

North Yorkshire County Council

Executive

23 May 2022

Agreement of General Consent in Response to Direction Issued Under Section 24 of the Local Government and Public Involvement in Health Act 2007

Report of the Section 151 Officer and Monitoring Officer

1.0 Purpose of Report

- 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 District Councils to enable the business of existing District Councils to continue to proceed in the run up to Vesting Day.

2.0 Executive Summary

- 2.1 This report sets out the legal position with regard to the District Councils being able to enter into contracts from 23 May 2022 up until 1 April 2023. The report further asks the Executive to use its transitional powers to give General Consent 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.

3.0 Background

- 3.1 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 North Yorkshire 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 for payment of such contracts is variable) without the consent of the Executive of the County Council.
- 3.2 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.
- 3.3 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 23 May, 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.

- 3.4 It is proposed that the Executive give a General Consent as drafted in Appendix 2. This Draft has been the subject of consultation with relevant officers within all affected Authorities. If the General Consent is agreed then Guidance will be issued 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 and Borough Councils and the County Council decision making remains the same as the newly elected members will have oversight of the County Council's budget prior to the 8 authorities becoming a unitary council.

4.0 Issues

- 4.1 Prior to Vesting Date of 1 April 2023, the seven District Councils within North Yorkshire 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 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.
- 4.2 The lack of a general consent does not mean that the associated financial commitment can not 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 7 District and Borough 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.

5.0 Options

- 5.1 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.
- 5.2 Alternatively 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 allowing freedom of the District Councils to continue running their services.

6.0 Financial Implications

- 6.1 The Secretary of State's Direction provides that the District Councils will need approval of the newly elected Executive from 23rd May for the following transactions:
- (1) dispose of any land worth over £100,000;
 - (2) enter into any capital contracts over £1,000,000;
 - (3) enter into any capital contract where a term can be varied on how much the District Council pays,
 - (4) enter into any non-capital contract over £100,000 where the contract has a potential to go over 1 April 2023.

- 6.2 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.
- 6.3 The Direction also potentially applies to new contracts of employment from 23 May for the District Councils whereby the continuing salary will be more £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.
- 6.4 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.

7.0 Legal Implications

- 7.1 As identified in the report.

8.0 Equalities Implications

- 8.1 An Equality Screening Report is attached at Appendix 3.

9.0 Reasons for Recommendations

- 9.1 In order 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 recommended that the General Consents are approved as attached at Appendix 2.

10.0 Recommendation

The Executive is recommended to approve:

- 10.1 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 attached in Appendix 2.
- 10.2 To delegate the ability to grant specific consents under the Section 24 Direction to:
- (i) the relevant Executive Member; and separately to
 - (ii) the Section 151 Officer in consultation with the Monitoring Officer and the Section 151 Officers of the District Councils.

Gary Fielding
Section 151 Officer

Barry Khan
Monitoring Officer

County Hall
Northallerton

12 May 2022

Report Authors – Barry Khan and Gary Fielding
Presenters of Report – Barry Khan and Gary Fielding

Background Documents: None

Appendices:

1. Direction made under Section 24 of the Local Government and Public Involvement in Health Act 2007.
2. General Consents.
3. Equality Screening Assessment.
4. Climate Change Impact Assessment.