

Wiltshire Council

Cabinet

15 January 2019

Subject: Service Devolution & Asset Transfer Package - Devizes

Cabinet Member: Councillor Richard Clewer – Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism

Key Decision: Key

Executive Summary

Following the approval of the Service Devolution and Asset Transfer Policy in November 2017 Members and officers of Devizes Town Council and Wiltshire Council have worked to finalise the detailed package of services and associated assets to transfer from Wiltshire Council to Devizes Town Council.

The final package of services and assets to transfer to Devizes Town Council consists of the following:

Services:

- All grounds maintenance services with the Devizes Town Boundary
- All Streetscene services within the Devizes Town Boundary
- Responsibility of amenity land hard areas and assets.
- Responsibility for streetscene assets on the highway
- All tree maintenance for those trees not on the Public Highway
- Management of the weekly market
- Management of the Shambles indoor market
- Management of the woodland parks/nature reserves
- Management of the maintenance on all closed church yards within the town boundary

The responsibility to carry out services and maintenance on all land assets will be discharged by way of an Agency Agreement.

Assets:

- The Shambles Market
- Drews Pond Wood
- Broadleas Woodland
- Devizes Heritage Park, including Byron Road and Newman Road play areas
- Devizes Superloo

- Play areas and surrounding open space land where appropriate:
 - Alan Cobham Road
 - Belvedere Terrace
 - Quakers Walk
 - Brickley Lane
 - Drews Pond Lane
 - Cowslip Close
 - Festival Close
 - Massey Road 1,2,3
 - Palmer Road
 - Quakers Road
 - Spitalcroft Open Space
 - White Horse Way

Section 106

- All S106 monies held or due to Wiltshire Council relating to assets within the Devizes Town boundary will be transferred.

These services and assets meet the criteria set out in the policy and are to be included in this package.

Other

In addition to the above, the following policy exempt assets will also be included in the transfer package on the understanding that the agreed conditions are met:

- The Market Place – This asset will be transferred freehold providing that the agreed conditions are met by the Town Council

Proposal(s)

It is recommended that Cabinet:

- 1) Consider and approve the final list of services and assets listed that will be transferred to Devizes Town Council. The inclusion of any open space land is subject to consideration of any objections received following the advertising of the disposal in accordance with statutory obligations.
- 2) Agree to the transfer of the Market Place Carpark with all associated conditions being met by the Town Council
- 3) Note the net revenue impact to the Council and acknowledge that the Service Devolution programme benefits of cost savings and avoidance will be realised on a cumulative basis as the programme progresses and as more Towns/Parishes complete the process.
- 4) Delegate the implementation of the transfer of assets and the service delegation to Alan Richell, the Growth & Investment Programme Director in consultation with Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism, Cllr Richard Clewer.

Reason for Proposal(s)

To complete the transfer of the package of assets and services to Devizes Town Council.

Alistair Cunningham
Corporate Director

Wiltshire Council

Cabinet

15 January 2019

Subject: Service Devolution & Asset Transfer Package - Devizes

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Purpose of Report

To recommend a final package of services and assets to transfer to Devizes Town Council and to provide detailed information in relation to the financial impact this will have on Wiltshire Council.

Relevance to the Council's Business Plan

The council has a Business Plan objective to transfer packages of assets and services, where applicable, to parish and town councils.

Background

Following several decisions made by Wiltshire Council's cabinet (please see appendix 1 for copies of each cabinet report) since 2015 it has been agreed that Wiltshire Council would work with each Town Council to produce a package of services and their associated assets to be devolved to them.

The Following the completion of the Salisbury City package transfer in April 2017 the Service Devolution and Asset Transfer policy was agreed by Cabinet in November 2017 (appendix 2); it sets out clear guidelines for the packages and provides a more streamlined process including the use of standardised service delegation agreements, lease agreements and freehold asset transfer documentation.

In a change to the original premise, assets associated with the transfer of a service will themselves be considered for freehold transfer, in most other cases the asset would become the responsibility of the Town Council via a service delegation agreement. The new policy also lays out criteria for those assets which would not be included in the first instance, e.g: anything considered strategic for the Council, anything with a revenue income (except for Markets) and anything which the Council holds a statutory responsibility to deliver.

From the service perspective, the policy states that the entirety of the service must be devolved to enable the best outcome for the transfer as piecemeal delegations are difficult to manage and risk disparate levels of delivery across the area.

Main Considerations for the Council

The proposal is for the transfer of the following:

- Services
 - All grounds maintenance services with the Devizes Town Boundary (this includes the recently acquired parish of Roundway) as detailed in appendix 3
 - All Streetscene services within the Devizes Town Boundary
 - Responsibility of amenity land hard areas and assets.
 - Responsibility for streetscene assets on the highway
 - All tree maintenance for those trees not on the Public Highway – e.g. trees located on open space land around play areas.
 - Management of the weekly market
 - Management of the Shambles indoor market
 - Management and maintenance of the woodland parks/nature reserves – Drews Pond Wood and Broadleas Woodland
 - Management of the maintenance on all closed church yards within the town boundary

The responsibility to carry out services and maintenance on all land assets will be discharged by way of an Agency Agreement.

The transfer of the Grounds Maintenance and Street Scene services is on the basis of a financial contribution to the existing IdVerde contract until June 2020 or the contract expires. All future amenity and cleaning services within the town boundary will be the responsibility of Devizes Town Council to manage.

- Assets:
 - The Shambles Market (freehold)
 - Drews Pond Wood (freehold)
 - Broadleas Woodland (freehold)
 - Devizes Heritage Park (freehold) – several open spaces detailed in Appendix 4, including Byron Road and Newman Road play areas
 - Devizes Superloo – extend to 125 yr lease
 - Play areas and surrounding open space land where appropriate:
 - Alan Cobham Road (whole freehold title, includes Osmund Road play area)
 - Belvedere Terrace (whole freehold title)
 - Quakers Walk (Part of freehold title only referring to play area Keepers Road)
 - Brickley Lane (whole freehold title)
 - Drews Pond Lane (whole freehold title)
 - Cowslip Close (whole freehold title)
 - Festival Close (freehold of play area only)
 - Massey Road 1,2,3 (freehold of play areas only)

- Palmer Road 1 (freehold of play area only)
- Quakers Road 1 (freehold of play area only)
- Spitalcroft Open Space (whole freehold title)
- White Horse Way (freehold of play area only)

The above list has been compiled on the assumption that there are no complex legal constraints on the assets which would prevent a freehold transfer being undertaken. In such circumstances the Town Council will be given the most appropriate form of responsibility. i.e. lease or licence.

- Section 106

Asset	S106 Value
Brickley Lane	40,900.00
Victoria Road	27,900.00
Spitalcroft	107,800.00
Quakers Walk	296,400.00

- Policy Exceptions

In addition to the above, the following policy exempt assets will also be included in the transfer package on the understanding that the agreed conditions are met:

- The Market Place – This asset will be transferred freehold providing that the current parking arrangements are de-commissioned and the space converted for community use. Non-chargeable parking (blue badge holders/ taxis / coach drop-off) can be included on an ancillary basis; subject to negotiation between the parties. The time scale for these works will be negotiated with the Town Council, but all standard public parking will cease from the 1st April 2019

Transfer of Funding

There will be no transfer of Wiltshire Council funding as part of this package.

There will however be a financial contribution of £170,000 per annum (pro rata from April 2020) from Devizes Town Council to Wiltshire Council in lieu of a novated contract with IdVerde. This arrangement will continue until June 2020, or the current contract expires.

Resources

Significant resource from Legal, Finance, Programme Office and Strategic Asset and Facilities Management (SA&FM) will be required to complete the transfer to Devizes Town Council, due to necessary due diligence to ensure transfer of service and assets can proceed.

Overview & Scrutiny Engagement

In November 2017 Overview and Scrutiny Management Select Committee (OSMC) undertook a scrutiny review of the revised Asset and Service Devolution and Community Asset Transfer Policy, prior to its adoption by Cabinet.

Safeguarding Implications

None

Public Health Implications

This proposal will have a number of positive public health implications as it allows the Town Council to manage and enhance the local community services at a local level. A good example would be the redevelopment of the currently closed play areas in the Town

Procurement Implications

This proposal affects current contracts and will result in a reduced requirement in future contracts. The procurement team will be involved further where appropriate.

Equalities Impact of the Proposal (detailing conclusions identified from Equality Analysis, sections 4 and 5)

The transfer of assets raises no issues in respect of equalities impact.

Environmental and Climate Change Considerations

None

Risk Assessment

Significant resources will be required to complete the work for the transfer.

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

- Reduction in budgets due to efficiencies may result in a reduction of services being offered by the Council and potential closures of amenity spaces.

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

- A removal of the grounds maintenance for the Devizes area may result in a pro-rata increased costs of the overall services, as overheads will not be reduced and spread across the remaining service
- Customers will be uncertain about responsibilities in areas, but experience from Salisbury shows this can be overcome and a positive working relationship will be formed with Devizes Town Council

- Freehold titles may contain restrictions that impact on asset transfer, but these can be overcome by detailed due diligence and dialogue between the parties
- Contribution for ground maintenance is not sufficient to cover the actual costs of the service being delivered....

Financial Implications

Ongoing Revenue

Financial analysis has been conducted to examine the impact for the council. The financial model is based on the following assumptions:

The model assumes the transfer will take effect from 1st April 2019.

Devizes Town Council will pay a revenue contribution of £170,000 per annum from 1st April 2019 (pro-rata from April 2020) until the 31st May 2020 or end the of the current IdVerde contract.

HR, Legal, Finance, SA&FM, Highways staff time costs for processing the transfer are excluded from the table below.

The table below shows the revenue impact.

	Income	Expenditure	Net
Market Place		15,400	15,400
Outdoor Market	-70,200		-70,200
The Shambles	-81,500		-81,500
The Shambles		14,400	14,400
Closed Churchyards		1,700	1,700
Idverde Contract	-31,400	170,000	138,600
Total	-183,100	201,500	18,400

Overall there would be a Net Revenue **budget saving of £18,400.**

In January 2018, the Cabinet approved a proposal (Appendix 5) to begin charging within all Wiltshire Council owned and operated car parks including those previously offering free short stay parking of which the Market Place car park was one. The projected revenue increase per annum for Devizes was approximately £95,000. As a result of the transfer and decommissioning of the free parking on the Market Place this will now be achieved through displacement into other chargeable car parks. This has not been included in the above package as it is already budgeted for as an increased income stream into the car parking revenue account.

Capital

The assets listed represent a potential capital receipt of approximately £454,000 that cannot be realised by Wiltshire Council if the transfer is approved.

Section 106 monies

Around £7,000 of Off Site Contribution capital section 106 monies would transfer to Devizes Town Council.

Around £473,000 of commuted sum/maintenance money would also transfer to Devizes Town Council.

Legal Implications

Section 123 of the Local Government Act 1972 gives Wiltshire Council the ability to transfer land at less than market value where that transfer helps secure the promotion of the economic, social, or environmental wellbeing of the area.

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 that the authority considers will help it to secure the promotion or improvement of the economic, social or environmental wellbeing of its area.

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. 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.

Whilst the majority of the sites will have a de-minimus value, there are some sites that may attract a value. Social value has not been determined as part of the package, but the overall view is that these services should be delivered at a local level and for enhancement, therefore generating social value.

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**

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 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 transfer programme for Devizes Town Council.

- **State Aid**

European State aid law is intended to avoid any state aided subsidies which could distort competition and affect trade between members states. State aid 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. State aid can only be found in the situation where 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 State aid implications for the transfer package.

If State aid has been granted without European Commission approval (either through a separate notification or by following the terms of the relevant exemption) this would be illegal State aid. The European Commission has the ability to make such orders as 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.

Even where there is no illegal State aid 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 an EU 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.

- **Transfer of employees**

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.

It will be necessary to consider the application or otherwise of TUPE having regard to the circumstances of the case and whether for example redundancy costs may be payable in the event that TUPE doesn't apply. These costs will need to be identified and form part of the financial analysis of the proposed service devolution.

Section 101 of the Local Government Act 1972 and supporting legislation (the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2012) allows the Council to decide to delegate certain functions relating to services to town and parish councils, including Devizes Town Council.

There are two levels of service delegation proposed under this report depending on the function involved:

Delegation of service delivery. This type of delegation applies for the Grounds Maintenance and Streetscene service and may be discharged by way of an Agency Arrangement. The function is a statutory function which remains the responsibility of Wiltshire Council, however the delivery of the service may be transferred to Devizes Town Council who will become responsible for the delivery contracted out services. This arrangement must be

by way of a written agreement which clearly defines the services being transferred and any conditions to which the transfer is subject.

Delegation of service responsibility. The service (and any land, buildings or assets that are required to run the service locally) will transfer to Devizes Town Council. This type of delegation can only apply where Wiltshire Council has a high degree of discretion about the provision of the service. Here, it will apply to maintenance of public conveniences, the Markets service and Woodland Park/Countryside services. Wiltshire Council will cease to be responsible and accountable for the delivery of these services.

It is confirmed that Wiltshire Council has the power to delegate the proposed services by s.101 of the Local Government Act 1972. There is the power for Devizes Town Council to deliver the service however it is for Devizes Town Council to determine its own ability to deliver the service and this was considered at a formal meeting of the Town Council before deciding to accept the service delegation

Officers will instruct Legal Services to draft the required Agency Agreement, so that terms relating to all functions to be delegated can be negotiated with Devizes Town Council.

In respect of the Section 106 monies a process will need to be defined to ensure that there is a clear understanding of what it can be used for and the date by which it must be spent with the parties entering into legal documentation to set out the arrangements.

Proposal 'd' below in this report; Delegate the implementation of the transfer of assets and the service delegation to Alan Richell, the Growth & Investment Programme Director in consultation with Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism, Cllr Richard Clewer, refers to Paragraph 2.2 of the Constitution which sets out the issues that must be properly considered and completed when exercising delegated powers, including:

- The views of the relevant Cabinet Member, Committee Chairman and Area Boards following the application of the consultation criteria set out in the Constitution;
- The implication of any Council policy initiative, strategy or procedure. Officers need to be aware of any potential impact of a delegated decision on other services. In such cases, consultation with officers, relevant Cabinet Members(s) or Committee Chairman from any affected portfolio and local members, where the issue relates to a specific area, should take place;
- The range of available options;
- The staffing, financial and legal implications;
- The assessment of any associated risks in accordance with the Council's risk management strategy

The above list is not exhaustive. Please refer to Part 3 Section D Scheme of Delegation to Officers of the Constitution for a complete list of the issues that must be taken into consideration.

Options Considered

None

Conclusions

The council can move towards achieving its Business Plan object to transfer packages of assets and services to parish and town councils with this transfer.

Proposal

It is recommended that Cabinet:

- a. Consider and approve the final list of assets and services listed that will be transferred to Devizes Town Council
- b. Approve the transfer of the Market Place Carpark required pedestrianisation and other associated conditions being met by the Town Council
- c. Note the net revenue impact to the Council and acknowledge that the Service Devolution programme benefits of cost savings and avoidance will be realised on a cumulative basis as the programme progresses and as more Towns/Parishes complete the process.
- d. Delegate the implementation of the transfer of assets and the service delegation to Alan Richell, the Growth & Investment Programme Director in consultation with Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism, Cllr Richard Clewer.

Alistair Cunningham
Corporate Director

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3rd December 2018

Background Papers

The following documents have been relied on in the preparation of this report: None

Appendices

Appendix 1 – Cabinet Papers

Appendix 2 – Service Devolution Policy

Appendix 3 – Grounds maintenance & Streetscene specifications

Appendix 4 – Plans of play areas and open spaces for transfer

Appendix 5 – Cabinet papers - Jan 2018 - Amendments to the Wiltshire Local Transport Plan (LTP) 2011-2026 - Car Parking Strategy

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Appendix 1

See attached paper

Appendix 2

See attached paper

Appendix 3 - Grounds maintenance & Streetscene specifications

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

Task	Comment	Conditions
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

Task	Comment	Conditions
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

Hard Area Maintenance Services

Type of Land	
The public open space where the hard asset is managed is:	<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 • 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>	

Appendix 4

See attached paper

Appendix 5

See Cabinet agenda pack for the meeting held on 30th January 2018 [here](#).