

Cherwell District Council

Executive

7 January 2019

Collaboration Agreement

Report of Director Law and Governance / Monitoring Officer

This report is public

Purpose of report

To recommend to Full Council that it agrees to enter into a Collaboration Agreement between Cherwell District and South Northamptonshire councils.

1.0 Recommendations

The meeting is recommended:

- 1.1 To recommend to Full Council that it agrees to enter into a Collaboration Agreement between Cherwell District and South Northamptonshire councils, and to delegate to the Monitoring Officer, in consultation with the Leader of the Council, authority to finalise and enter into the Agreement based on the provisions provided by the Local Government Act 1972, the Local Government Act 2000, the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and the Localism Act 2011.

2.0 Introduction

- 2.1 Joint working between Cherwell District and South Northamptonshire councils has been in place since 2010. Due to the likely creation of unitary governance in Northamptonshire, Cherwell District Council and South Northamptonshire Council have agreed to end their successful joint working arrangements. Consequently notice of termination of the Section 113 Agreement between the councils was served, resulting in the agreement ending on 16 January 2019.
- 2.2 Since notice of termination was mutually served work has been taking place on how services will be separated, or where this is not possible immediately, how future services can be delivered from one council to the other. This work is complex and will take several months to undertake. Meanwhile there is a need to have a legal relationship between the councils to allow services to continue to be provided in a responsive and flexible manner beyond 16 January and for individual services to separate at different times as permanent arrangements are put in place.

3.0 Report Details

- 3.1 A number of options that might allow joint working to continue have been considered and it is proposed that a Collaboration Agreement be put in place.
- 3.2 The Collaboration Agreement will act as a framework under which individual service heads at each of the councils can negotiate separate service offers as necessary and appropriate. Accordingly, the detail as to what services will be provided by one Council to another, how those services will be provided and the appropriate termination arrangements applying to each of them will be captured within individual service schedules agreed by those service heads under the Collaboration Agreement.
- 3.3 Under the existing section 113 Agreement there were appropriate termination provisions which related to all services. The Collaboration Agreement allows individual services to separate in an orderly way and at different times as appropriate.
- 3.4 Until such time as the individual service schedules come to an end, staff will be protected in precisely the same manner as they are currently protected under the existing section 113 Agreement.

4.0 Conclusion and Reasons for Recommendations

- 4.1 It is important that both councils can continue to deliver services after 16 January 2019 which for most services will either be prior to separation taking place or permanent delivery arrangements being put in place for those services that cannot be separated. It is clear that in the interim there needs to be a legal arrangement that allows this and a Collaboration Agreement is seen as the most appropriate vehicle to enable this.

5.0 Consultation

- 5.1 The Chief Executives and Leaders of both Councils have been consulted in preparation of this report.

6.0 Alternative Options and Reasons for Rejection

The following alternative options have been identified and rejected for the reasons set out below.

- 6.1 **Option 1:** not to enter into an agreement between the councils. This is rejected as many council services would not be able to function.
- 6.2 **Option 2:** a Collaboration Agreement based on the provisions provided through the Local Authority (Goods and Services) Act 1970.
- 6.3 Section 1 of the Local Authority (Goods and Services) Act 1970 enables a local authority to provide another public body with goods or materials, administrative,

professional, or technical services. The Act does not in itself exempt local authorities from complying with the Public Contracts Regulations 2015, however an exemption is provided by “the Hamburg exemption” (Hamburg (Commission v Germany) Case C-480/06). A Collaboration Agreement containing these provisions would allow two-way co-operation between the two councils with the aim of ensuring that the public services they have to perform: are provided with a view to achieving objectives they have in common; is governed solely by considerations relating to the public interest; and less than 20% of the activities concerned by the co-operation are performed on the open market.

- 6.4 Whilst it is considered that the Hamburg exemption could provide appropriate authority to enter into such an agreement, there is a potential argument that the Hamburg exemption applies only to services that Councils “have to perform” rather than any discretionary services. Therefore, any discretionary services over the financial threshold in the Public Contract Regulations 2015 would be subject to the procurement rules. Given that discretionary services are included in those which would be shared it is not considered that the Local Authority (Goods and Services) Act 1970 would be the best option for the Councils due to it carrying a risk of challenge.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising directly from this report. Legal advice has been procured from existing council budgets. The financial implications of separating services will be considered in each business case.

Comments checked by:

Kelly Watson Assistant Director Finance and Procurement
Kelly.watson@cherwellandsouthnorthants.gov.uk

Legal Implications

- 7.2 From a legal perspective it is imperative that if activity continues to be carried out by staff employed by one council on behalf of the other council after 16 January 2019 there needs to be a legal basis to enable this. The recommendations in this report if adopted will provide this framework. Legal advice has been obtained which provides analysis of the various legal options available which in turn have been considered by officers. Internal advice has been provided through the non-contentious team and by the former Assistant Director Law and Governance.

Comments checked by:

Chris Mace, Solicitor, 01327 322125
christopher.mace@cherwellandsouthnorthants.gov.uk

Risk Implications

- 7.4 A full risk register has been developed as part of the action plan to separate the two councils. A significant risk was that the councils would not have in place provisions that would allow the two councils to continue joint working following the termination

of the Section 113 Agreement. This Collaboration Agreement deals directly with that risk.

Comments checked by:

Chris Mace, Solicitor, 01327 322125

christopher.mace@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

All.

Links to Corporate Plan and Policy Framework

Not applicable

Lead Councillor

Councillor Barry Wood, Leader of the Council - CDC

Councillor Ian McCord, Leader of the Council - SNC

Document Information

Appendix No	Title
N/A	N/A
Background Papers	
Exempt Background Paper – Legal Advice Note, exempt from publication by virtue of paragraph 5 of Part 1 Schedule 12A of Local Government Act 1972.	
Report Author	Nick Graham, Director of Law & Governance (CDC) Andrew Hunkin, Executive Director: Resources (SNC)
Contact Information	01327 322209 andrew.hunkin@cherwellandsouthnorthants.gov.uk