

AGENDA SUPPLEMENT (1)

Meeting: Overview and Scrutiny Management Committee
Place: The Kennet Room - County Hall, Trowbridge BA14 8JN
Date: Wednesday 28 September 2022
Time: 10.00 am

The Agenda for the above meeting was published on 20 September 2022. Additional documents are now available and are attached to this Agenda Supplement.

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This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

10 **Report of the Asset Transfer Policy Rapid Scrutiny Exercise (Pages 3 - 58)**

DATE OF PUBLICATION: 22 SEPTEMBER 2022
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Wiltshire Council

Overview & Scrutiny Management Committee

28 September 2022

Report of the Service Devolution & Asset Transfer Policy Rapid Scrutiny Exercise

Purpose of the report

1. To present the comments of the rapid scrutiny (RS) group on the revised Service Devolution & Asset Transfer policy for consideration by the Overview & Scrutiny Management Committee (OSMC).

Background

2. In September 2021, Overview & Scrutiny Management Committee (OSMC) received an update on the implementation of the Service Devolution and Asset Transfer policy. The policy had previously been considered by Overview and Scrutiny prior to its adoption in 2017. OSMC resolved to establish a rapid scrutiny exercise to provide Overview and Scrutiny input on the Policy review process. This would follow the completion of a consultation process (January 2022).
3. On 22 March 2022, Cllr Philip Alford, Cabinet Member for Housing, Strategic Assets and Asset Transfer, updated OSMC. A town/parish council conference, delayed from January, would take place on 27 May 2022. Its purpose was to develop a new policy by the autumn of 2022 to enable town and parish councils to plan their budgets for the following financial year.
4. Following a request from the Cabinet Member, OSMC commissioned a rapid scrutiny exercise to look at the strengths and weaknesses of the current policy. It would present its recommendations for endorsement in advance of the town/parish council conference on 27 May 2022.
5. The rapid scrutiny group's recommendations were endorsed by OSMC on 19 May 2022 (see Appendix 1). The Executive response to the recommendations was considered by OSMC on 14 July 2022 (see Appendix 2). OSMC resolved that the rapid scrutiny group review and comment on the new Service Delegation & Asset Transfer policy prior to consideration by Cabinet in September 2022.

Membership

6. The opportunity to take part in the rapid scrutiny was offered to all non-executive members of the council. The following members were appointed:
 - Cllr Ruth Hopkinson (Lead Member)
 - Cllr Bob Jones MBE
 - Cllr Gordon King
 - Cllr Bill Parks

- Cllr Pip Ridout
- Cllr Iain Wallis
- Cllr Graham Wright

Evidence

7. The rapid scrutiny considered the following evidence:
 - a) Proposed new Service Devolution and Asset Transfer Policy (to be considered by Cabinet on 27 September 2022)
 - b) Current Service Devolution and Asset Transfer Policy (Wiltshire Council 2017)
 - c) Report of the rapid scrutiny group (OSMC 19 May 2022)
 - d) Executive response to the report of the rapid scrutiny group (14 July 2022)

Aim of the rapid scrutiny

8. To review and comment on the new Service Delegation & Asset Transfer policy prior to consideration by Cabinet, as resolved by OSMC (14 July 2022).

Summary of review

9. The rapid scrutiny group met once to consider the draft Service Delegation & Asset Transfer Policy (published 5 September 2022).
10. The rapid scrutiny group compared the revised policy with the previous version and noted that – as stated in para 13 of the covering report to Cabinet (27 September 2022) – ‘remains largely unchanged’ from the policy adopted in 2017.
11. The group also considered the recommendations presented in its own report to OSMC (19 May 2022) and the Executive response (14 July 2022), in particular how those recommendations accepted by the Executive were reflected in the refreshed policy.

Conclusions of the Rapid Scrutiny Exercise

12. All involved are aware that asset transfer and service devolution are important in bringing the management of local facilities nearer to local people. However, the implementation of the previous policy caused concerns and challenges for town and parish councils. It was therefore an appropriate time to undertake a review with partners to make the policy more responsive, focused, and effective.
13. In the Rapid Scrutiny Group’s view, the revised policy remains imbalanced in favour of the Council. For example, the policy retains a list from 2017 of soft services for devolution (Service Devolution & Asset Transfer policy, Appendix 3), all of which place additional costs and risk onto town and parish councils. This is exemplified by car parks being exempt from transfer under the policy (see Service Devolution & Asset Transfer policy, Appendix 2), but their maintenance being part of service devolution (see Service Devolution & Asset Transfer policy, Appendix 3).
14. It is unclear how the challenges facing town and parish councils, strongly articulated to the Rapid Scrutiny Group by Devizes Town Council (their comments included in the Rapid Scrutiny report 19 May 2022), will be mitigated or resolved by the proposed

new policy. Those concerns included the length of time agreements took, the bureaucratic nature of the process and ultimately the cost to town and parish councils. Wiltshire Council did consult town and parish councils prior to reviewing the policy, but it is not clear how the version proposed addresses their concerns.

15. The proposed policy risks perpetuating the difficulties identified in the previous version. It should have clarified the process, where possible removing risks, and provided partners with greater clarity regarding the timing/implementation of the policy, thus re-assuring town and parish councils of the benefits of asset transfer and service devolution. It is disappointing that this opportunity has been missed.

Recommendations

Having reviewed the proposed new Policy, the Rapid Scrutiny Group recommends that:

- 1. Cabinet notes this report and the concerns that it raises regarding the Service Devolution & Asset Transfer policy.**
- 2. Overview & Scrutiny Management Committee (OSMC) closely monitors the implementation of the refreshed Service Devolution & Asset Transfer policy and receives a progress update within 6 months.**

Cllr Ruth Hopkinson, Lead Member for the Rapid Scrutiny Exercise

Report author: Simon Bennett, Senior Scrutiny Officer, 01225 718 709,
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Appendices

Appendix 1 Rapid Scrutiny report (May 2022) incl. Asset Transfer & Service Devolution policy (2017)

Appendix 2 – Executive response to the Rapid Scrutiny report (July 2022)

Appendix 3a/3b – Asset Transfer & Service Devolution, Cabinet report (September 2022)

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**Report of the
Service Devolution Asset Transfer Policy Rapid Scrutiny Exercise**

Purpose of the report

1. To present the findings and recommendations of the rapid scrutiny (RS) exercise, for endorsement by the Overview & Scrutiny Management Committee (OSMC).

Background

2. In September 2021, OSMC received an update on the implementation of the Service Devolution and Asset Transfer Policy. The policy had been considered by overview and scrutiny prior to the adoption of a refreshed version in 2017. There was concern about the number of transfers agreed and that delays to the delivery of the policy had meant a lower level of service or maintenance of assets for residents. The difficulty for town and parish councils to plan their budgets with uncertainty around taking on services or assets was raised, along with any new requests being treated the same as those with historic requests.
3. OSMC resolved to establish a rapid scrutiny exercise to provide Overview and Scrutiny input on the Policy review process. This would follow completion of a proposed consultation process (January 2022).
4. At OSMC on 22 March 2022, Cllr Philip Alford, Cabinet Member for Housing, Strategic Assets and Asset Transfer, updated the Committee. A town/parish council conference, delayed from January, would take place on 27 May 2022. The aim was now to develop a new policy by the autumn of 2022 to enable town and parish councils to plan their budgets for the following financial year.
5. Following a request from the Cabinet Member, OSMC resolved that the rapid scrutiny exercise would look at the strengths and weaknesses of the current Service Devolution and Asset Transfer policy. This would present recommendations for endorsement before the town/parish council conference on 27 May 2022.

Membership

6. The opportunity to take part in the rapid scrutiny was offered to all non-executive members of the council. The following members were appointed:
 - Cllr Ruth Hopkinson (Lead Member)
 - Cllr Bob Jones MBE
 - Cllr Gordon King

- Cllr Bill Parks
- Cllr Pip Ridout
- Cllr Iain Wallis
- Cllr Graham Wright

Evidence

7. The rapid scrutiny met on three occasions and considered the following evidence:
 - a) Service Devolution and Asset Transfer Policy (Wiltshire Council 2017)
 - b) Asset Transfer Policies of Bath & North East Somerset Council, Bristol City Council, Dorset Council, Herefordshire Council and Northumberland County Council
 - c) A summary of completed asset transfers in Wiltshire.

Aim of the rapid scrutiny

8. To review the strengths and weaknesses of the council's current asset transfer policy in light of experience since its adoption.
9. To recommend potential improvements for a new policy.
10. To form conclusions and recommendations in time for consideration by the Cabinet Member prior to the town and parish council conference scheduled for 27 May 2022.

Witnesses

11. The Rapid Scrutiny group would like to thank the following Cabinet members, Wiltshire Council officers and the officers and members of Devizes Town Council for providing information, and answering the group's questions:
 - Cllr Phil Alford (Cabinet Member for Housing, Strategic Assets, Asset Transfer)
 - Andy Brown, Corporate Director of Resources & Deputy Chief Executive (Section 151 Officer)
 - Simon Hendeby, Director for Assets & Commercial Development
 - Cllr Kelvin Nash (Devizes Town Council)
 - Cllr Peter Corbett (Devizes Town Council)
 - Simon Fisher (Devizes Town Clerk)

Summary of findings

12. At the meeting on 21 April 2022 with the Cabinet Member and council officers, the group received a presentation from Simon Hendeby, Director Assets & Commercial Development. This outlined the background and context to the policy, which was reviewed in 2017 when service delegation and asset transfers were linked. The policy sets out the minimum services delegation and assets to be transferred and is intended to cover small scale asset transfer and service

delegation. It was due for a further review in 2020, but this was postponed due to the pandemic.

13. To date 115 transfers have been completed (113 for towns; 2 for parishes), 54 transfers are pending (31 for towns; 23 for parishes), 23 public conveniences have been transferred. In total some 183 assets have been transferred or are pending. Capital savings have amounted to £6.516m and there have been annual revenue savings of £1.667m.
14. Asset transfers and service delegations have been paused subject to the policy review, therefore there is currently no schedule of future transfers or officer resources assigned to the process. A new schedule could be in place by 2023/24. Though the scale and the size of the assets to be transferred influences the resources needed, it was acknowledged that the level of resources committed previously had had an impact upon the delivery of the policy. In future any policy could be delivered through an 'invest to save' process as, though there are significant upfront costs, these will be balanced by future savings.
15. Revenue savings are accounted for corporately and are applied by specific service areas. Savings are not part of the overall annual corporate budget savings. It was confirmed that service delegation is possible through the new Highways and Streetscene contracts, but the preference is for delegated services to be removed from these contracts.
16. The benefits of the current policy for the council are that it helps to avoid service closure, generates revenue savings, and gives towns and parish councils control over key assets and services. Issues identified with delivering the previous policy have included towns and parishes not being involved in the development of the policy, the initial costs of each transfer / delegation, not all assets being eligible to be part of the process and only revenue liabilities being included in transfers.
17. The conference with town and parish councillors (27 May 2022) will be an opportunity for the council to hear their perspectives on the policy and to inform the review. The council is already aware that the current process is too complex and that the experience of transfers has been variable. Few assets are currently identified for transfer; this may be due to the process and the lack of incentives for town and parish councils to invest in assets. For example, leases can be short (7 years).
18. The rapid scrutiny group wanted to better understand the implementation of the policy from the perspective of a town or parish council that had undertaken an asset transfer / service devolution process. They therefore met with the town clerk and a councillor of Devizes Town Council on 4 May 2022.
19. Though Devizes Town Council felt that the outcome, for them and residents, had justified undertaking asset transfer / service devolution, it had also been a challenging process being, in their opinion, time consuming, bureaucratic, and costly.

20. Though the town council had started with clear objectives, the process had taken 12-18 months and cost thousands of pounds in legal fees alone. The legal negotiations were protracted, and it was felt, unnecessarily complex. Some of the paperwork and critical business information had either not been available or did not exist, making taking on some of the assets problematic.
21. The benefits of service delegation for the town council and residents were not as clear as for asset transfer, with the inability to plan future investment seen as a key drawback.
22. It was suggested that some of the delays appeared to be due to Wiltshire Council not assigning adequate officer resources to managing the process. Also, that delays were caused through council departments not seeming to communicate with each other effectively. Though it was conceded that often it was not clear why issues were taking so long to be resolved.
23. The current policy was considered to take a top-down approach and to be too constraining for both sides, not allowing decisions to flex to meet local circumstances. Indeed, most asset transfer policies from other local authorities, such as Bath & North East Somerset, allow a wider range of organisations or local bodies to be considered for asset transfer.
24. It was stated that although the transfer process does need improvement, it is more important that all partners are working to deliver the best outcomes for residents.

Conclusion

25. Asset transfer / service devolution is important in bringing the management of local facilities nearer to local people. Several issues with the current policy were articulated by all the witnesses, and it is an appropriate time to undertake a review to make the policy more responsive, focused, and effective.
26. The success of any new policy will depend upon leading and driving its delivery. Any revised policy needs to be backed by Cabinet and be adequately resourced. The council should explore an 'invest to save' process to cover upfront costs.
27. Town and parish councils need to feel that they have ownership of the policy. All parties should help develop a new policy. The policy should be more flexible and adaptive to specific local needs and circumstances. It ought to be clearer how other bodies, not just town and parish councils, could take on council assets. As a minimum the policy needs to have shared aims and objectives, definitions, a set of shared outcomes and measures of success.
28. Any new policy requires a clearer timetable to avoid a piecemeal approach to asset transfer and service delegation. The pause in the current plan means that many towns and parishes have not benefited as fully as they might have done from the policy. Allied to this, greater transparency about the assets available,

their liabilities and when a transfer can be undertaken would support the negotiation process and deliver swifter agreement. More timely information should be provided on service delegation.

29. Each transfer process should be project managed by an identified lead officer. This would keep the process on track, manage resources, improve collaboration (inside and outside of the council) and efficiency. A significant benefit would be the ability to identify and apply lessons learnt to future transfers, particularly streamlining the process.
30. Given the importance of this policy, oversight of its application and performance should be maintained by OSMC.

Recommendations

Based upon the evidence it received, the rapid scrutiny exercise recommends that:

1. **The successful delivery of a new Asset Transfer and Service Devolution Policy is made a priority by the Cabinet.**
2. **Implementation of the policy is fully resourced.**
3. **The council investigates using its reserves, as an ‘invest to save’ initiative, to fund the programme of asset transfer / service devolution.**
4. **The new policy is developed, delivered, and owned jointly with town and parish councils, and includes shared:**
 - a. **aims and objectives**
 - b. **glossary of definitions e.g., devolution and delegation**
 - c. **outcomes**
 - d. **measures of success**
5. **The council reviews which assets are appropriate for transfer and publicises a revised list.**
6. **The council should review whether to open asset transfer to other bodies i.e., charities, community groups.**
7. **The council should create an overall timetable for asset transfer / service devolution for each town and parish wishing to proceed.**
8. **A project management approach should be taken with each transfer.**
9. **A review, including all partners, is undertaken after each transfer to develop and improve the transfer process.**
10. **All information on the potential financial liabilities and responsibilities attached to an asset are made available to the town or parish council in a timely manner during the negotiation period.**
11. **The council confirms the opportunity for town and parish councils who wish to pursue asset transfer / service devolution to procure services through the council’s Streetscene / Grounds and Highway contracts.**
12. **Overview & Scrutiny Management Committee (OSMC) receives a report of the outcomes of the town and parish council conference (27 May 2022) and how it will inform the new policy.**

13. Overview & Scrutiny Management Committee (OSMC) receives the final draft of the policy and updates on the implementation of the new policy (once approved), every 6 months.

Cllr Ruth Hopkinson, Lead Member for the Rapid Scrutiny Exercise

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Appendices

Appendix 1 Service Devolution and Asset Transfer Policy (2017)

Service Devolution and Asset Transfer Policy



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

Contents

1. Introduction
2. Background
3. Service and Asset Devolution
 - 3.3 Service Delegation
 - 3.4 Freehold Asset Transfer
4. Review
5. Appendices

Policy Cover Information

Policy number		Version number	0.12	Status	Draft
Implementation lead	Corporate Services			Implementation date	October 2017
Policy approved by				Date approved	
Next review date	April 2020				

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
Policy author(s)	Ian Brown, Head of Environment Services Adrian Hampton, Head of Local Highways Leanne Sykes, Head of Finance Operations Mike Dawson, Strategic Asset Manager Jo Madeley, Property and Planning Legal Team Leader Lauren Ashdown, Business Analyst
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
First year review date	April 2020
Subsequent review date	April 2022
Internet link	

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.

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.

2.3 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.

2.4 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.

3. 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 disposal 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

Soft Maintenance Services		
Task	Comment	Conditions
Litter Picking	<ul style="list-style-type: none"> • Litter examples include: • Dead animals (road kill) • Dog/ animal faeces • Cigarette waste & cigarette packets • Beverage and drinks containers • Food containers or utensils • Publications, magazines and newspapers • Shopping and other bags • Illegal deposits of bagged commercial and household waste which shall be cleared as fly tipping, see further below • Removal of pigeon droppings from pathways and footways • Removal of fallen branches, wood, metal and plastic objects • Removal of leaf and blossom falls to an approved programme • Other similar waste types up to 1 cubic meter 	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. WC's prior written permission must be given in respect of repairing and replacing Highway furniture.
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. WC's consent to maintain the verges of the Highway is hereby given.

Grass Maintenance	<ul style="list-style-type: none"> • Sheltered Housing Schemes • High amenity areas • General grass areas • Low Amenity areas • Highway verge areas • Rough grass areas • Flail grass areas • Wild flower/conservation areas 	Must be carried out on the Amenity Land and the verges of the Highway. WC's consent to maintain the verges of the Highway is hereby given.
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	General up keep and maintenance including: <ul style="list-style-type: none"> • Boundary fencing • Gates and Hedges • Tracks • Car parks • Grass areas and • Footpaths 	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

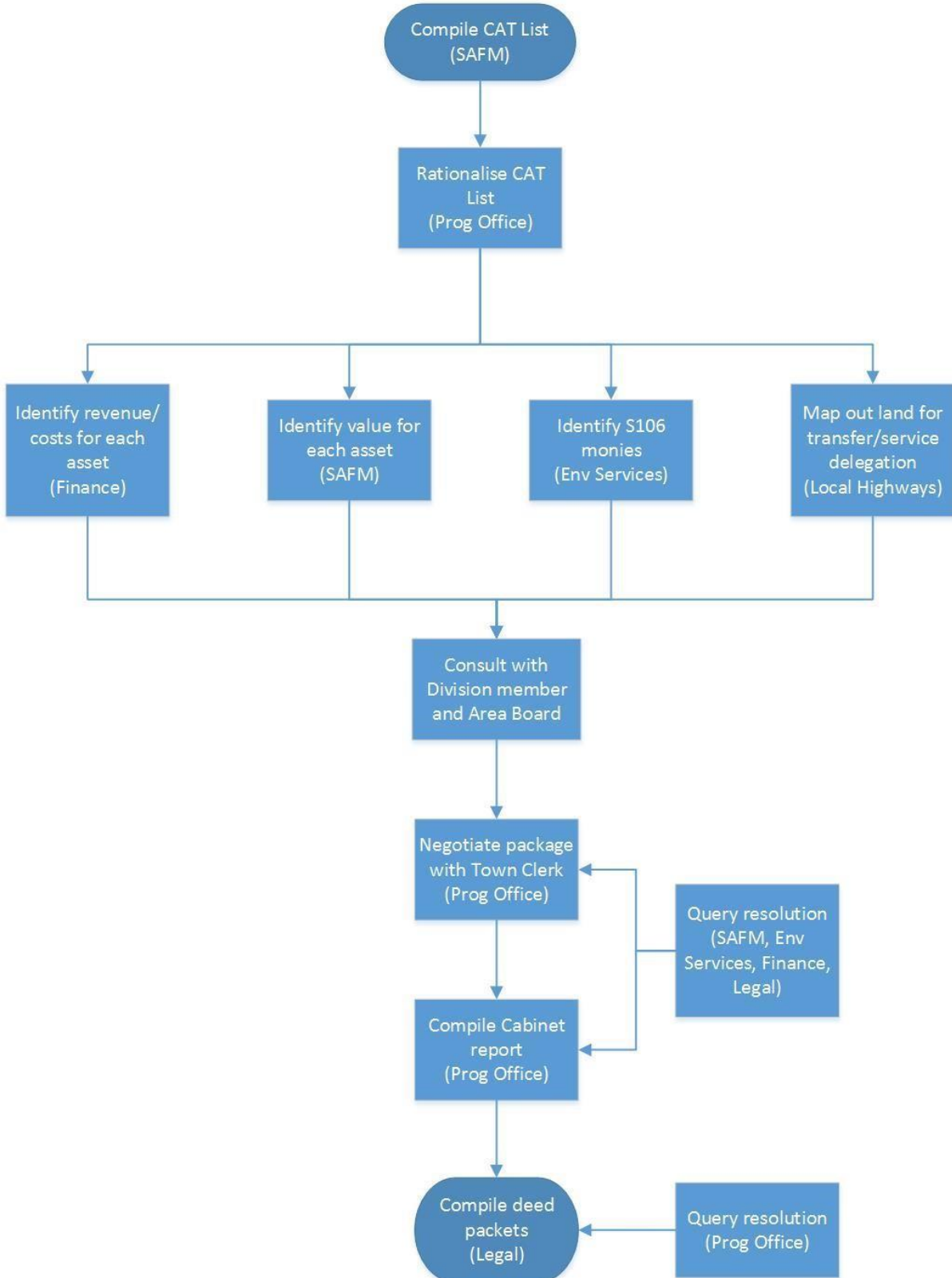
APPENDIX 4

Hard Area Maintenance Services	
Type of Land	
<p>The public open space where the hard asset is managed is:</p>	<ul style="list-style-type: none"> • public gardens; • land used for the purposes of public recreation; • parks; • natural and semi-natural urban greenspaces • derelict open land; • sports pitches; • outdoor sports areas; • play provision; • amenity greenspace; • play areas; • skateboard parks; • outdoor basketball hoops; • and other more informal area (e.g. 'hanging out' areas, teenage shelters); • accessible countryside in urban fringe areas; • cemeteries; • closed churchyards.

For the avoidance of doubt, hard asset management would not be delegated for:	<ul style="list-style-type: none"> • Play & Display Car Parks
	<ul style="list-style-type: none"> • Highway assets (without prior agreement – see below) • Campus or Hub areas • Housing Revenue Areas
<p>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.</p>	

APPENDIX 5

Community Asset Transfer High Level Process



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14 July 2022

**Executive Response to the Final Report of the
Service Devolution Asset Transfer Policy Rapid Scrutiny Exercise**

Purpose of the report

1. To present the response of the Cabinet Member for Housing, Strategic Assets, Asset Transfer to the final report of the Service Devolution Asset Transfer Policy Rapid Scrutiny Exercise.

Background

2. On 19 July 2022, the Overview & Scrutiny Management Committee (OSMC) endorsed the final report of the Task Group.
3. The Committee resolved to refer the following Rapid Scrutiny Exercise's recommendations to the relevant Cabinet member for response at the Committee's next meeting on 14 July 2022.

Executive response to the Task Group's recommendations

Recommendation No.1	The successful delivery of a new Asset Transfer and Service Devolution Policy is made a priority by the Cabinet.		
Executive response	July 2022	ACCEPTED	The review of the existing policy is on the Cabinet Forward Workplan for September 2022, where the Cabinet will approve any revisions to the policy and formally re-start the programme and negotiations with Councils who have indicated an interest following the Town & Parish conference at the end May.
Recommendation No.2	Implementation of the policy is fully resourced.		
Executive response	July 2022	AMENDED	Resourcing the service devolution and asset transfer policy in 2022/23 will be within existing resources and as such will be limited. The policy and programme for 2023/24 onwards and resourcing will be subject to the budget setting process for forthcoming years and a clear business case to justify

			additional investment from Wiltshire Council.
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Recommendation No.3	The council investigates using its reserves, as an 'invest to save' initiative, to fund the programme of asset transfer / service devolution.		
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Executive response	July 2022	AMENDED	It would not be appropriate to use reserves to fund the programme going forward. The Cabinet have at their discretion earmarked reserves for Business Plan Priorities could utilise that funding, equally the transformation reserve could be utilised to forward fund resource where a business case demonstrates savings.
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Recommendation No.4	The new policy is developed, delivered, and owned jointly with town and parish councils, and includes shared: <ul style="list-style-type: none"> a) aims and objectives b) glossary of definitions e.g., devolution and delegation c) outcomes d) measures of success 		
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Executive response	July 2022	AMENDED	The conference with Town and Parish Councils held on the 27th May enabled the Council to share and engage on the review of the policy that will be considered formally by Cabinet in September.
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Recommendation No.5	The council reviews which assets are appropriate for transfer and publicises a revised list.		
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Executive response	July 2022	ACCEPTED	The Council regularly reviews the list of assets it holds, and this will be included in the report to Cabinet as part of the consideration of the new policy, with specific reference to which assets are available for transfer and equally those which are not. The conference set out the current review was looking to set a minimum level of assets to be transferred in any future arrangements.
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Recommendation No.6	The council should review whether to open asset transfer to other bodies i.e., charities, community groups.		
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Executive response	July 2022	ACCEPTED	The new policy will include consideration of transfer of some assets to charities or community groups so as to allow them to seek funding to address capital liabilities. However, the policy will require those groups to provide a form of security that could be provided by a Town and Parish Council.
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Recommendation No.7	The council should create an overall timetable for asset transfer / service devolution for each town and parish wishing to proceed.		
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Executive response	July 2022	ACCEPTED	Following the Town and Parish council conference Wiltshire Council has received an indication of the appetite of town and parish councils and that will be used to inform the development and resourcing of a programme.
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Recommendation No.8	A project management approach should be taken with each transfer.		
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Executive response	July 2022	ACCEPTED	The programme will project manage the transfers once agreed and negotiated.
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Recommendation No.9	A review, including all partners, is undertaken after each transfer to develop and improve the transfer process.		
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Executive response	July 2022	AMENDED	A review will be undertaken where appropriate and proportionate.
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Recommendation No.10	All information on the potential financial liabilities and responsibilities attached to an asset are made available to the town or parish council in a timely manner during the negotiation period.		
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Executive response	July 2022	ACCEPTED	All information will be made available to inform asset transfer and service devolution
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Recommendation No.11	The council confirms the opportunity for town and parish councils who wish to pursue asset transfer / service devolution to procure services through the council's Streetscene / Grounds and Highway contracts.		
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Executive response	July 2022	AMENDED	The opportunity will exist but service devolution will also encourage towns and parishes to investigate the most cost effective way of delivering services.
Recommendation No.12	Overview & Scrutiny Management Committee (OSMC) receives a report of the outcomes of the town and parish council conference (27 May 2022) and how it will inform the new policy.		
Executive response	July 2022	AMENDED	The outcome from the conference will be reported to cabinet to inform the review of the policy and any subsequent recommendations on the programme.
Recommendation No.13	Overview & Scrutiny Management Committee (OSMC) receives the final draft of the policy and updates on the implementation of the new policy (once approved), every 6 months.		
Executive response	July 2022	ACCEPTED	Subject to the policy review and consideration by Cabinet the progress on the revised policy and programme will be reported to OSMC every six months.

4. The Town and Parish Conference was held on 27th May 2022, during that conference an update was provided by the Corporate Director Resources and Deputy Chief Executive on the review of the existing Service Devolution and Asset Transfer policy.
5. The review is looking to simplify the process and to clarify the assets and services that can be considered for either transfer and/or devolution to inform Town and Parish Councils on the position and expediate any negotiations.
6. The key action point and target date on the next steps in all the above recommendations is the Cabinet report scheduled to go in September 2022. This report will approve the revised policy and set out the plans for engagement with those Councils who have expressed an indication to hold discussions on potential transfers or devolution.
7. The report will also set out the resources and investment required to restart the programme and hold the negotiations and conclude agreements and subsequent transfer and/or devolution.

Proposal

8. To note the executive response to the Final Report of the **Service Devolution Asset Transfer Policy Rapid Scrutiny Exercise**.

Cllr Phil Alford, Cabinet Member for Cabinet Member for Housing, Strategic Assets, Asset Transfer.

Officer contact: Simon Bennett, Senior Scrutiny Officer, 01225 718709,
simon.bennett@wiltshire.gov.uk

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Wiltshire Council

Cabinet

27 September 2022

Subject: Service Delegation & Asset Transfer Policy

Cabinet Member: Cllr Phil Alford, Cabinet Member for Housing, Strategic Assets, Asset Transfer

Key Decision: Key

Executive Summary

This report refreshes the existing Service Devolution and Asset Transfer Policy that was approved by Cabinet in October 2017.

The policy enables the transfer of services and assets to Town and Parish Councils, this activity had to be subsequently paused as resources were focused on responding to the pandemic. With a new Business Plan approved, the policy is being refreshed and updated to continue the transfer of assets and devolution of services to local councils.

The report also sets aside one-off investment to ensure any packages can be progressed and delivered in a reasonable timeframe.

Proposals

Cabinet is recommended to:

- 1) Approve the revised Service Devolution and Asset Transfer Policy.
- 2) Approve a drawdown of up to £200K from the transformation earmarked reserve to enable sufficient resource to deliver on requests.

Reason for Proposals

The pandemic paused the SDAT programme and with the new Business Plan there is a drive to refresh the desire to ensure local Councils are best placed to look after the services and assets at a local level.

The revised policy will streamline the protracted negotiations experienced in the previous programme with an aim to make the policy clearer to those Councils wishing to pursue service devolution and asset transfer.

Terence Herbert
Chief Executive

Wiltshire Council

Cabinet

27 September 2022

Subject: Service Delegation & Asset Transfer Policy

Cabinet Member: Cllr Phil Alford, Cabinet Member for Housing, Strategic Assets, Asset Transfer

Key Decision: Key

Purpose of Report

1. This report refreshes the existing Service Devolution and Asset Transfer Policy that was approved by Cabinet in October 2017.
2. The policy enables the devolution and transfer of services and assets to Town and Parish Councils which had to be subsequently paused as resources were focused on responding to the pandemic. With a new Business Plan approved, the policy is being refreshed and updated to continue the process to transfer of assets and devolution of services to local councils where appropriate.
3. The report also sets aside one-off investment to ensure any packages can be progressed and delivered in a reasonable timeframe.

Relevance to the Council's Business Plan

4. The Councils Business Plan 2022-2032 sets out the mission to have vibrant, well-connected communities. Within this mission the business plan sets the aim to make the best use of Council owned assets for the benefit of communities, including transferring those assets to communities where appropriate.

Background

5. The previous policy approved in 2017 continued the Councils approach to devolving services and transferring the associated assets to Town and Parish Councils who are best placed to deal, resource and operate according to local need.
6. The previous programme and policy was based on a package approach and ongoing negotiation to secure a transfer. A programme was initiated that set out tranches for Towns and Parishes to undertake their proposed service devolution and asset transfer, with the original programme for this to be completed by the end of 2021.
7. COVID-19 pandemic in March 2020 effectively paused the programme with the Council going into response and deploying resource on to priority activities that were required during the response phase of the pandemic.

8. With a new Business Plan approved in February 2022, a review of the policy has been undertaken and appended. This will reinstate the planned activity around service devolution and asset transfer.
9. At the Town and Parish council conference held on 27 May 2022, Councils were updated on the planned review of the policy and asked to submit interest in the potential for service devolution and asset transfers.

Main Considerations for the Council

10. The Council previously undertook a programme of service devolution and asset transfer to local communities who are best placed to control, operate and resource those services and assets.
11. COVID-19 pandemic resulted in that programme being put on indefinite pause, with the internal resource being utilised on the response programmes required to support Wiltshire's residents. Communities and businesses. Equally some of the resource was time limited owing to the planned conclusion of the programme by the end of 2021.
12. With the county now in long term recovery from the implications of the pandemic, and with a new business plan approved, the Council is in a position to review the policy and re-establish the activity and discussions with local councils around the potential for future service devolution and asset transfer.
13. The revised policy is appended to this report and on the whole remains largely unchanged from the previous policy.
14. The learning from the previous policy was the drawn-out negotiations and resource intensive process experienced from both organisations undertaking the process. Therefore, the policy aims to streamline this with providing clarity on the proposal and commitment that local Councils must accept when undertaking any proposed agreement.
15. The policy therefore sets out a minimum set of services and/or assets to be devolved and transferred to provide clarity and enable the process and discussions to start. Councils must accept this minimum to enable the agreement to proceed.
16. The Town and Parish Conference held on 27 May set out the likely direction of travel on the review of the policy and the feedback received post the conference has provided a snapshot of those Councils interested in discussing further the potential to reach agreements in the future. This list will be used to follow up with those Councils following the approval of the revised policy.
17. Inevitably resources will be required to progress agreements and negotiations. There is a commitment to ensure the programme is appropriately resourced to give expectations that agreements will be delivered upon, and this report seeks upfront one-off investment to ensure a proportionate level of resource is put in place to enable this to happen.

18. It is envisaged that future agreements will lead to savings for the Council, and any further resource requirements will have to be met from the savings generated from any future agreements.

19. The Council is in active discussions with Trowbridge Town Council on a potential service devolution and future asset transfer and these negotiations will be bound within the revised policy.

Overview and Scrutiny Engagement

20. The Executive responded to a report by the rapid scrutiny exercise group tasked with looking at the service devolution and asset transfer policy. This report went to Overview & Scrutiny Management Committee on 14 July 2022.

21. All 13 recommendations were responded to, and the Executive accepted or amended all recommendations put forward, with this report providing further detail to those responses, particularly with response to the concerns around the commitment by the executive to resource the programme going forward.

22. The Overview & Scrutiny Management Committee further resolved to ask the Asset Transfer Policy Rapid Scrutiny Group to review and comment on the new Asset Transfer Policy prior to its consideration by Cabinet.

Safeguarding Implications

23. No direct safeguarding implications arising from this report.

Public Health Implications

24. The policy should enable those assets and services that support communities and residents physical and mental wellbeing to continue and where possible be enhanced.

Procurement Implications

25. None identified.

Equalities Impact of the Proposal

26. Equality Impact assessments will be undertaken as part of the individual agreements and process.

Risks that may arise if the proposed decision and related work is not taken

27. The risk is that future possible service devolutions and asset transfers would either not proceed or would proceed in a haphazard, uncontrolled way or would continue to be subject to lengthy delaying negotiations.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

28. The resources of the programme will need to be monitored and managed, and if appropriate increased to ensure successful agreements in a timely manner. The amendments to the policy make it more prescriptive which could dissuade Councils to put forward proposals going forward.

Financial Implications

29. The programme will, on the whole, be resourced from within existing resources within services. The allocation of one-off funding will be used to support those services e.g. legal, where additional resource is required upfront to ensure successful completion of future agreements.

30. It is envisaged that savings will materialise from future agreements, and these will either be factored into the Councils Medium Term Financial Strategy or be used to fund any further additional resource required to deliver on the programme.

Legal Implications

31. Section 123 of the Local Government Act 1972 (“the LGA 1972”) imposes a general restriction on disposals by local authorities which means that Wiltshire Council cannot dispose of its land for a consideration less than the best that can be reasonably obtained in the market, except with the express consent of the Secretary of State. Disposals by way of short-term tenancies are not caught by this restriction.

32. The power of the Secretary of State to give a general consent for the purpose of land disposals by local authorities is set out in section 128 (1) of the LGA 1972. Specific consent is not required for the disposal of any interest in land at less than best consideration where the authority considers that the disposal will help it to secure the promotion or improvement of the economic, social or environmental wellbeing of its area. However, disposal at less than best consideration is always subject to the condition that the undervalue does not exceed £2 million. Therefore, all proposed transactions where the aggregate of “undervalue” exceeds the £2 million threshold will require the specific consent of the Secretary of State. These statutory restrictions will need to be considered when agreeing the assets to be transferred to the Town/Parish Council.

33. The model community asset transfer and leasehold documentation is drafted on the basis that the use of the property will continue for the benefit of the local community.

Open Space Land

34. A local authority has a statutory duty to advertise its intention to dispose of open space land in a local newspaper for two consecutive weeks and to consider objections. This will need to be done before any final decision is taken on the disposal so that proper consideration is given to the responses that are received. This process will need to be factored into the programme of asset disposals to the Town and Parish Councils.

Subsidy Control

35. Subsidy Control is intended to avoid any state aided subsidies which could distort competition and affect trade between members states. Subsidy Control law can

potentially apply to town and parish councils and third sector organisations when they receive community assets and/or financial contributions from Wiltshire Council towards the cost of delivering delegated services. Subsidy Control can only be found in the situation where the organisation receiving the aid acts on a market. Local Authorities (as well as charities) can in some of their functions be assessed as acting on a market. This assessment is unlikely to be made where the recipient is engaged in carrying out not for profit activities to meet local community need. However, the use of each individual asset or financial contribution must be considered, and Legal Services must be engaged to advise Wiltshire Council on the subsidy control implications for the transfer package.

36. If subsidy control has been granted without approval (either through a separate notification or by following the terms of the relevant exemption) this would be an illegal subsidy. The government has the ability to make such orders to correct the perceived market distortion caused by the illegal aid. This could take the form of an order to the recipient to return to Wiltshire Council any assets and/or repay the value of any financial aid, plus interest from the date of the aid to the date of repayment.
37. Even where there is no illegal subsidy in favour of the recipient, care needs to be taken to avoid accidental leakage of aid in the future when the recipient itself deals with the asset or funding. For instance, care needs to be taken by the recipient to avoid giving a third party a competitive advantage by letting a community asset at below market rate, and a legally compliant procurement process must be followed by the recipient when engaging any third party to carry out delegated services. There are clauses in the model legal documentation between Wiltshire Council and the recipient to deal with this.

Workforce Implications

38. There are no direct workforce implications arising from the report, additional resources required will be assessed by the relevant service.

Options Considered

39. The Cabinet have three options available, either cease the process entirely, to approve the revised policy or to retain the existing policy.

Conclusions

40. To re-establish the activity of service devolution and assets transfer the Cabinet is recommended to:
- a. Approve the revised Service Devolution and Asset Transfer Policy.
 - b. Drawdown of up to £200K from the transformation earmarked reserve to enable sufficient resource to deliver on requests.

Andy Brown (Corporate Director Resources & Deputy Chief Executive)

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Appendices

Appendix 1 – revised Service Devolution and Asset Transfer Policy

Background Papers

None

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Service Devolution and Asset Transfer Policy

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

Contents

1. Introduction
2. Background
3. Service Devolution and Asset Transfer
 - 3.3 Service Delegation
 - 3.4 Freehold Asset Transfer
4. Appendices

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 2022 – 2032 sets out to make the best use of council owned assets for the benefit of communities, including transferring those assets to communities where appropriate.

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 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 sets out Wiltshire Council's approach to service and asset transfers to Town and Parish councils. It also recognises 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 prospective Town and Parish Councils 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 Parish/Town by Parish/Town basis:

3.1.1. Defined minimum of all 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
- Cemeteries
- Maintenance of closed churchyards

3.1.2. Defined minimum of all assets to be transferred:

- Play areas
- Monuments
- Parks and Open Spaces
- Cemeteries
- 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 transfers 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 there is only a small area of council owned land, which means the cost of the legal land transfer is prohibitive (negated where 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 4 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 through this policy 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 Requests over and above the defined minimum assets and services and not included in appendix 2 can be considered during the negotiation of an agreement.

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.

4. Appendices

1. Relevant Legislation
2. Exempt Assets
3. Soft Maintenance Services for devolution
4. Hard Maintenance Services for devolution

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 disposal 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 – Exempt Assets

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 exempt for transfer or devolution through this policy 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
Assets held to deliver Leisure and Library services to residents and local communities

APPENDIX 3

Soft Maintenance Services		
Task	Comment	Conditions
Litter Picking	<ul style="list-style-type: none"> • Litter examples include: • Dead animals (road kill) • Dog/ animal faeces • Cigarette waste & cigarette packets • Beverage and drinks containers • Food containers or utensils • Publications, magazines and newspapers • Shopping and other bags • Illegal deposits of bagged commercial and household waste which shall be cleared as fly tipping, see further below • Removal of pigeon droppings from pathways and footways • Removal of fallen branches, wood, metal and plastic objects • Removal of leaf and blossom falls to an approved programme • Other similar waste types up to 1 cubic meter 	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. WC's prior written permission must be given in respect of repairing and replacing Highway furniture.
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. WC's consent to maintain the verges of the Highway is hereby given.

Grass Maintenance	<ul style="list-style-type: none"> • Sheltered Housing Schemes • High amenity areas • General grass areas • Low Amenity areas 	Must be carried out on the Amenity Land and the verges of the Highway. WC's consent to maintain the verges of the Highway is hereby given.
	<ul style="list-style-type: none"> • Highway verge areas • Rough grass areas • Flail grass areas • Wild flower/conservation areas 	
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	General up keep and maintenance including: <ul style="list-style-type: none"> • Boundary fencing • Gates and Hedges • Tracks • Car parks • Grass areas and • Footpaths 	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 contract 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

Hard Area Maintenance Services	
Type of Land	
<p>The public open space where the hard asset is managed is:</p>	<ul style="list-style-type: none"> <input type="checkbox"/> public gardens; <input type="checkbox"/> land used for the purposes of public recreation; <input type="checkbox"/> parks; <input type="checkbox"/> natural and semi-natural urban greenspaces <input type="checkbox"/> derelict open land; <input type="checkbox"/> sports pitches; <input type="checkbox"/> outdoor sports areas; <input type="checkbox"/> play provision; <input type="checkbox"/> amenity greenspace; <input type="checkbox"/> play areas; <input type="checkbox"/> skateboard parks; <input type="checkbox"/> outdoor basketball hoops; <input type="checkbox"/> and other more informal area (e.g. 'hanging out' areas, teenage shelters); <input type="checkbox"/> accessible countryside in urban fringe areas; <input type="checkbox"/> cemeteries; <input type="checkbox"/> closed churchyards.

For the avoidance of doubt, hard asset management would not be delegated for:	<input type="checkbox"/> Play & Display Car Parks
	<ul style="list-style-type: none"> • Highway assets (without prior agreement – see below) • Campus or Hub areas • Housing Revenue Areas
<p>The concept of the delegation would be for hard asset maintenance to be as an asset transfer.</p> <p>As such anything on the asset and anything beneath (but not adopted assets) would become the responsibility of the local council.</p> <p>Hard assets would include: fences; walls; paths; lighting; seats; fixed equipment etc.</p>	