

# CHESHIRE EAST CABINET

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**Date:** 21 May 2008  
**Report of:** Governance Group  
**Title** Agreement of General Consent In Response To Direction Issued Under Section 24 Of The Local Government And Public Involvement in Health Act 2007

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## **1.0 Purpose of Report**

- 1.1 This paper sets out latest position concerning the issue of a Direction restricting certain transactions and made under the Local Government and Public Involvement in Health Act 2007 (the 2007 Act). It also proposes that a form of a General Consent document be agreed by the Shadow Authority to enable the business of existing District and County Councils to continue to proceed in the run up to Vesting Day. In order to seek to secure consistency of approach in relation to the Cheshire area, a report in similar terms is being submitted to the Cheshire West and Chester Shadow Authority.

## **2.0 Decision Required**

- 2.1 That pursuant to its powers to give General Consent under the provisions of the Direction made on the 9 April 2008 under the Local Government and Public Involvement in Health Act 2007 the Cabinet, on behalf of the Shadow Council, agrees the General Consent in the form set out in Appendix 2 to this Report.

## **3.0 Implications for Transitional Costs**

- 3.1 Failure to agree a suitably streamlined Consent regime may result in increased workload (and therefore possibly cost) in transacting the business of outgoing and Shadow Councils.

## **4.0 Background and Options**

- 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 Cheshire (Structural Changes) Order the Department for Communities and Local Government (DCLG) made such a Direction on the 9 April 2008, but have agreed that it will not come into force until the 26 May 2008 to enable both Shadow Councils if they see fit to agree a General Consent. A copy of the Direction and the accompanying letter and Guidance Note is attached as Appendix 1. Essentially, the Direction will restrict Authorities 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 Shadow Council. Where the contract or disposal relates to areas covered by both Shadow Councils or relates to land outside of both of those areas (eg in the case of a transaction by the County Council) then

the consent of both Shadow Councils is required. Where disposal involves land valued at over £100k and “required by any enactment” the consent of the Secretary of State is required. The DCLG have indicated in their Guidance Note that whilst these limits appear in the Direction they would recommend “as an urgent priority” that Shadow Councils give a General Consent which may apply higher limits and different parameters for relevant transactions (see covering letter and Para 15 and 35 of the Guidance Note).

- 4.2 The sanctions for not complying with the Direction and consent regime are draconian. 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.
- 4.3 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 and the latest Draft of such a Consent, to be agreed by the Cabinet, on behalf of the Shadow Authority, is attached (Appendix 2). This Draft has been the subject of consultation with relevant officers within all affected Authorities. At member level prior to the May elections the Joint Committee noted the current position and agreed in principle the content of the General Direction essentially in the form as reproduced in Appendix 2 (but references to Joint Committees have now been removed as no longer relevant). The only change to the document related to leases of seven years or less where the Cheshire West and Chester Joint Committee considered that a financial limit should be inserted. In relation to the nominated officers who would normally give consents there is an issue which requires clarification. Currently the Interim Monitoring Officer and the Interim section 151 Officer for the Cheshire East Shadow Council are employed by Macclesfield Borough Council. If a consent were being sought by Macclesfield Borough Council from the Cheshire East Council then this would create a potential for a conflict of interest for those officers. Accordingly for the purposes of the General Consent only however, it is recommended that where Macclesfield BC are seeking a consent then the authorised officers for the purposes of giving such a consent in those circumstances would be the Monitoring Officer of the County Council and the Section 151 Officer of Congleton Borough Council, and the wording of the relevant section of the Draft General Consent in Appendix 2 reflects this.
- 4.4 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.

## **Conclusion**

- 4.5 Indications were that although the Minister decided to make the Direction on the 9 April he was prepared to delay the “in force” date of the Direction until after the Shadow elections (and for a reasonable period thereafter) to allow the Shadow Council to consider the giving of a General Consent prior to it coming into force on 26 May. It is believed this was in recognition of the collaborative manner in which all affected Councils in Cheshire were approaching the matter and that the finalisation of a Draft General Consent was well advanced.

***For further information:-***

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*Background Documents:- n/a*

**Direction made under section 24 of the Local Government and Public Involvement in Health Act 2007.**

- 1) In exercise of the powers under section 24 of the Local Government and Public Involvement in Health Act 2007 (“the Act”) the Secretary of State makes this direction which has effect from 26<sup>th</sup> May 2008.

**Interpretation**

- 2) In this direction:
- a) “the West Cheshire councils” means Chester City Council, Ellesmere Port and Neston Borough Council and Vale Royal Borough Council;
  - b) “the East Cheshire councils” means Congleton Borough Council, Crewe and Nantwich Borough Council and Macclesfield Borough Council;
  - c) “the Cheshire West and Chester Council” means the Cheshire West and Chester District Council; and
  - d) “the Cheshire East Council” means the Cheshire East District Council.

**General**

- 3) The Secretary of State directs each authority specified in paragraph 4, being an authority which is to be dissolved by virtue of an order made under section 7 of the Act, that it may not, without her written consent, dispose of any land if the consideration for the disposal exceeds £100,000 and the authority is required to dispose of the land under any enactment.
- 4) The authorities are:
- a) the authorities comprising the West Cheshire councils;
  - b) the authorities comprising the East Cheshire councils; and
  - c) Cheshire County Council.

**Particular**

**The West Cheshire and East Cheshire councils**

- 5) The Secretary of State directs:
- a) each of the West Cheshire councils that from 26<sup>th</sup> May 2008 they may not without the written consent of the Cheshire West and Chester Council :

(1) make any other disposal of land, if the consideration for the disposal exceeds £100,000;

(2) enter into any capital contract

(a) under which the consideration payable by the relevant authority exceeds £1,000,000; or

(b) 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 2009; or

(b) under the terms of the contract that period may be extended beyond that date; or

(4) include an amount of financial reserves in a calculation under section 32(3) or 43(3) of the Local Government Finance Act 1992.

b) each of the East Cheshire councils that from 26<sup>th</sup> May 2008 they may not without the written consent of the Cheshire East Council undertake any of the actions set out in paragraph 5(a)(1) to (4) above.

### **Cheshire County Council**

6) The Secretary of State directs Cheshire County Council that from 26<sup>th</sup> May 2008 it may not without the written consent of Cheshire West and Chester Council undertake any of the actions set out in paragraph 5(a)(1) to (3) above, if the land is situated in, or the contract relates to, the area of the West Cheshire councils.

7) The Secretary of State directs Cheshire County Council that from 26<sup>th</sup> May 2008 it may not without the written consent of the Cheshire East Council undertake any of the actions set out in paragraph 5(a)(1) to (3) above, if the land is situated in, or the contract relates to, the area of the East Cheshire councils.

8) The Secretary of State directs Cheshire County Council that from 26<sup>th</sup> May 2008 it may not without the written consent of the Cheshire West and Chester Council and the Cheshire East Council :

- a)** make any other disposal of land, if the consideration for the disposal exceeds £100,000 and the land is situated in both the area of the West Cheshire councils and in the area of the East Cheshire councils or it is situated outside those areas;
- b)** enter into any capital contract which relates to both the area of the West Cheshire councils and the area of the East Cheshire councils or to an area outside those areas:
  - i)** under which the consideration payable by the relevant authority exceeds £1,000,000; or:
  - ii)** which includes a term allowing the consideration payable by the relevant authority to be varied;
- c)** enter into any non-capital contract under which the consideration payable by the relevant authority exceeds £100,000, which relates to both the area of the West Cheshire councils and the area of the East Cheshire councils or to an area outside those areas, where –
  - i)** the period of the contract extends beyond 1 April 2009; or
  - ii)** under the terms of the contract that period may be extended beyond that date; or
- d)** include an amount of financial reserves in a calculation under section 32(3) or 43(3) of the Local Government Finance Act 1992.

Signed by the authority of the Secretary of State

A senior civil servant

Department for Communities and Local Government

Date:

## LOCAL GOVERNMENT REORGANISATION IN CHESHIRE

### GENERAL CONSENT IN RELATION TO DISPOSALS, CONTRACTS AND AGREEMENTS

#### Introduction and Scope of Consent

- 1 This General Consent is based upon the fundamental principle that all existing/outgoing local authorities in Cheshire, and Shadow Councils established by the Cheshire (Structural Changes) Order (the “Order”), in the face of Local Government Reorganisation, will continue to uphold the highest standards of public administration and stewardship of public resources and have confidence in each other that these standards will continue to be upheld as the preparations continue for a smooth transfer of responsibilities to the two New Councils to be established on 1.4.09 by the Order. This General Consent recognises that many initiatives and actions of the existing/outgoing authorities will need to continue pending Vesting Day within established budgetary plans and seeks to avoid paralysis in public service delivery/development during this period. It sets out a number of instances where the further consent of the Joint Committee(s)/ Shadow Council(s) is not required by virtue of having been given by this General Consent.
- 2 The scope of this General Consent means that it will only apply to matters which are currently within the definition in Section 24 of the Local Government and Public Involvement in Health Act 2007 (and have been made the subject of a Direction made by the Secretary of State under that section in relation to the Cheshire area) and therefore in particular involve the following:
  - Non Capital (ie Revenue) contracts exceeding £100,000
  - Capital contracts exceeding £1m or where the term for payment for such contacts is variable
  - Disposals of land and buildings exceeding £100,000
  - Inclusion of an amount of reserves when setting the Authority’s Budget
- 3 Section 27 allows aggregation of these limits for disposals/contracts after 31 December 2006. The Direction makes it clear that aggregation of the limits will apply.
- 4 The matters which fall within the definitions contained in the Schedule can proceed in the normal way and are subject to a General Consent from the Shadow Council(s). These matters require no further consent to be obtained. Nevertheless in these cases it is expected that outgoing councils will ensure that contracts and agreements allow the maximum flexibility to the successor authorities to achieve future economy, efficiency and effectiveness. For example, limited extensions of existing contracts and break clauses in new contracts will provide early scope for reappraisal. Where matters fall outside the definitions then a specific written Consent will be required if the contract/ disposal is not to be void. The process for seeking and providing such Consents is set out in the next part of this document.

## **Process for seeking, and giving, of specific Consents**

- 1 Where a Specific Consent is required, the Authority seeking the Consent shall submit a written request to officers designated for these purposes by the Shadow Council(s) the “Designated Officers” (i.e. the Interim Section 151 Officer and Interim Monitoring Officer of the Shadow Authority) in question providing such information as is reasonably required by those officers. Those Officers shall be authorised (and have the delegated power from the Shadow Council) to give any consents required, but shall, at their discretion refer the matter to the Shadow Council if they see fit. If there is no joint agreement between the Designated Officers then the matter will be so referred. At this stage, it is considered that those Officers are best placed within each of their Authorities to be aware of relevant contracts and disposals and their likely impact on the functions and financial position of the New Councils. Where the Authority seeking the consent is Macclesfield Borough Council, then the officers designated for the purposes of giving a consent in such circumstances shall be the Monitoring Officer of Cheshire County Council and the S151 Officer of Congleton Borough Council. Where a contract or disposal relates to areas or service provision covered by both Shadow Councils then the consent of BOTH will be required. Where this is not the case then only the consent of the Shadow Council which will be affected is required.
- 2 Records of the decisions of those Designated Officers within each Authority will be maintained. Where decisions were taken to give a Consent then these will be reported retrospectively to the relevant Shadow Councils. It is considered that this will (a) provide an opportunity for challenge as to the application of the General Consent regime in every relevant Authority and (b) in extreme cases enable any Authority to invite the Secretary of State to consider the matter further to issue a revised or specific Direction against a particular Authority or class of matter.

## **Review**

This General Consent will be kept under review by the Joint Implementation Teams and amended or developed as necessary by the Shadow Council(s) in the light of experience and practical application.



## **The Schedule**

### **TRANSACTIONS WHERE A GENERAL CONSENT TO PROCEED APPLIES**

#### **Land Transactions**

- A disposal certified by the Monitoring Officer of the disposing authority that it is required by statute (e.g. purchase notices, compulsory purchase notices, right to buy sales) or in fulfilment of an enforceable legal obligation in existence as at 29.2.08.
- Leases of commercial premises built and/or existing as at 18 December 2007, with or without a premium, where the terms are certified as representing the best consideration that can be reasonably be obtained.
- Leases for seven years or less where the annual rental payable does not exceed £150,000 per annum.
- Consents to assignments, underleases and variation of terms where these are commercially prudent.
- Notwithstanding the above, disposals and acquisitions of land and/or buildings or interests in land/buildings where the consideration as expressed in any document effecting the transaction is less than £500,000.
- Transactions in respect of the property portfolio held and managed on behalf of the Cheshire Pension Fund

#### **Contracts**

- Contracts for goods or services which do not extend beyond 1<sup>st</sup> April 2009 where the contract does not contain provisions to enable extensions beyond that date.
- Notwithstanding any other category within this section, any contract for goods or services where the total value of the contract (including any obligations for future development or servicing) cannot exceed the sum of £3,000,000 for Cheshire County Council and £1,000,000 for any Cheshire District Council whether by extension, variation or otherwise
- Any Construction contract which, taken together with any related contracts for professional or specialist services, cannot exceed the sum of £3,000,000 for Cheshire County Council, and £1,000,000 for any Cheshire District Council whether by extension, variation or otherwise, save for events of an unforeseen nature which could not reasonably have been specified by the employer in advance and which become apparent in the course of construction
- Contracts relating to service provision for individual children or adults/older people.
- Essential responsive maintenance of buildings and highways.
- Any contract for goods or services which is required as an essential response to a civil emergency.
- Contracts relating to the employment of staff or agency workers.
- Agreements relating to the investment or borrowing of local authority funds either for short or long term purposes in accordance with an Authority's existing agreed Treasury Management Strategy.
- Contracts for the supply of utilities (eg gas or electricity).
- Agreements for the appointment of Investment Managers on behalf of the Cheshire Pension Fund and the allocation of funds or assets for investment to existing or new managers.

End of document.