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Report

Subject : Local Government Reorganisation in Wiltshire
Report to : Cabinet
Date : Wednesday 26 March 2008
Author : John Crawford
Leader of the Cabinet : Councillor Paul Sample

1. **Summary:**

To update Members on local government reorganisation in Wiltshire.

2. **The Wiltshire [Structural Change] Order 2008:**

- 2.1 The Wiltshire [Structural Change] Order 2008 ["the Structural Order"] was made on 25.02.2008 and came into force on 26.02.2008. It implements Wiltshire County Council's proposal for a single tier of local government in Wiltshire. A copy is attached as Appendix 1.
- 2.2 The Structural Order sets out the functions, powers and duties of the Implementation Executive ["the IE]. The IE is made responsible for transitional functions. Our constitution will need to be amended and a report will be presented to Council on 31.03.2008 to authorise any amendments. The Structural Order provides that the transitional functions are preparing for and facilitating transfer of district council functions property rights and liabilities.
- 2.3 The Structural Order provides that other functions can be added. The Government has produced an indicative timetable of likely functions to be added by means of regulations. A copy of the timetable is attached as Appendix 2.
- 2.4 The Structural Order gives power to each of the councils affected by LGR to obtain information from any of the others through an appointed Proper Officer. The report to be presented to Council will seek the appointment of the Chief Executive as our Proper Officer. Wiltshire County Council has already made a request for information ["The Request"] on various matters from each of the district councils. The Request specifically seeks information on our office project and the housing revenue account. A copy of the Request and our response is attached as Appendix 3.
- 2.5 Whilst the role of the IE created by the Structural Order is initially relatively limited in scope it will be extended as functions are added with a consequent cumulative impact on our ability to act independently.



Awarded in:
Housing Services
Waste and Recycling Services



2.6 The Structural Order states amongst other things that the IE will consist of two Members nominated by our council. Officers attempted to anticipate this by seeking appointments at Council on 18.02.2008 to the informal IE set up before the Structural Order came into force and any successor to it established by the Structural Order. Unfortunately Wiltshire County Council is not prepared to accept the validity of appointments made prior to the Structural Order coming into force. Officers take the view that rather than seeking to challenge Wiltshire County Council the best course is to seek ratification to the appointments made by Council on 18.02.2008 at its next meeting on 31.03.2008. This does mean that our appointees will not be able to take part in any voting for decisions taken at meetings of the IE until after then.

3. Control of disposals contracts and reserves direction:

3.1 On 29.02.2008 the Government issued a direction ["the Direction"] under section 24 of the Local Government and Public Involvement in Health Act 2007 ["The Act"]. It came into force on 04.03.2008. A copy is attached as Appendix 4.

3.2 The effect of the Direction is that in most instances any disposals or contracts whether revenue or capital which we wish to effect require the consent of Wiltshire County Council before we can proceed otherwise they will be unenforceable against Wiltshire County Council.

3.3 The Government recognises that the effect of the Direction will be to catch a number of routine transactions that we carry out on a regular basis and recommends that Wiltshire County Council considers issuing general consents. Wiltshire County Council has already approached the district councils asking for proposals for general consents. Officers have researched proposals by other councils involved in LGR. We could put a proposal to the meeting of the IE next following ratification of the appointments referred to in 2.6 above.

4. Judicial review proceedings:

4.1 On 04.03.2008 the Court of Appeal dismissed Shrewsbury & Atcham and Congleton Borough Councils legal challenge ["the Legal Challenge"] to the Government refusing to set aside decisions made and procedures used during LGR ahead of the Act coming into force.

4.2 Congleton has lodged an application for leave to appeal to the House of Lords. Congleton is seeking views of all of those authorities that promised financial support for the appeal to the Court of Appeal whether they would be prepared to give further financial support for an appeal to the House of Lords. The Chief Executive following consultation with the Leader and Deputy Leader has decided that now that LGR has progressed so far it would not be the best interests of our residents and our staff to provide any further support for the Legal Challenge.

4.3 Kennet West Wiltshire and Salisbury District Councils own judicial review proceedings ["the Wiltshire Challenge"] have been suspended pending the outcome of the Legal Challenge. Officers understand that Kennet District Council will consider its position at a Council meeting on 22.04.2008 [it is understood that the likely consensus will be to withdraw] and that West Wiltshire District Council's Cabinet decided to withdraw at a meeting on 05.03.2008. Should the Wiltshire Challenge be ended before the outcome of any appeal to the House of Lords then in the event of a successful appeal which resulted in LGR in Shropshire and Cheshire being set aside we would have no legal standing to seek to set aside LGR in Wiltshire. However we would be in an invidious position should Kennet District Council withdraw as well as West Wiltshire District Council and we do not.

5. Consultation undertaken: "Prescribed" internal consultees

6. Recommendations:

6.1 Members note this Report

6.2 Members advise whether they would wish to receive further updates on LGR and if so how frequently.

6.3 Members delegate to the Chief Executive in consultation with the Heads of Financial and Legal & Property Services the making of a proposal for general consents to the IE.

- 6.4 Members ratify the decision of the Chief Executive not further to support the Legal Challenge.
6.5 Members agree that we withdraw from the Wiltshire Challenge.

7. **Background papers:** None

8. **Implications:**

- Financial: there would be budgetary implications in further supporting the Legal Challenge.
- Legal: set out in the report
- Human Rights: none identified
- Personnel: none other than as required to provide periodic updates
- ICT: none identified
- Equality and diversity: none identified
- Climate change: none identified
- Community safety: none identified
- Environmental: none identified
- Council's core values: provide excellent service
- Wards affected: all

2008 No. 490

LOCAL GOVERNMENT, ENGLAND

The Wiltshire (Structural Change) Order 2008

Made - - - - 25th February 2008

Coming into force in accordance with article 1

This Order implements, without modification, a proposal, submitted to the Secretary of State for Communities and Local Government under section 2 of the Local Government and Public Involvement in Health Act 2007(a), that there should be a single tier of local government for the county of Wiltshire.

That proposal was made by Wiltshire County Council.

The Secretary of State did not make a request under section 4 of the Local Government and Public Involvement in Health Act 2007 (request for Boundary Committee for England's advice).

Before making the Order the Secretary of State consulted the following about the proposal—

- (a) every authority affected by the proposal(b) (except the authority which made it); and
- (b) other persons the Secretary of State considered appropriate.

In accordance with section 240(6) of the Local Government and Public Involvement in Health Act 2007, a draft of this Order was laid before, and approved by, both Houses of Parliament.

The Secretary of State for Communities and Local Government makes this Order in the exercise of the powers conferred by sections 7, 11, 12 and 13 of the Local Government and Public Involvement in Health Act 2007:

PART 1

GENERAL

Citation and commencement

1. This Order may be cited as the Wiltshire (Structural Change) Order 2008 and shall come into force on the day after that on which it is made.

(a) 2007 c.28. See section 21(3) as to proposals made in response to pre-commencement invitations, and section 23(3).
(b) See section 7(4) as to authorities "affected by" a proposal for the purposes of that section.

Interpretation

2. In this Order—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007;

“the 2000 Act” means the Local Government Act 2000 as it has effect in relation to the Wiltshire council(a);

“the 1972 Act” means the Local Government Act 1972(b);

“article 7 functions” means the functions referred to in article 7;

“the 2009 election day” means the ordinary day of election of councillors(c) in 2009;

“the district councils” means the councils specified in article 4(b);

“the Implementation Executive” means the committee established (whether before or after the coming into force of this Order) for the purposes of article 6(3);

“the main transitional function” has the meaning given by article 6(1);

“the Wiltshire council” means the council of the county of Wiltshire; and

“Wiltshire”, except in the definition of “the Wiltshire council” and the second mention of those words in article 3(2), means the county of Wiltshire.

PART 2

ESTABLISHMENT OF SINGLE TIER LOCAL GOVERNMENT IN WILTSHIRE

Single tier local government in Wiltshire

3.—(1) On and after 1st April 2009 the Wiltshire council shall be the sole principal authority for Wiltshire.

(2) For the purposes of enactments relating to local government, there shall be a new district, whose area shall be co-terminous with that of Wiltshire; and the name of that new district shall be Wiltshire.

Abolition of districts and winding up and dissolution of district councils

4. On 1st April 2009—

(a) the following districts shall be abolished—

(i) Kennet,

(ii) North Wiltshire,

(iii) Salisbury, and

(iv) West Wiltshire; and

(b) the following councils shall be wound up and dissolved—

(i) Kennet District Council,

(ii) North Wiltshire District Council,

(iii) Salisbury District Council, and

(iv) West Wiltshire District Council.

(a) 2000 c.22. Relevant amendments are made by Part 3 of the Local Government and Public Involvement in Health Act 2007, but see paragraph 2 of Schedule 4 to that Act for transitional provisions relevant to the Wiltshire council.

(b) 1972 c.70.

(c) See section 37 of the Representation of the People Act 1983 (c.2).

Cessation of term of office of district councillors

5. Every person who holds office as a councillor of one of the district councils immediately before 1st April 2009 shall cease to hold office on that date.

PART 3

TRANSITIONAL FUNCTIONS AND THEIR DISCHARGE

Transitional functions of the Wiltshire council and establishment of Implementation Executive

6.—(1) On the coming into force of this Order there shall be added to the functions of the Wiltshire council the function, which is to be exercisable only during the transitional period ending on the fourth day after the 2009 election day, of preparing for and facilitating the economic, effective, efficient and timely transfer of the district councils' functions, property, rights and liabilities (“the main transitional function”).

(2) Section 15 of the 2000 Act (discharge of functions: leader and cabinet executive) shall have effect in relation to the Wiltshire council and—

- (a) the main transitional function, and
- (b) the other transitional functions referred to in article 7 (“the article 7 functions”),

as if, in subsection (1), after the words “19 or 20,” there were inserted “or under the Wiltshire (Structural Change) Order 2008,”.

(3) The Wiltshire council's executive arrangements shall provide for the discharge of the main transitional function and the article 7 functions to be the responsibility of a committee of the council's executive, to be known as the Implementation Executive.

(4) Such statutory provisions as apply to, or in relation to, committees of a local authority's executive shall apply to, or in relation to, the Implementation Executive subject only to paragraphs (5), (6) and (8) to (11) of this article and article 8(2) to (4); and for this purpose “statutory provisions” includes —

- (a) any enactment contained in an Act passed after the making of this Order; and
- (b) any instrument made at any time under an enactment (including an enactment contained in an Act passed after the 2007 Act).

(5) The Implementation Executive shall consist of—

- (a) the person who is for the time being the leader of the Wiltshire council's executive;
- (b) eight persons nominated by the Wiltshire council who are for the time being members of that council; and
- (c) eight other persons, of whom each of the district councils shall nominate two, being persons who are for the time being members of the council by which they are nominated (whether or not including the leaders for the time being of those councils).

(6) In making the nominations referred to in paragraph (5)(b) and (c), the Wiltshire council and the district councils shall, to the extent that it is practicable to do so, secure that at all times the Conservative Party, the Labour Party and the Liberal Democrats are each represented on the Implementation Executive by at least one member.

(7) It shall be the duty of the Wiltshire council and each of the district councils to co-operate in the establishment of the Implementation Executive.

(8) The leader of the Implementation Executive shall be the person who is for the time being the leader of the Wiltshire council's executive; and that person shall preside at all meetings of the Implementation Executive at which he is present.

(9) The persons who, immediately before 1st April 2009, are members of the Implementation Executive by virtue of paragraph (5)(c) shall continue as members of the Executive notwithstanding that they cease on that date to be members of the district councils.

(10) The Implementation Executive shall regulate its own proceedings, but a question to be decided by the Executive shall, in the first instance, be decided by the majority of those present and voting at the meeting at which the question is put, each member (including the leader of the Executive) having one vote.

(11) In the case of an equality of votes, the person presiding at the meeting (whether or not the leader of the Executive) shall have a casting vote, in addition to any other vote the person may have.

Other transitional functions

7.—(1) The other transitional functions referred to in article 6(2)(b), which are to be exercisable only during the transitional period ending on the fourth day after the 2009 election day, are—

- (a) such executive and non-executive functions of the Wiltshire council as exist on the date on which this Order is made; and
- (b) such other functions (including functions exercisable by all or any of the district councils, and functions conferred on or after that date on local authorities generally or on particular classes of local authority),

as, by any of the means mentioned in paragraph (2), the Secretary of State may specify.

(2) The means referred to in paragraph (1) are—

- (a) this Order,
- (b) a subsequent order made under section 7 of the 2007 Act by virtue of section 14 of the Interpretation Act 1978 (power to amend)(a),
- (c) an order under section 20 of the 2007 Act (correction of orders), and
- (d) regulations under section 14 of the 2007 Act (regulations for supplementing orders).

Discharge of functions by Implementation Executive

8.—(1) The discharge of the main transitional function and the article 7 functions shall be a responsibility of the Implementation Executive, and shall not be a responsibility of the executive of the Wiltshire council.

(2) Section 15(7) of the 2000 Act (which enables a committee of a local authority executive to arrange for the discharge of its functions by an officer of the authority) shall have effect in relation to the Implementation Executive as if—

- (a) references to functions included references to responsibilities, and
- (b) the reference to an officer of the authority included a reference to—
 - (i) a sub-committee of the Implementation Executive, and
 - (ii) an officer of any of the district councils.

(3) Section 15(9) of the 2000 Act (which enables a person who has made arrangements for the discharge by another person of any function of his, to discharge that function himself) shall have effect in relation to arrangements made under subsection (7) of that section (as modified by paragraph (2) above) as if —

- (a) references to functions included references to responsibilities, and
- (b) the reference to an officer of the authority included a reference to—
 - (i) a sub-committee of the Implementation Executive, and
 - (ii) an officer of any of the district councils.

(a) 1978 c.30.

(4) Section 21 of the 2000 Act (overview and scrutiny committees) shall not apply on or before 31st March 2009 in relation to any matter—

- (a) that is a responsibility of the Implementation Executive by virtue of paragraph (1), or
- (b) that is the responsibility of that Executive under arrangements made by the Wiltshire council under the 2000 Act.

(5) Until 1st April 2009, section 13 of the 2000 Act (functions which are the responsibility of an executive) shall have effect as if, at the end of subsection (10)(c), there were added “or as mentioned in article 8(6) of the Wiltshire (Structural Change) Order 2008”.

(6) The Wiltshire council and the district councils may discharge jointly under arrangements under section 101(5) of the 1972 Act the functions of—

- (a) reviewing or scrutinising decisions made, or other action taken, by the Implementation Executive in connection with any matter of a description mentioned in paragraph (4); or
- (b) preparing reports for, or making recommendations to, the Implementation Executive in connection with any function or responsibility of that Executive.

(7) Where such arrangements as are mentioned in paragraph (6) are made, the joint committee shall inform the Wiltshire council and the district councils at least once in each period of three months beginning with the period ending on 31st March 2008 of—

- (a) the matters that it has considered during the period in question, and
- (b) the conclusions (if any) that it has reached concerning those matters.

(8) The Implementation Executive and any sub-committee of that Executive shall be dissolved on the fourth day after the 2009 election day.

(9) Any joint committee established as mentioned in paragraph (6) shall be dissolved on 1st April 2009.

Implementation Plan and further provisions relevant to discharge of functions by Implementation Executive

9.—(1) The Implementation Executive shall prepare, keep under review, and revise as necessary, an Implementation Plan which shall include—

- (a) such plans and timetables as the Implementation Executive considers necessary to secure the effective, efficient and timely discharge of the main transitional function and the article 7 functions; and
- (b) such budgets and plans as it considers necessary or desirable to facilitate the economic, effective, efficient and timely discharge of the Wiltshire council’s functions on or after 1st April 2009.

(2) For the purposes of—

- (a) preparing, reviewing and revising the Implementation Plan,
- (b) discharging the main transitional function and the article 7 functions, and
- (c) discharging such other functions as may be conferred on it,

the Implementation Executive shall have regard to the information supplied by the Wiltshire council to the Secretary of State in support of its proposal for single tier local government in Wiltshire and, in particular, to the information supplied in relation to the matters specified in paragraphs 3.6 to 3.11 (strategic leadership, neighbourhood empowerment and value for money services) of the guidance “Invitations to councils in England”, issued by the Secretary of State in October 2006(a).

(3) The Implementation Executive may, by written notice to—

(a) The guidance was published by the Department for Communities and Local Government. Copies of the guidance may be obtained from Communities and Local Government Publications, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, quoting Product Code 06 LGSRU 04198 (Tel: 08701 226 236; Email: communities@twoten.com or online at www.communities.gov.uk).

- (a) the proper officer of the Wiltshire council, or
- (b) the proper officer of any of the district councils,

require the council referred to in the notice to take such action relevant to the main transitional function or any of the article 7 functions as may be specified in the notice.

(4) In paragraph (3), “the proper officer”, means the officer appointed by the Wiltshire council or the district council concerned (as the case may be) for the purpose of receiving such notices.

Implementation Team

10.—(1) Not later than 21 days after the coming into force of this Order the Implementation Executive shall form a team of officers for the purpose of assisting the Executive in the discharge of the main transitional function and the article 7 functions (“the Implementation Team”).

(2) The members of the Implementation Team shall include officers from both the Wiltshire council and each of the district councils.

(3) The leader of the Implementation Team shall be an officer of the Wiltshire council.

(4) It shall be the duty of the Wiltshire council and each of the district councils to co-operate in the formation of the Implementation Team and to release the officers concerned from their normal duties at such times or for such periods as the Implementation Executive may reasonably require.

PART 4

DUTIES OF THE WILTSHIRE COUNCIL AND THE DISTRICT COUNCILS RELEVANT TO TRANSITION

General transitional duties of the Wiltshire council and the district councils

11.—(1) It shall be the duty of the Wiltshire council and the district councils—

- (a) to take, whether alone or in any combination, such steps as may be necessary to prepare for the transfer of the functions, property, rights and liabilities of the district councils;
- (b) to consult and co-operate with each other in order to secure the economic, effective, efficient and timely transfer of those functions, property, rights and liabilities; and
- (c) generally, to exercise their functions so as to further the purposes of this Order.

(2) Without prejudice to the generality of paragraph (1), the Wiltshire council and each of the district councils shall provide such information relating to its functions as any other of those councils may reasonably request for the purpose of giving effect to this Order.

(3) Any person authorised in that behalf by the council making the request shall be entitled, at all reasonable times, on producing evidence that the person is authorised (if so required by the council from which the information is sought)—

- (a) to inspect any record belonging to or under the control of the council providing the information and relating to that council or its functions; and
- (b) to take, or be supplied with, a copy of any such record or part of it.

(4) The rights conferred by paragraph (3) include the right to require any record which is not in legible form to be made available in legible form so that the authorised person may inspect or copy it or be supplied with copies.

PART 5
ELECTORAL MATTERS

Cancellation of parish council elections, etc

12. Notwithstanding section 16(3) of the 1972 Act (election of parish councillors)—

- (a) elections shall not be held in 2011 for the return of councillors to the council of any parish within Wiltshire; and
- (b) the term of office of parish councillors elected in 2007 or at any subsequent by-election held before the ordinary day of election of councillors in 2013 shall end on the fourth day after the ordinary day of election of councillors in 2013(a).

(2) Elections of parish councillors for those parishes in which, but for paragraph (1), elections would have been held in 2011 shall be held on the ordinary day of election of councillors in 2013 and every four years thereafter.

Signed by authority of the Secretary of State for Communities and Local Government

John Healey
Minister of State

25th February 2008

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the establishment, on 1st April 2009, of a single tier of local government in the county of Wiltshire (article 3). The area of the county remains unchanged. A new district is created, with the same area as the county.

The county will be administered by a county council, referred to in this Order as “the Wiltshire council”.

Article 4 of the Order provides for the winding up and dissolution on 1st April 2009 of the district councils in Wiltshire:

Kennet District Council
North Wiltshire District Council
Salisbury District Council and
West Wiltshire District Council.

Those councils are referred to in this Note and the Order as “the district councils”.

The districts administered by the district councils are also abolished.

The term of office of all district councillors expires on 1st April 2009 (article 5).

In Part 3 of the Order, article 6(1) confers on the Wiltshire council the function of preparing for the transfer on 1st April 2009 of the district councils’ functions, property, rights and liabilities (its “main transitional function”). Article 6(3) requires the Wiltshire council to arrange for the discharge of its main transitional function by a committee of its executive, to be known as its “Implementation Executive”. The membership of that Executive is to be drawn from both the Wiltshire council and the district councils.

(a) Under section 16(3) of the Local Government Act 1972, the term of office of parish councillors is four years.

Article 7 enables the Secretary of State, by the making of an order or regulations, to make other functions (including functions of the Wiltshire council or any of the district councils) the responsibility of the Implementation Executive during the transitional period ending on the fourth day after the ordinary day of election of councillors in 2009 (“article 7 functions”).

Article 8(1) makes the discharge of the main transitional function and the article 7 functions a responsibility of the Implementation Executive. Article 8(2) and (3) modifies section 15(7) and (9) of the Local Government Act 2000 (“the 2000 Act”) so as to extend the range of arrangements available to the Executive for the discharge of that responsibility. Article 8(4) disapplies, until 1st April 2009 and in relation to the Implementation Executive, section 21 of the 2000 Act, which deals with the overview and scrutiny of decisions of local authorities. Instead, paragraphs (5) and (6) of article 8 enable arrangements to be made by the Wiltshire council and the district councils under section 101(5) of the Local Government Act 1972 for the review or scrutiny by a joint committee of decisions or other action taken by the Implementation Executive, and for recommendations or reports to be made to the Executive. Where a joint committee is established, article 8(7) provides for that committee to make quarterly reports to the Wiltshire council and the district councils. Article 8(8) provides for the dissolution of the Implementation Executive and any sub-committee of that Executive on the fourth day after the 2009 election day. Article 8(9) provides for the dissolution of any joint committee established by virtue of article 8(6) on 1st April 2009.

Article 9 requires the Implementation Executive to prepare an Implementation Plan which must include budgets, plans and timetables relevant to the process of transition to single tier local government. In discharging the main transitional function and the article 7 functions, the Implementation Executive is required to have regard to the Wiltshire council’s response to the Secretary of State in support of its proposal for single tier local government in the county.

Article 10 provides for the establishment of a team of officers drawn from the Wiltshire council and the district councils to assist the Implementation Executive.

Part 4 of the Order relates to the functions of the Wiltshire council and the district councils in the period before 1st April 2009. Article 11 requires the Wiltshire council and the district councils to prepare for the transition to single tier local government, to consult and co-operate, to disclose relevant information and, generally, to further the purposes of the Order.

In Part 5 of the Order, article 12 cancels the parish council elections that would otherwise have taken place in 2011. The term of office of parish councillors elected in 2007 or at subsequent by-elections is extended to the fourth day after the ordinary day of election of councillors in 2013, when all parishes will hold elections.

A full impact assessment has been produced for this and other orders that provide for a change to single tier local government. A copy of the assessment has been deposited in the Library of both Houses of Parliament and may be accessed at www.communities.gov.uk

£3.00

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Appendix 2

Subject Area	Key provisions	1 st draft regulations to be circulated w/c	2 nd draft regulations to be circulated w/c	Regulations to be laid before Parliament w/c
Staffing	<p>To make provisions in respect of staff transfers:</p> <ul style="list-style-type: none"> i. that staff of authorities to be dissolved are transferred to the new unitary on 01 April 2009 ii. that they enjoy the full protections of TUPE on doing so iii. claims in connection with previous service 	11 February	10 March	28 April 2008
Finance	<p>To make provisions in respect of finance:</p> <ul style="list-style-type: none"> i. to provide that the new authorities will become the billing authorities for the area; to make necessary adjustments to CT and NNDR rating lists; and for payments from NNDR pool 	7 April	5 May	30 June 2008
Transitional Arrangements	<p>To provide that, pre-reorganisation, certain functions of the authorities to be dissolved are to be carried out by the continuing / shadow authority. Specifically,</p> <ul style="list-style-type: none"> i. duty to prepare budgets for 2009/10 ii. duty to prepare development planning framework <p>To ensure that the duties inherited by the new unitary councils are manageable from 1 April 2009, given what they will inherit.</p>	7 April	5 May	30 June 2008

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As at 11/02/08

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Assets and Liabilities (1) - Cheshire and Beds	To provide for the transfer of all assets/liabilities of authorities to be dissolved to the new unitary authorities in each area – except insofar as they are to transfer to parishes/charter trustees	5 May	9 June	28 July 2008
Membership	To provide for the membership of: i. Police Authorities ii Fire Authorities iii. National Parks iv. Ports Authorities v. Local Authority Companies	2 June	7 July	1 September 2008
Continuity	To provide for continuity of functions. In particular, that: i. anything being done by a district or county, prior to its abolition, can continue to be done by the continuing / new authority, post-abolition ii. anything done by a district or county, prior to its abolition, insofar, as it is to have continuing effect, shall have effect as if done by the continuing / new authority eg bylaws, licences, consents exemptions, dispensations and proceedings by (or against) the authority.	4 August	1 September	27 October 2008

Transfer of Functions	To provide for the transfer of functions of those authorities to be abolished to the continuing / shadow authorities wef 1 April 2009. In particular, that: i. references in statute to districts and counties are to be treated as including a reference to the continuing / new authority. ii. provisions in enactments that apply to the whole of a named district or county apply, post-transfer, only to that part of the county.	4 August	1 September	27 October 2008
Ceremonial	To preserve the rights and privileges of exiting areas. Specifically, i. to transfer rights etc to parishes established for that purpose, or charter trustees ii. to preserve rights of freemen and ensure that services rendered to an abolished council can be treated as services rendered to the parish	1 September	6 October	24 November 2008
Assets and Liabilities (2) - five counties	To provide for the transfer of all assets/liabilities of those districts to be abolished to the county – except insofar as they are to transfer to parishes/charter trustees	8 September	6 October	1 December 2008
POSS: Coroners and Registration Officers	Depending on discussions, possibly to provide for continuity of coronial functions and personnel contiguous with the new authorities, and a registration officer for each.	8 September	6 October	1 December 2008

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Report

Subject : Provision of information as to Salisbury District Council functions
Report to : Implementation Executive
Date : 19th March 2008
Author : Head of Legal and Property Head of Financial Services Head of Housing Management and Property Manager

1. Summary.

To comply with a request ["the Request"] for information made by Wiltshire County Council's Proper Officer under section 11 of The Wiltshire [Structural Change] Order 2008 on matters which are likely to significantly impact on the Implementation Executive's ability to procure the transfer of district council functions assets and liabilities to the new Wiltshire Council to be established on 1st April 2009.

2. Background.

- 2.1. A copy of the Request is attached to this Report as Appendix 1.
- 2.2. Our response to the Request breaks it down into four separate elements:
 - The Council's Office Project
 - The current and long term status of the Council's Housing Revenue Account ["HRA"]
 - Proposed non budgeted revenue and capital expenditure
 - Any other matter involving a sum of £250000 or more in line with the Council's key decision protocol.

3. The Council's Office Project.

- 3.1. Decision making.
 - 3.1.1. On 11.12.2006 Full Council resolved to award the enabling works contract to H Smith. This provided for the demolition of the Victorian extension and other ancillary structures, removal of trees, site preparation, relocation of recycling facilities and access improvements to the College Street car park. It delegated the award of the main contract for the construction of a three storey (plus basement) office extension containing approximately 4000m2 and the repair and refurbishment of a listed office building to the Policy Director. Bluestone plc was subsequently appointed as the main contractor.
 - 3.1.2. The enabling works commenced in February 2007. Following a change of political administration at the local elections in May 2007 the decision was taken to halt the works and the contractor instructed to leave the site in a tidy and secure state. This occurred in June 2007.
 - 3.1.3. In the summer of 2007 the new administration carried out a district-wide public consultation exercise



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Housing Services
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to which over 10,000 responses were received. A significant majority favoured the option of continuing with a modified version of the extension that avoided the building encroaching into the North Garden

3.1.4. On 25.07.2007 Full Council resolved that the Acting Chief Executive be authorised to instruct the main contractor to proceed with the existing project and contract subject to modification set out on the plan before Council and to seek planning permission and listed building consent for the modified project. A copy of the Report to Full Council is attached as Appendix 2.

3.1.5. On 07.08.2007 Full Council resolved to instruct the Acting Chief Executive to sign the draft agreement with the main contractor before Council and authorised the Acting Chief Executive to continue negotiations with the main contractor to complete a deed of variation [“the Deed of Variation”] modifying the project [“The Modified Project”] and to enter into it by 24.09.2007.

3.1.6. The Deed of Variation was sealed on 26.09.2007

3.2. Business case.

3.2.1. On 26.06.2006 Full Council resolved that the business case be approved. Supplementary information was subsequently added to the business case and noted by Cabinet on 12.07.2006.

3.2.2. No new business case has been developed for the Modified Project. The Modified Project was agreed by Council following a change of administration consequent upon the outcome of local elections in May 2007.

3.3. Timetable for delivery of the Modified Project.

3.3.1. The Deed of Variation requires that we enter into a further deed of variation with the main contractor by 03.06.2008 committing us to a price for the Modified Project and a start date for construction in the absence of which the main contractor is able to end the main contract.

3.3.2. The current timetable for the Modified Project is attached as Appendix 3.

3.3.3 The revised planning and listed building applications were submitted to the Local Planning Authority on 18.02.2008. It is anticipated that the applications will be considered by Committee in May 2008.

3.4. Development proposals.

3.4.1. Fallback position.

We have the benefit of extant planning and listed building consents [the 2006 scheme]. The planning consent is for “External alterations to The Council House, part demolition of office buildings, outbuildings and boundary walls, new pedestrian access opening through existing boundary wall adjacent to the Arts Centre, construction of a new building (approximately 4,000m²) to create new Headquarters for Salisbury District Council and part change of use of The Council House to Registry Office, together with associated car parking and landscape works. Closure of vehicular access to car park from College Street and alterations to car park.”

The Council House is a Grade II* Listed Building and the Listed Building Consent is for “External and internal alterations to The Council House and part demolition of the office buildings, outbuildings and boundary walls, new pedestrian access through existing boundary wall adjacent to the Arts Centre and construction of a new building (approximately 4000m²) to create a new Headquarters for Salisbury District Council together with associated landscape works.”

3.4.2. Current position.

The revised planning and listed building applications [the 2008 scheme] is for:

Planning – “External alterations to the Council House including glazed link and boundary walls, new pedestrian access opening through existing boundary wall adjacent to the Arts Centre, with glazed link to a

new extension (approximately 2630m2 gross external area) to create new offices for Council services and part use of the Council House as a Registry Office, with associated car parking, landscaping (including to the North Garden) and alterations to existing car park.”

Listed Building – “ External and internal alterations to The Council House including glazed link and boundary walls, new pedestrian access through the existing boundary wall adjacent to the Arts Centre with glazes link to a new extension (approximately 2630m2 gross external area) to create new offices for Council services, with associated landscape works.”

4. HRA

4.1. Current status.

4.1.1. The Housing Revenue Account (HRA) is the council’s landlord account, and is ‘ring fenced’ for this purpose. Income to the HRA is mostly generated by the rents and service charges paid by tenants and leaseholders, while expenditure is on the management and maintenance of the council’s housing stock, including loan charges incurred for capital works.

4.1.2. Salisbury District Council is the only council landlord in Wiltshire. The council manages 5,400 tenanted dwellings and around 400 leasehold properties. In partnership with tenants, leaseholders and other stakeholders, our objective is to ensure that the landlord service in Salisbury continues to be accessible and responsive to changing needs, as well as being efficient and providing value for money. This Business Plan has been compiled in light of the tenant’s wish to remain with council as their landlord when they voted in a stock transfer ballot in 2006.

4.1.3 The council owns a number of different types of properties. Our properties fall in to the following categories:

Property Type	Number
Pre 1945 houses	686
House 1945 - 1964	738
Post 1965 houses	399
Non trades	674
Low Rise	1064
Medium Rise	616
Bungalows	1219
Total	5396

4.1.4. Of the 5,396 properties owned by the council, 12.5% homes are of non traditional construction (i.e. pre cast reinforced concrete) and there are 501 sheltered housing units.

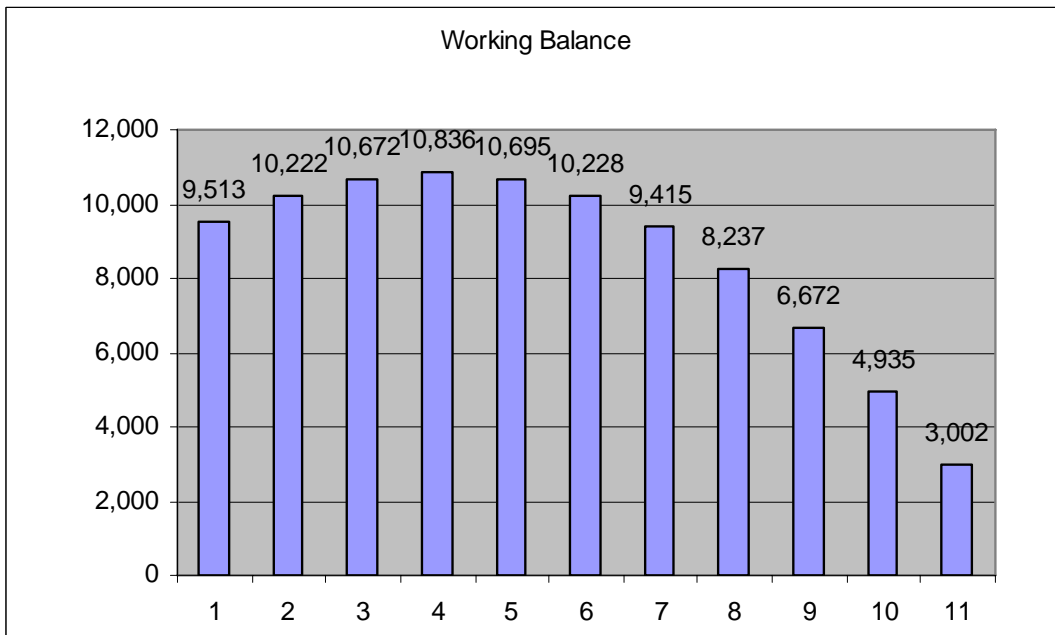
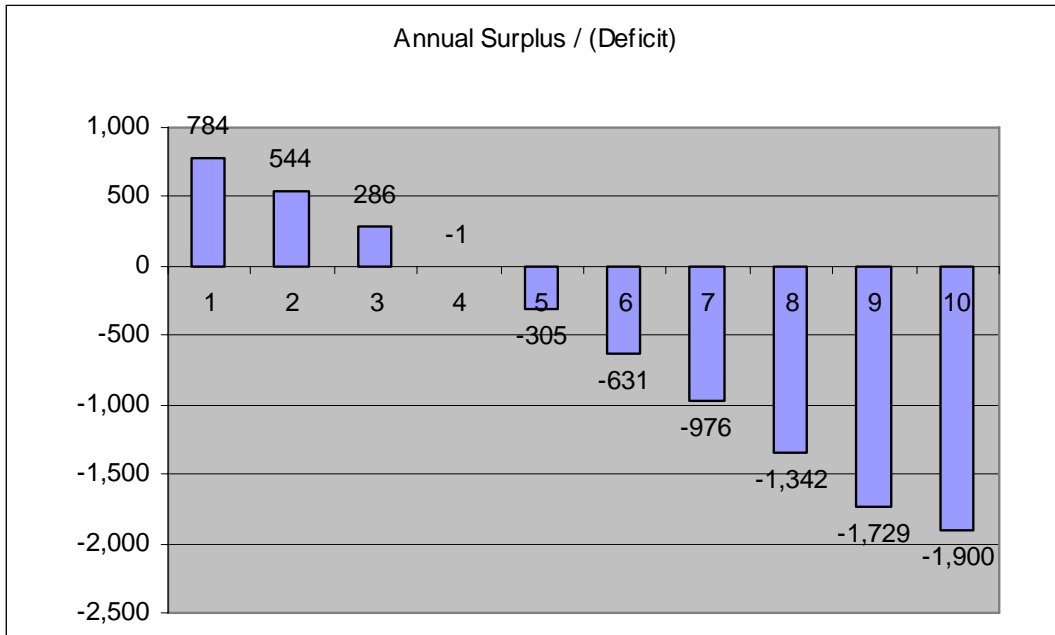
4.1.5. During 2004/05 a detailed housing options appraisal was undertaken to consider the future management provisions of the council’s housing stock. The appraisal concluded that continuing with the existing investment policy, the council could achieve the target of Decent Homes Standard by 2010 and continue for some time after. However, this was not sustainable as in the longer term the general condition of the stock will begin to deteriorate with disrepair as backlog repairs mount up. The HRA operating account was projected to go into deficit within the next 10 years, and remedial action would be required to prevent this from occurring. This indicated that the HRA would soon be unviable. The level of savings required from year 2 onwards for the next 30 years would be in excess of £1m per annum. The council, having considered the Options Appraisal, confirmed that it should seek to pursue a large scale voluntary transfer of its stock.

4.1.6 In October 2006 tenants were balloted on a stock transfer and 72% voted to stay with the council. An HRA Business Plan Project Board has been working through the issues raised at the option appraisal to provide a “fit for purpose” 30 year HRA Business Plan as assessed by the Government Office for the South West.

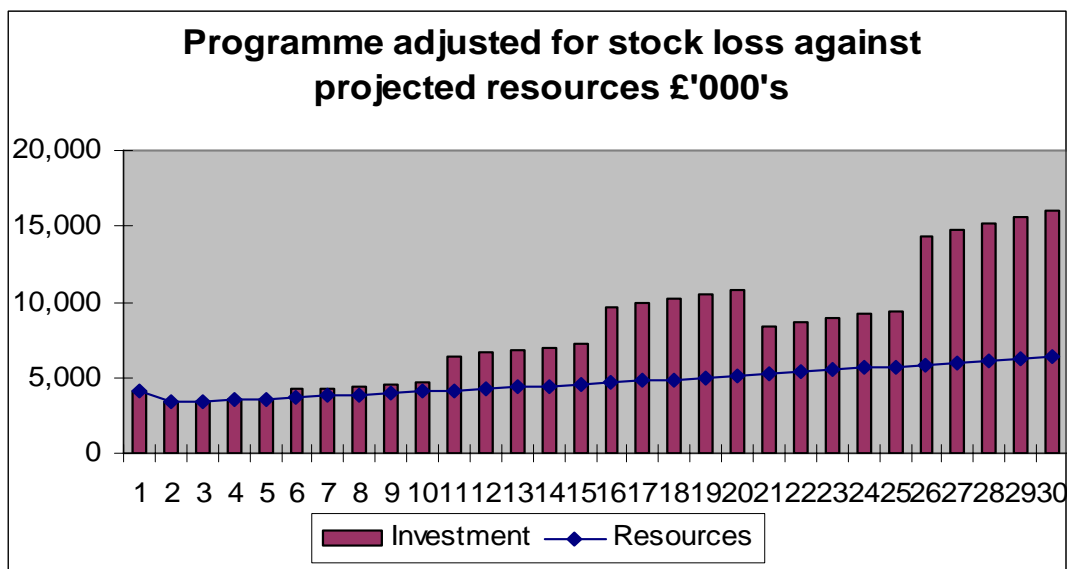
4.2. Long-term status.

4.2.1 On current assumptions and despite implementing savings of over £250,000 for 2007/08 on the revenue side the HRA is predicted to make year on year deficits from 2011/12. This is in part due to

the Council having negative subsidy of over £6m However HRA balances are very healthy and will peak in 2010/11 at £10.8m. The HRA will fall into overall deficit in 2019/20, as illustrated below



4.2.2 On the capital side the housing stock will meet the governments Decent home standard by 2010 as is required and maintain it for some years afterwards but the Decent Homes Standard does not cover all investment requirements and it is predicted that resources will fall short of the investment required from 2013/14 as illustrated below



4.2.3 However there is a national review of the HRA being undertaken by DCLG at the moment which will include rent restructuring, the distribution of resources (the HRA nationally is in surplus) and is looking at the self funding of HRA's i.e. being taken out of the subsidy system.

4.2.4 We seek a general consent to continue to implement the long term HRA business plan within the existing budgetary framework.

5. Proposed non budgeted expenditure

5.1. Revenue –There is none that the Council is currently aware of.

The Council does however manage significant financial risks in it's day to day operations principally car parking income, benefits performance, interest rates and the new concessionary fares scheme.

5.2. Capital –There is none that the Council is currently aware of.

There are risks associated with any capital programme and specifically with the Office Project. These are highlighted in the Report referred to in Paragraph 3.1.4 and attached as Appendix 2.

6. Significant other matters

The Council is currently pursuing via a VAT tribunal a significant repayment of output tax paid to Revenue and Customs in respect of off street car parking. The tribunal has currently been set aside for six months pending the outcome of an appeal case being heard at the European Court of Justice.

The Council has within it's 2008/9 budget strategy set aside revenue to commence collection of recyclable materials to compliment the current "black box" scheme from 1.10.08. This has been agreed by the County wide waste partnership. There is an assumption that a further £200-£250k of funding will be made available to finance the whole year effect of this operation in 2009/10.

7. Request for consents

7.1.1. The Request asks us to identify any consents that will be necessary to obtain from Wiltshire County Council so as to avoid any contravention of section 24 Local Government and Public Involvement in Health Act 2007.

7.1.2. Although we do not believe that any Section 24 consents are necessary with regard to specific matters referred to in this Report for the avoidance of doubt it would be beneficial if confirmation is provided to this effect.

- 7.2. In order to minimise the risk of specific consents increasing the Council's exposure to undue financial risk it is requested that a general consent be given to allow the Council delegation to agree contracts that fall within the agreed budget framework, with the need to consult restricted to contracts that commit beyond 31.03.09.
- 7.3. There are subsisting applications for specific consents which we have made which are not referred to in this report.

APPENDIX 1

AMESBURY BRADFORD ON AVON CALNE CHIPPENHAM CORSHAM DEVIZES DOWNTON MALMESBURY
MARLBOROUGH MELKSHAM MERE PEWSEY SALISBURY TIDWORTH TISBURY TROWBRIDGE WARMINSTER
WESTBURY WILTON WOOTTON BASSETT & CRICKLADE **WILTSHIRE'S COMMUNITY AREAS**

Keith Robinson MA PhD
Chief Executive



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Operator: 01225 713000

E-mail: keithrobinson@wiltshire.gov.uk

DX 116892 Trowbridge 3

Mr. M. Boden, Chief Executive,
Kennet District Council
Mr. D. Burbidge, Chief Executive,
North Wiltshire District Council
Ms. M. Gill, Interim Chief Executive,
Salisbury District Council
Mr. A. Pate, Chief Executive,
West Wiltshire District Council

Please ask for: Keith Robinson

Our ref: KR/JMP

Your ref:

5th March, 2008

Dear Manjeet,

The Wiltshire (Structural Change) Order 2008

You will be aware that following the coming into force of the order on 26th February 2008 the County Council now has the function of "preparing for and facilitating the economic, effective, efficient and timely transfer of the district councils' functions, property, rights and liabilities." This transition function will be discharged by a committee of the County Council's Cabinet, the Implementation Executive.

I am aware that there are currently a number of proposals in the District Councils which will have a significant impact on the transitional function. Some of these are listed below by individual authority. In order to enable the Implementation Executive to discharge the main transitional function, I would be grateful if you could forward to me a report for the Implementation Executive detailing your proposals in these areas, and any other area where there is significant expenditure proposed outside of your existing budgetary framework.

Some of these matters are of course affected by the direction issued by the Secretary of State under section 24 of the Local Government and Public Involvement in Health Act 2007. It would be helpful if the report could indicate the extent to which consent will be necessary to give effect to District Council ambitions, in order to avoid the disposal being in contravention of section 24 and void under section 28 of the Local Government and Public Involvement in Health Act 2007.

Salisbury District Council

- The business case, time table and current development proposals for the Bourne Hill site and council offices.
- Information relating to housing revenue account, including details of future investment proposals in the housing stock.

North Wiltshire District Council

- Full details of proposals in relation to proposed disposal or granting of assets to the

Chief Executive's Office, County Hall, Trowbridge, Wiltshire, BA14 8JF



2005-2006
Getting Closer to Communities
2006-2007
Valuing People



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community or voluntary bodies, including details of matters agreed at your full Council meeting on Tuesday 26 February.

Kennet District Council

- Details of the reported £1.25m programme of one off spend this year on community, voluntary and other proposals.

West Wiltshire

- Details of the housing PFI proposal.

This list should not be taken as exhaustive. I would be grateful if you could give me details of any other matter which is likely to significantly impact upon the implementation executive's ability to deliver the transitional function.

The next meeting of the Implementation Executive is scheduled for 19th March. It would be very helpful to receive the information which I have requested by not later than midday on Monday, 17th March. Thank you.

Yours sincerely,

Keith Robinson

Cabinet/Full Council
Salisbury District Council
PO Box 2117, 26 Endless Street
Salisbury, Wiltshire SP2 2DS

email: dcrook@salisbury.gov.uk
direct line: 01722 434217
web: www.salisbury.gov.uk

Report

Subject : Office Project
Report to : Special Cabinet and Special Full Council
Date : Monday 23 July 2007 at 6.00 pm and Wednesday 25 July 2007 at 6.00 pm
Author : David Crook
Cabinet Member: The Leader, Councillor Paul Sample

Purpose of Report:

1.1. To reach a decision on the cancellation, modification or proceeding with the original plan for the proposed Council offices at Bourne Hill.

Background:

2.1 At a meeting held on 31 May 2007, Cabinet considered a report from officers on whether it should proceed with or cancel the proposed offices. Cabinet resolved:

- to note the Officers' report
- to also note the comments made by the public at this meeting, and paper and questions presented by Mr Brain, Mr Rothwell, Mr Grant, Mrs Morton and Councillor English
- the Cabinet is mindful of the outcome of recent elections and the clearly expressed wishes of the electorate on the Bourne Hill project
- to note the ongoing consultation and the expected decision by the Government on the provision of local Government in South Wiltshire
- there are a large number of criticisms of the business case and the options presented in the papers before Cabinet
- the Cabinet believe that the demolition of the old Victorian building should be completed and that the debris and earth moving equipment should be removed at the earliest opportunity



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- to instruct the Officers to suspend all construction work and inform the contractor accordingly
- to instruct the Chief Executive in conjunction with the Leader, Deputy Leader and relevant portfolio holders to seek independent advice on the options available to fulfill the wishes expressed by the electorate while mitigating costs against the Council
- to instruct the Chief Executive to provide suitable independent advice to inform the process and provide assistance to the Cabinet
- once final advice has been received, the officers shall consult with local residents, community associations, county, parish and town councils and others on the desirability of the options available.
- to note in view of the above decisions, there is consequently no need for a Special Council meeting in June.

2.2 Members will recall from the progress report to the Council meeting on 25 June 2007 that:

- The position (at the time of writing) in respect of Local Government Reorganisation remains unclear.
- Work on the construction phase of the contract has been suspended.
- Independent advice has been sought on the legal and financial aspects of the contract.
- Views of the public have been invited.

2.3 The remainder of this report describes the latest position and seeks a decision from members.

3. Independent Advice

3.1 The specialists appointed to give legal advice were Piers Stansfield of Keating Chambers (winners of Construction Chamber of the Year 2006) and Butlers (one of the largest Treasury Management specialists in the country).

3.2 The advice from Keatings and a summary of the advice from Butlers is set out at **Appendices A and B** to this report. The advice confirms the position reported to Cabinet by officers;

- A legally binding contractual position exists with Bluestone, the contractors appointed to renovate Bourne House and build the new extension.
- The costs of cancelling the contract would fall on the revenue account and are in the region of £1.5m in addition to some £4.5m of sunk costs.

3.3 Butlers report explored the issue of special dispensation from central government to capitalise the abortive costs arising from cancellation. An approach was made by officers to central government to ascertain the likely reaction should such an application be made. The result is set out at **Appendix C** to this report.

3.4 Although the response is to a hypothetical question and cannot therefore be regarded as definitive, it would clearly be unwise to proceed in the belief that agreement to capitalisation is likely to be forthcoming.

3.5 Further reference to the advice from the independent experts is made in later sections of this report.

4. Views of the Public

4.1 The views of the public were sought via a leaflet delivered to every household, over the period 2 July until midnight on 16 July (in view of the postal strike any responses received in the morning post 17 July will be included)

4.2 A summary of responses will be made available to members before 19 July.

5. Options

5.1 Set out below is more information on the options available to members. Officers have incorporated the advice from independent experts. The advantages and disadvantages of each option area expressed purely in terms of property management (including customer service and compliance with the Disability

Discrimination Act (DDA)) and finance, although members will doubtless wish to consider the wider aspects.

5.2 A detailed financial analysis of each option is set out at **Appendix D**. Simplified versions of this analysis are set out for each of the options concentrating on the impact on the **revenue account**, which is the crucial issue in terms of the Council's financial sustainability. A copy of a risk matrix associated with the options in this report is shown at **Appendix F**.

5.3 Cancellation of the Project

5.3.1 Consultation with independent experts and central government has strengthened officer views that cancellation would result in a huge charge to the revenue account, in the order **£6m**. Butler's advice is that this sum would need to be **repaid within one financial year**.

5.3.2 With reserves of some £1.5m and net annual expenditure of around £13m it can clearly be seen that such a position is not manageable.

5.3.3 Central government has indicated strongly that it would not permit capitalisation of the abortive costs.

5.3.4 This option would leave the Council with its existing poor access to customers, buildings that are not DDA compliant and a Grade II* listed building in peril.

5.4 Modification of the Project

5.4.1 Keating's advice is that we could technically use the terms of the contract to reduce the scale of the proposed extension. Officers believe that if this option is pursued we would not necessarily incur abortive costs for the cancellation of the contract. However compensation would be payable for any works omitted and non market rates would be applied for varied works. Furthermore, costs already incurred for design etc would continue to be charged to capital and the threat to the revenue account is therefore much reduced.

5.4.2 This is not, however, a risk-free option. The modified scheme would have to proceed under the existing planning consent and listed building consent, which we would seek to revise as work progresses. There is clearly a risk of the failure of this process and indeed the listed building consent potentially exposes the Council and/or its advisers and contractors to criminal liability. The alternative would be to first seek fresh planning and listed building consents but the delay involved would effectively allow the contractor to invoke the cancellation clause and claim damages.

5.4.3 Furthermore, this is not the only problem associated with a modified scheme. Dependent on the size of the new extension, a considerable number of staff would need accommodation on other sites. It is suggested that the maximum number of staff who could be accommodated in decent accommodation off site is effectively dictated by the retention of the best of the council's existing stock ie:

Wyndham Road (50 staff)
Pennyfarthing House (50 staff)
Depot (50 staff)
TOTAL 150 STAFF

5.4.4 Sketch plans of the layout of the extension are shown at **Appendix E**. A number of treatments are shown all of which assume a reduction in that part of the extension proposed to be built over the walled garden.

5.4.5 Three options are shown

1. With no intrusion on the walled garden.
2. With one extra bay beyond this point.
3. With two extra bays beyond this point.

Members should note that an extra staircase would be needed for Options 2 or 3.

5.4.6 In terms of the accommodation requirements set out in para 5.4.3, the options would require off site accommodation for the following numbers of staff depending upon final spatial layouts and meeting room locations.

1. 160 staff
2. 115 staff
3. 70 staff

5.4.7 In terms of construction costs, although there would be a gross reduction of £500k for each bay cancelled, there would be counterbalancing costs for design, delay and extras. The design team advises that savings would be negligible. Furthermore, added costs would be incurred to make off site offices DDA compliant.

5.4.8 However, there would be an impact on the revenue account in that the more staff accommodated, the more surplus buildings can be disposed of, and this generates a capital receipt, reduces the cost of future maintenance and increases efficiency savings.

5.4.9 If the assumption is made as follows:

- Option one - retention of three off site offices
- Option two - retention of three off site offices
- Option three - retention of two off site offices

Then the impact on the revenue account of each option is as follows:

- Option one - £711,000 pa
- Option two - £747,000 pa
- Option three - £699,000 pa

Note there is a loss of efficiency with option 2 as the first bay would largely be a service bay.

5.4.10 The option of redesigning the extension has been explored. Although this could be described as a "modification" in the legal sense, the delay involved would effectively allow the contractor to invoke the cancellation clause and claim damages. The overall impact on the revenue account would be £906,000 per annum. In addition a one-off charge to revenue reserves of approximately £2.3m would need to be made this would need to be repaid in one year. The financial analysis shows the estimated costs of redesigning the extension.

5.5 Proceed with the Existing Project

5.5.1 It is still the case that the ability to sell our assets and maximise maintenance and efficiency savings means that this option could have a **neutral impact** on the revenue account. All staff would also be located on a single site. From the financial and property management (including the provision of high priority customer services and DDA compliance) perspective, therefore, this option offers the lowest risk and highest return. It is recognised however, that there are other perspectives.

6. Recommendations

6.1 Members are reminded that a decision cannot be further delayed, under the terms of the contract if a contractor is not notified of a decision by 8 August it is entitled to regard the contract as cancelled and claim compensation.

6.2 Cabinet is asked to recommend its preferred course of action for confirmation by the Full Council meeting on 25 July.

6.3 Council is asked to finally determine this matter.

6.4 Cabinet is asked to note that the Leader has invited all group leaders to join him in meeting with Bluestone on 26 July 2007.

7. Implications

7.1 Legal

- Consultation: the law requires that whether or not it is a legal requirement in any particular case consultation must be carried out at a time when proposals are at a formative stage, must include sufficient reasons for the proposals to allow those consulted to give intelligent consideration and response, allow adequate time and the responses must be conscientiously taken into account when any final decision is taken. Moreover the Council is required to have regard to the Local Government Code of Publicity.
- Contractual matters associated with each of the options: set out in Counsel's advice at **Appendix A**
- Regulatory and statutory matters associated with cancellation: The Council would potentially expose itself to regulatory risks as development has commenced. It is open to the Council as planning authority to serve a completion notice under section 94 of the Town and Country Planning Act 1990 after the expiry of planning permission (3 years). The effect of a completion notice is that planning permission will cease to have effect after a period of not less than 12 months. If work is not carried out in that time the development carried out may become unauthorised. In such circumstances the council as planning authority may decide to take enforcement action if the site is not made good. This option is not available with regard to listed building consent. A power also exists under section 215 to require the site to be tidied up. A fresh listed building application would be required to address any revisions to the listed building works required as a result of demolition abutting the Council House and any modifications to the proposed refurbishment of it. A revised Memorandum of Understanding would also need to be agreed and potentially a new planning application depending on the scale and extent and impact of the works. If a fresh listed building application was not submitted to address changes, some of the conditions of the planning permission and building control coupled with requirements of the conditioned Memorandum of Understanding may still need to be complied with, such as long term management plans for the archaeological preservation of the site and for landscaping and habitat creation, fabric repairs to the listed building and a scheme for the provision of public art.

Secondly, the Council would potentially expose itself to risks of non-compliance with statutory duties under the listed building and disability access regimes with regard to the Council House:

- The owner of a listed building is obliged not to allow it to fall out of a reasonable state of repair. Consultants have reported on the current state of the repair of the Council House and the measures needed to be taken to refurbish it. The Council as the regulatory authority would have to take a view as to which of those measures should be carried out by the Council as landowner to be satisfied that the Council had met its statutory duties.
- Service providers are expected to make reasonable adjustments to their buildings so that there are no physical barriers stopping or making it unreasonably difficult for disabled people to access services or find a way of providing services another way. The Council would have to establish what measures would need to be taken to enable it to meet its statutory duties.

Thirdly, the Council would need to consider its duties under Section 114 of the Local Government Finance Act 1988. The Council is under a fiduciary duty to its taxpayers with regard to its use of and accounting for public money. Under Section 114 of the Local Government Finance Act 1988 the Chief Finance Officer is under a duty to make a report to each Member and the Council's Auditor if it appears to him that the actual or proposed expenditure of the Council in a financial year is likely to exceed the resources available to it to meet that expenditure. Council is required to consider such a report on or before the expiry of 21 days and during that time the Council must not enter into any new agreement which may involve the incurring of expenditure. This is referred to in section A9 of the Council's constitution.

- Regulatory matters associated with modification: external legal advice is that a permanent reduction in size or a phased approach to construction should not be treated as a minor non material variation of the existing scheme and that fresh statutory consents should be sought after screening any modified scheme for environmental impact assessment purposes.

In the absence of the Council securing listed building consent for a modified scheme the Council and/or its advisers and contractors would be exposed to criminal liability under Planning [Listed Buildings and Conservation Areas] Act 1990. Moreover any Officer with the appropriate authority

and responsibility who consented to or connived in the commission of an offence under that Act [or where such offence was attributable to neglect on their part] would also be exposed to criminal liability by virtue of section 331 of the Town and Country Planning Act 1990.

- Decision making: any public law decision has to be taken within statutory authority, be compliant with any applicable procedures, be consistent with the Council's fiduciary duty to its taxpayers, taken fairly and so as to avoid any reasonable perception of bias or predetermination and have regard only to proper and relevant considerations

7.2 Financial

Any option that involves the existing contractor terminating the current contract and being entitled to compensation in the order of the assumed amount will require the Head of Financial Services to serve a report under s114 of the Local Government and Finance Act 1988, unless a concurrent robust recovery plan is adopted. Such a report would prevent the Council entering into any new agreement other than "life and limb" expenditure until such measures were in place to mitigate against the deficit caused.

7.3 Community Safety

7.4 Environmental

7.5 Human Rights:

A contract is a property right for the purposes of Protocol 1 Article 1 [protection of property]. Payment of compensation for any cancellation of the contract should mean that the Protocol is not infringed.

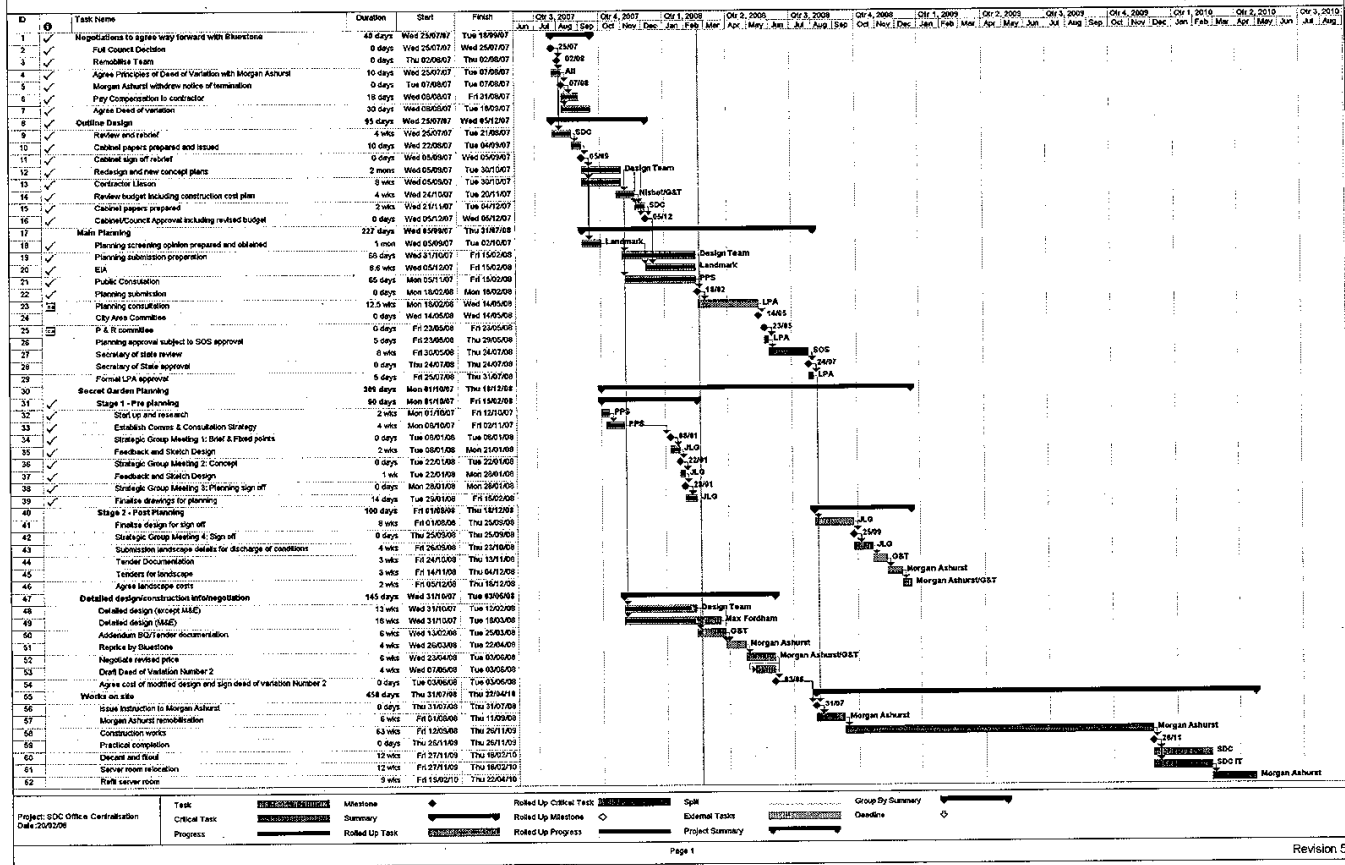
7.6 Wards Affected

7.7 Personnel

Cancellation or delay as a result of modified scheme would have a negative impact on staff morale, recruitment and retention, sickness levels and the ability to recruit staff with mobility disabilities.

SDC Office Centralisation - Bourne Hill Site
Modified Scheme Programme

Nisbet LLP



15

APPENDIX 3

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

In exercise of the powers under section 24 of the Local Government and Public Involvement in Health Act 2007 (“the Act”):

- 1) The Secretary of State directs each authority listed in Column A of the attached Schedule, being an authority which is to be dissolved by virtue of an order made under section 7 of the Act, that it may not, from 4 March 2008:
 - a) 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;
 - b) (subject to paragraph 2 below,) without the written consent of the authority listed against it in Column B of the attached Schedule:
 - i) make any other disposal of land, if the consideration for the disposal exceeds £100,000;
 - ii) enter into any capital contract
 - (1) under which the consideration payable by the relevant authority exceeds £1,000,000; or
 - (2) which includes a term allowing the consideration payable by the relevant authority to be varied;
 - iii) enter into any non-capital contract under which the consideration payable by the relevant authority exceeds £100,000, where –
 - (1) the period of the contract extends beyond 1 April 2009; or
 - (2) under the terms of the contract that period may be extended beyond that date; or

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

Specific voluntary disposals of land for which consent must be given by the Secretary of State

- 2) The Secretary of State directs Berwick upon Tweed Borough Council that it may not, without her written consent, dispose of land as part of the 2006 Housing Transfer Programme¹, if the consideration for the disposal exceeds £100,000.

Signed by the authority of the Secretary of State



Date: 29 February 2008.

A senior civil servant

Department for Communities and Local Government

¹ The 2006 Housing Transfer Programme is part of the Government's social housing refurbishment scheme. It was announced by Ruth Kelly, the then Secretary of State for Communities and Local Government, on 7 June 2006 (it was then referred to as the "Decent Homes Programme", see *Official Report*, column 27WS) and successful authorities were announced by Yvette Cooper on 18 October 2006 (see *Official Report* column 53WS).

SCHEDULE

Column A – authorities to be wound up and dissolved on 1 April 2009	Column B – authority specified under section 24 of the Act as the person whose written consent is required for the matters specified at article 1(b) of this direction.
Kennet District Council	The council of the county of Wiltshire
North Wiltshire District Council	The council of the county of Wiltshire
Salisbury District Council	The council of the county of Wiltshire
West Wiltshire District Council	The council of the county of Wiltshire
Caradon District Council	The council of the county of Cornwall
Carrick District Council	The council of the county of Cornwall
Kerrier District Council	The council of the county of Cornwall
North Cornwall District Council	The council of the county of Cornwall
Penwith District Council	The council of the county of Cornwall
Restormel Borough Council	The council of the county of Cornwall
Sedgefield Borough Council	The council of the county of County Durham
Durham City Council	The council of the county of County Durham
Chester-Le-Street District Council	The council of the county of County Durham
Derwentside District Council	The council of the county of County Durham
Easington District Council	The council of the county of County Durham
Teesdale District Council	The council of the county of County Durham
Wear Valley District Council	The council of the county of County Durham
Berwick upon Tweed Borough Council	The council of the county of Northumberland
Blyth Valley Borough Council	The council of the county of Northumberland
Castle Morpeth Borough Council	The council of the county of Northumberland
Alnwick District Council	The council of the county of Northumberland
Tynedale District Council	The council of the county of Northumberland
Wansbeck District Council	The council of the county of Northumberland
Oswestry Borough Council	The council of the county of Shropshire
Shrewsbury and Atcham Borough Council	The council of the county of Shropshire
Bridgnorth Borough Council	The council of the county of Shropshire
North Shropshire District Council	The council of the county of Shropshire
South Shropshire District Council	The council of the county of Shropshire