

# Service Devolution and Asset Transfer Policy



This policy can be made available in a range of accessible formats if required.

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### Policy Control Sheet

Policy title	Service Devolution and Asset Transfer Policy
Purpose of policy	To provide governance and clarity to how Wiltshire Council manages asset and service devolution to Town and Parish Councils
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Lead Director	Dr Carlton Brand Corporate Director
Target audience	Frontline staff, Town and Parish Council Clerks and members of the public
This policy supersedes	Community Asset Transfer (2009 and updated 2011)
This policy should be read alongside	
Related Procedures	
Monitoring and review lead	Corporate Services
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#### 1. Introduction

Wiltshire is a thriving and innovative County that continues to build on its tradition to enable its residents to live healthy lives in strong, prosperous communities. Over the last decade the Council, with its partners, has improved the outcomes of people's lives and businesses in Wiltshire.

Wiltshire Council is committed to continuing to improve and enhance the outcomes of people's lives and businesses in Wiltshire working closely with our communities and partners;

The council's business plan 2017 – 2027 emphasises the desire for communities and residents in Wiltshire to continue to feel they can take responsibility for their well-being, have positive relationships with each other to get involved and influence and shape their own communities.

The council recognises that the devolution of assets and services to local communities, town and parish councils makes a significant contribution to enabling them to be stronger, more resilient and sustainable. Experience gained from a number of asset and service transfers completed to date, has shown that the development of this policy presents significant opportunities to create stronger, more cohesive and sustainable communities. It enhances the role of town and parish councils; enables the use of buildings to be enhanced with the ability to modify them to embrace local needs; the ability to source and secure additional resources from sources not available to Wiltshire Council to do so as well as the ability to deliver and modify services to match the needs and expectations of local communities.

This document aims to set out the council's policy for service devolution and asset transfers on the form of packages to Town and Parish councils. All single asset transfers to community groups as facilitated by Community Area Boards will continue to be managed by the approved Community Asset Transfer Policy July 2011.

## **2. Background**

- 2.1. Wiltshire Council will promote and facilitate the devolution of appropriate services and transfer of associated assets (by way of freehold or leasehold) to town and parish councils where it is deemed more appropriate for those assets and services to be delivered by third tier Local Government.
- 2.2. The devolution will seek to take a pragmatic approach to provide the community with the ability to influence the level of service it feels is appropriate. In some instances, only services may be devolved to town and parish councils without the ownership of the land or building being transferred.
- 2.3. This policy builds on relevant policies developed over the last 5 years and sets out Wiltshire Council's approach to service and asset transfers to town and parish councils. It also recognizes and takes into account significant legislative requirements and supports central governments commitments to devolve assets and services to local community groups, summarized in appendix 1.
- 2.4. Wiltshire Council has responsibility for land and buildings through various means:
  - 2.4.1. Owned assets – Wiltshire Council hold either a freehold interest or long lease (usually in excess of 100 year) of the asset;
  - 2.4.2. Dedicated assets – Wiltshire Council has responsibility to maintain land due to a historical contractual obligation but does not have the freehold ownership, for example areas of public open space or play areas under planning agreements; or

- 2.4.3. Statutory responsibility – Wiltshire Council has the responsibility for maintaining assets and provide services under legislations, for example highway land or closed burial grounds.
- 2.5. The disposal of assets by Wiltshire Council broadly fall under two types:
- 2.5.1. Market sales – where “best consideration” is obtained, widely interpreted as the best price/market value (as defined by the *Red Book*).
- 2.5.2. Disposal at less than best consideration - this could either be a transfer for a nominal sum or reduced purchase price but will certainly be lower than the market value.

### **3. Service and Asset Devolution**

- 3.1 The Service and asset devolution package to each Town and Parish Council will differ depending on the services provided and the assets held, however the following principles will be applied initially with any additional elements considered on a town by town basis:
- 3.1.1. Minimum services to be devolved include:
- Grounds Maintenance of all land for which Wiltshire Council has responsibility
  - All Streetscene services currently provided within the boundary of the Town/Parish
  - Weed control with Town/Parish Boundary
  - Maintenance of closed churchyards
- 3.1.2. Minimum core assets to be transferred:
- Play areas
  - Monuments
  - Any area for which section 106 monies are held
  - Any other assets which are not covered by the exemption criteria in Appendix 2
- 3.2. The transfer of the packages will be managed in two ways
- 3.2.1. Service delegation agreement– transfer of responsibility for delivering services currently performed by Wiltshire Council where the Council only has dedicated or statutory responsibility (see 2.4.22 & 2.4.3 above), as there is no asset to transfer.
- 3.2.2 There may also be strategic reasons for Wiltshire Council to retain ownership of the asset but are willing to transfer the responsibility to provide services. Wiltshire Council will consider the transfer of both statutory and discretionary services; although where statutory services have transferred the ultimate responsibility will remain with Wiltshire Council
- 3.2.3 Freehold transfer – transfer of total ownership of the service related asset. subject to certain exceptions – in some cases a freehold transfer of the asset to town and parish councils may not be acceptable to Wiltshire Council due to:

- adjoining / surrounding land not being transferred; and/or
- potential for redevelopment, either with or without Wiltshire Council land, and/or
- historic and/or complex land issues which would make a freehold transfer resource prohibitive to both Wiltshire Council and the Town or Parish Council.

In these cases, (where Wiltshire Council owns the freehold) Wiltshire Council will grant a fixed term tenancy of 7 years (less 5 days) of the asset, subject to appropriate break clauses. (A lease of this length is exempt from s123 “best consideration” tests.)

- there being a large number of small non-strategic open space land parcels.

These are most efficiently and effectively managed via a service delegation agreement. Should the Town or Parish council wish to have these legally transferred it will be the responsibility of that Town or Parish council to undertake all the required due diligence and fund all legal costs.

### **3.3 Service Delegation**

Wiltshire Council recognises certain services are more appropriately delivered by the local community in which they are required. The service delegation of amenity services recognises those activities that are best delivered locally - appendix 3 and 4 detail those services. These amenity services are cross cutting and the service delegation should ensure that the responsibility for delivery of all services is transferred to the local town or parish.

3.3.1 The decision to delegate services to the town or parish council may form part of a package including a freehold transfer or leasehold disposal referred to in section 4.1 OR the service delegation may be offered as a single package approach where there may be reasons for Wiltshire Council to retain the freehold ownership or not grant a lease of the site.

- Wiltshire Council’s statutory services – transfer of service delivery only. Wherever Wiltshire Council decides to transfer a statutory function, Wiltshire Council will retain ultimate responsibility for that function. However, responsibility for delivering the service may be transferred to a town or parish council under clear contractual arrangements. The town or parish council will then become responsible for the delivery of those services in accordance with the terms of the service delegation agreement. In view of the Council’s underlying statutory responsibility, the Council must be able to terminate the service delegation agreement at any time.
- Wiltshire Council’s discretionary services – transfer of responsibility for the services. This type of delegation can only apply where Wiltshire Council has a high degree of discretion about the provision of the service. Wiltshire Council will cease to be responsible and accountable for the delivery of these services. There is also no guarantee that the council would consider re-assuming responsibility or accountability for the service. A clear, written delegation must be made by the

Council and accepted by the town or parish council.

- there being a large number of small non-strategic open space land parcels. These are most efficiently and effectively managed via a service delegation agreement. Should the Town or Parish council wish to have these legally transferred it will be the responsibility of that Town or Parish council to undertake all the required due diligence and fund all legal costs

3.3.2 In some circumstances Wiltshire Council, will only delegate services to town and parish councils rather than devolve assets. Examples of where a service delegation will only be appropriate include

- The council has a statutory obligation, such as highway or a housing authority to provide.
- Land maintained for the benefit of the community by the council, but not owned by the council.
- Land where commuted sums for the maintenance have been paid to the council
- Where income or there is a strategic benefit to the council which would prevent the asset transfer but the soft (green and street) services should be delegated. For example: car parks; main council hubs; campuses etc.
- Where there is only a small area of council owned land, which means the cost of the legal land transfer is prohibitive (negated in the local town or parish council are prepared to fund the transfer).

However, in the above cases a service delegation on those areas will allow the local town or parish to set the standard and deliver the Amenity Maintenance Services within their defined boundary.

3.3.3 Following the date of transfer Wiltshire Council would not be responsible for delivery of any of the services listed in appendix 3 or 46 within the defined boundary. The town or parish council will perform the services within the boundary indefinitely on and from the transfer date to the minimum standards required by any relevant legislation. The decision thereafter on enhancement to the legal minimum standard of provision of services will be delegated to the relevant town or parish council. The town or parish council would take responsibility for all consequences: financial, contractual, safety or otherwise for the services delivered and the management of the amenity asset and their services provided on the highway.

3.3.4 The delegation of services will not affect any rights Wiltshire Council may have to dispose of, transfer, assign, lease or otherwise deal with its amenity land in its capacity as freehold owner.

### **3.4 Freehold Asset Transfer**

3.4.1 The freehold transfer will be drafted on the following basis:

- The transfer will not normally include a provision to offer the asset back to Wiltshire Council **if it is no longer needed for community use** (“the reverter”) unless there are compelling legal reasons for doing so.
- If the transfer needs to contain the reverter in the circumstances referred to above, Wiltshire Council will not be under any obligation in the transfer to accept

the asset back. However, Wiltshire Council will need to assess at the time if there are still wider legal issues that mean Wiltshire Council should take the land back.

- If Wiltshire Council decides to take the asset back it will be under no obligation to continue to use it for community purposes, furthermore if Wiltshire Council disposes of the asset at a future date there will be no requirement to split the capital receipt with the Town or Parish Council.
- The transfer will include a provision whereby should town and parish councils dispose of those assets for non-community uses, a 50% split of the capital receipt will be payable to Wiltshire Council.
- In the case of community buildings and land, the permitted community use is defined in the standard lease or freehold transfer.

3.4.2 When considering the devolution of assets to Town and Parish Councils, the main functions and services together with the financial implications for Wiltshire Council of transfer will be considered. With that in mind, the list of assets that will not be considered for devolution can be seen in Appendix 2.

3.4.2 In some circumstances an asset may result in more than one of the list in Appendix 2 being relevant, and in which case **if any** of the above should apply an asset devolution would not be considered.

3.4.3 Wiltshire Council will establish a program of devolution reviews with town and parish councils during a particular year. Wiltshire Council will assess all assets within the Community Area and contact the relevant Clerk to discuss the assets on the list. Applications outside of the program or land and buildings and services in isolation will not be considered, including the grant of short term leases.

3.4.4 Following agreement with the town or parish council, the asset devolution package will be presented to Wiltshire Council's Cabinet for a resolution or delegated authority thereof for a resolution.

3.4.5 The flowchart included in Appendix 5 demonstrates the process for asset devolution.

#### **4. Review**

The Asset and Service Delegation & Community Asset Transfer Policy will be reviewed in April 2020, to reflect any issues arising from the implementation of the Policy.

#### Appendices

- Relevant Legislation
- Restricted Assets
- Services for delegation
- Flowchart

## **Appendix 1 Relevant Legislation**

**Local Government Act 1972 (“1972 Act”)** – s123 sets out that local authorities must obtain “best consideration” for all disposals, and s101 allows a local authority to delegate certain functions to another local authority (subject to express provisions in the 1972 Act and subsequent legislation).

**Local Government Act 1972: General Disposal Consent 2003** (“General Consent Order”) - gives permission for Councils to dispose at less than best consideration provided the value forgone is less than £2m (in capital terms) and the transaction benefits the economic, social or environmental well-being of the area. If the value forgone is greater than £2m approval from the Secretary of State is required.

**Local Government Finance Act [1988]**

**RICS Valuation - Professional Standards** (“Red Book”) – defines market value when considering the price obtained from a disposal

**Localism Act 2011** – introduced the concept of local communities taking more control of assets in their area.

**Public Contracts Regulations 2015** - ensure that public spending on goods, services and works is subject to EU procurement rules. Pure land transactions are exempt from EU procurement rules, but the rules may apply where specified services are provided in exchange for receipt of an asset.

**European Commission’s State Aid Rules** – may apply to any use of public money and resources which is not subject to EU procurement rules (e.g. asset transfers and grant awards). These rules are intended to avoid state aided subsidies which could distort competition and affect trade between member states.

**Transfer of employees: TUPE** - There are two different types of transfer of employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) – Service Provision Change or a Transfer of Whole or Part of an Undertaking



## Appendix 2

The types and nature of assets and or services that will transfer are set out in the policy. The Transfer of property assets are likely to be associated with transfers of services, where agreed between the parties. Assets that are unlikely to be considered for devolution are::

Assets held for investment purposes - both assets that generate an immediate income to Wiltshire Council and those held for future capital realisations
Assets of a rural nature - given Wiltshire Council's roles as a small holdings authority
Assets held with Wiltshire Council's Housing Revenue Account (HRA) - utilised to deliver the statutory housing functions
Vacant land or buildings that can generate a capital receipt in excess of de-minimus level for capital accounting purposes - with capital receipts required to fund the capital programme of Wiltshire Council
Land held for future development of Wiltshire Council or partner schemes - as it would not be financially prudent to devolve the land and be required to repurchase in the future
Education and statutory early years premises - due to Wiltshire Council's roles as a Local Authority for education purposes
Car parks defined by Wiltshire Council for retention under the 2015 Parking Review or any subsequent reviews or land held or adopted as public highway - due to Wiltshire Council's role as Highway Authority

### APPENDIX 3

<b>Soft Maintenance Services</b>		
<b>Task</b>	<b>Comment</b>	<b>Conditions</b>
Litter Picking	<ul style="list-style-type: none"> <li>• Litter examples include:</li> <li>• Dead animals (road kill)</li> <li>• Dog/ animal faeces</li> <li>• Cigarette waste &amp; cigarette packets</li> <li>• Beverage and drinks containers</li> <li>• Food containers or utensils</li> <li>• Publications, magazines and newspapers</li> <li>• Shopping and other bags</li> <li>• Illegal deposits of bagged commercial and household waste which shall be cleared as fly tipping, see further below</li> <li>• Removal of pigeon droppings from pathways and footways</li> <li>• Removal of fallen branches, wood, metal and plastic objects</li> <li>• Removal of leaf and blossom falls to an approved programme</li> <li>• Other similar waste types up to 1 cubic meter</li> </ul>	Must be carried out on both Amenity Land and the Highway
Emptying of Litter Bins		Must be carried out on both Amenity Land and the Highway
Removal of Dead Animals on the Highway		Must be carried out on both Amenity Land and the Highway
Removal of Fly Tipping (but no enforcement related tasks)		Must be carried out on both Amenity Land and the Highway

Removal of Fly Posting (but no enforcement related tasks)		Must be carried out on both Amenity Land and the Highway
Graffiti Removal (but no enforcement related tasks)		Must be carried out on both Amenity Land and the Highway
Shopping Trolley Removal (but no enforcement related tasks)		Must be carried out on both Amenity Land and the Highway
Leaf Clearance		Must be carried out on both Amenity Land and the Highway
Balancing ponds, amenity footpaths, Streetscene assets and water courses	Monitor the condition and highlight any health and safety concerns on amenity footpaths, ponds, ditches and any amenity asset and effect their reasonable repair	Must be carried out on Amenity Land
Park and Highway Furniture	Monitor the condition of the furniture and highlight any health and safety concerns and effect their reasonable repair/replacement (subject on each occasion to WC's permission to repair/replace highway furniture)	Must be carried out on both Amenity Land and the Highway. <b>WC's prior written permission must be given in respect of repairing and replacing Highway furniture.</b>
Grounds Maintenance	Shrub Bed Maintenance, Maintenance of Shelterbelt/Plantation Areas/ Hedge Maintenance/ Tree/ Herbaceous Borders and any soft area maintenance.	Must be carried out on Amenity Land and the Highway. <b>WC's consent to maintain the verges of the Highway is hereby given.</b>
Grass Maintenance	<ul style="list-style-type: none"> <li>• Sheltered Housing Schemes</li> <li>• High amenity areas</li> <li>• General grass areas</li> <li>• Low Amenity areas</li> </ul>	Must be carried out on the Amenity Land and the verges of the Highway. <b>WC's consent to maintain the verges of the Highway is hereby given.</b>

	<ul style="list-style-type: none"> <li>• Highway verge areas</li> <li>• Rough grass areas</li> <li>• Flail grass areas</li> <li>• Wild flower/conservation areas</li> </ul>	
Sports Pitch Maintenance (Football and Rugby)		Must be carried out on Amenity Land
Cricket Pitch Maintenance		Must be carried out on Amenity Land
Countryside	Litter clearance and emptying of litter bins	Must be carried out on Amenity Land
Woodlands and Countryside Site	Scavenging and cleaning and/or maintenance	Must be carried out on Amenity Land
Play Areas, Multiple Use Games Areas (MUGA) and Skate Park Inspection and Maintenance		Must be carried out on Amenity Land
Allotments	<p>General up keep and maintenance including:</p> <ul style="list-style-type: none"> <li>• Boundary fencing</li> <li>• Gates and Hedges</li> <li>• Tracks</li> <li>• Car parks</li> <li>• Grass areas and</li> <li>• Footpaths</li> </ul>	Must be carried out on Amenity Land (allotments)
Open Cemeteries	General up keep and maintenance including memorial testing	Must be carried out on Amenity Land (cemeteries)

Closed Churchyards	General up keep and maintenance including memorial testing	Must be carried out on Amenity Land (closed churchyards)
Car Parks and hard areas maintained by WC immediately prior to the Transfer Date	Maintenance of car parks – grounds and street cleaning (as per Idverde Scope)	Must be carried out on Amenity Land and hard areas subject to the exclusions in Column 1
Centre Litter Picking and Sweeping		Must be carried out on Amenity Land and the Highway
Weed Control (amenity hard areas and highways)	Responsibility for all weeds on the highways and service delegated areas	Must be carried out on Amenity Land and the Highway
Bus shelter maintenance	Litter collection and cleaning (graffiti, fly posting, moss etc. removal)	Must be carried out on Amenity Land and the Highway

## Appendix 4

<b>Hard Area Maintenance Services</b>	
<b>Type of Land</b>	
<p>The public open space where the hard asset is managed is:</p>	<ul style="list-style-type: none"> <li>• public gardens;</li> <li>• land used for the purposes of public recreation;</li> <li>• parks;</li> <li>• natural and semi-natural urban greenspaces</li> <li>• derelict open land;</li> <li>• sports pitches;</li> <li>• outdoor sports areas;</li> <li>• play provision;</li> <li>• amenity greenspace;</li> <li>• play areas;</li> <li>• skateboard parks;</li> <li>• outdoor basketball hoops;</li> <li>• and other more informal area (e.g. 'hanging out' areas, teenage shelters);</li> <li>• accessible countryside in urban fringe areas;</li> <li>• cemeteries;</li> <li>• closed churchyards.</li> </ul>
<p>For the avoidance of doubt, hard asset management would not be delegated for:</p>	<ul style="list-style-type: none"> <li>• Play &amp; Display Car Parks</li> </ul>

- Highway assets (without prior agreement – see below)
- Campus or Hub areas
- Housing Revenue Areas

The concept of the delegation would be for hard asset maintenance to be as an asset transfer.

As such anything on the asset and anything beneath (but not adopted assets) would become the responsibility of the local council.

Hard assets would include: fences; walls; paths; lighting; seats; fixed equipment etc.

# APPENDIX 5

## Community Asset Transfer High Level Process

