Specific Consents.

BACKGROUND

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.

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.

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

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.

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.

The Direction also potentially applies to new contracts of employment from 16 June 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.

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.

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 SCC Executive and authority given to determine what financial decisions the District Councils can make prior to Vesting Date.

THE PROPOSAL

It is proposed 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).

If the General Consent is agreed then the County Council's Section 151 Officer 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 SCC website.

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.

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.

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.

RECOMMENDATIONS

Cabinet is asked to note:

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 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.
3. The intention that Somerset County Council 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 Somerset County Council 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 the Somerset County Council or the SCC Executive.

REASONS FOR RECOMMENDATIONS

The proposals being recommended seek to ensure that the right balance is met in giving the newly elected Somerset County Council 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.

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.

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.

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Appendices

Appendix 1: Section 24 Direction
Appendix 2: Proposed General Consents and Specific Consents
Appendix 3: Annex A Land Disposals CONFIDENTIAL
Appendix 4: Annex B Capital Schemes CONFIDENTIAL
Appendix 5: Annex C Non-Capital Schemes CONFIDENTIAL
Appendix 6: Annex D Levelling-Up Bid

List of background Papers:

Somerset Structural Changes Order 2022
Section 24 Direction issued 10 May 2022