

Service Devolution and Asset Transfer Policy

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

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1. Introduction

- 1.1. Wiltshire is a thriving county with a rich and diverse heritage. We are home to half a million people with around half of the population living in towns and villages with fewer than 10,000 residents. This policy recognises that Wiltshire Council cannot achieve everything in isolation; we need to work ever more closely with our partners and stakeholders.
- 1.2. Our strong and cohesive communities continue to be some of our proudest achievements. The way we look out for each other and handle the challenges we have faced together is what makes our beautiful county the best place to live, work and raise a family.
- 1.3. At the centre of Our Wiltshire Plan 2025-2035 is the empowerment of local communities and this policy is intended to be a method of delivering this.
- 1.4. It enhances the role of Town and Parish councils; enables the use of buildings to be modified to embrace local needs; the ability to seek 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.
- 1.5. This Policy creates the framework for service devolution and asset transfers to Town and Parish councils.
- 1.6. 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 long leasehold) to Town and Parish councils where it is more appropriate for those assets and services to be delivered by third-tier Local Government.
- 2.2. The devolution of services will seek to take a pragmatic approach to provide the local community with the ability to influence the level of service it feels is appropriate and to meet their individual needs.
- 2.3. This policy sets out Wiltshire Council's approach to service devolution and asset transfers to Town and Parish councils, reflecting significant legislative requirements, summarised 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 years) 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 providing services under legislation, for example highway land or closed burial grounds.

2.5. The disposal of assets by Wiltshire Council can be by either:

2.5.1. Market sales – where “best consideration” is obtained, widely interpreted as the best price/market value (as required under s123 of Local Government Act); or

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. Justification for such a disposal is needed via other socio-economic wellbeing purposes.

3. Service Devolution and Asset Transfers

3.1. The Service Devolution and Asset Transfer 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 case by case basis:

3.1.1. Services to be devolved include:

- All Streetscene services within the boundary of the Town/Parish boundary.
- OR**
- An individual service or combination of services from the list below defined either by the Town/Parish boundary or a defined area:
 - Amenity Maintenance – Grounds, trees and vegetation on identified land to include weeds
 - Cleansing – Councils compliance to Code of Practice for Litter and Refuse (CoPLaR) including weeds and dead animal removal Play areas
 - Monuments
 - Parks and Open Spaces
 - Public Conveniences

3.1.2. Assets to be transferred will be the choice of the respective Town or Parish council but be largely based on non-statutory provisions of Wiltshire Council:

- Play areas
- Monuments
- Parks and Open Spaces
- Cemeteries
- Community facilities
- Leisure centres
- 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 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 Wiltshire Council only has dedicated or statutory responsibility (see 2.4.2 & 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

an asset but are willing to transfer 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 assets, subject to certain exceptions. In some cases, a freehold transfer of the assets 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/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 an appropriate break clause. (A lease of this length is exempt from s123 “best consideration” tests.)

3.3. Wiltshire Council own a large number of small non-strategic open space land parcels. These are most efficiently and effectively managed via a service delegation agreement only, as it is financially inefficient for both parties to arrange a freehold or long leasehold transfer. Should the Town/Parish council wish to have these legally transferred it will be the responsibility of that Town/Parish council to undertake all the required due diligence and fund all legal costs.

3.4. Service Delegation

3.4.1. Wiltshire Council recognises certain services can sometimes be more appropriately delivered by the local community in which they are required, and that service delegation of these services can be the most appropriate way to ensure this. Appendix 3 and 4 detail the services that can be delegated at a local level. These amenity services are cross cutting with Wiltshire Council, and the service delegation should ensure that the responsibility for delivery of services is transferred to the local Town/Parish.

3.4.2. The decision to delegate services to the Town/Parish council may form part of a package including freehold or leasehold transfers referred to in section 3.5 **or** the service delegation may be taken as a single package approach where either there may be reasons for Wiltshire Council to retain the freehold ownership or the town/parish council does not wish to take on the freeholds.

3.4.3. The delivery of services fall within two categories:

- (1) **Statutory services** – the transfer of service delivery is available but not full statutory responsibility. 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/Parish council under clear contractual arrangements. The Town/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 Wiltshire Council’s underlying statutory responsibility, Wiltshire Council must be able to terminate the service delegation agreement at any time.

(2) **Discretionary services** – the transfer of full responsibility, including responsibility for delivery, for services can happen. 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 Wiltshire Council would consider taking on responsibility or accountability for the service should a Town/Parish council wish to stop these services. A clear, written delegation must be made by Wiltshire Council and accepted by the Town/Parish council.

3.4.4. In some circumstances Wiltshire Council will only delegate services to Town/Parish councils rather than transfer assets. Examples of where a service delegation will only be appropriate include:

- (1) Wiltshire Council has a statutory obligation, such as highway or a housing authority to provide; or
- (2) Land maintained for the benefit of the community by Wiltshire Council but not owned by Wiltshire Council; or
- (3) Land where commuted sums for the maintenance have been paid to Wiltshire Council; or
- (4) 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/Parish council are prepared to fund the transfer).

3.4.5. However, in the above cases a service delegation on those areas will allow the local Town/Parish to set the standard and deliver the Amenity Maintenance Services within a defined boundary.

3.4.6. Following the date of transfer Wiltshire Council will not be responsible for delivery of any of the services agreed in Appendix 3 and any Services in Appendix 4 within the defined boundary. The Town/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 on enhancement to the legal minimum standard of provision of services will be delegated to the relevant Town/Parish council. The Town/Parish council would take responsibility for all consequences: financial, contractual, safety or otherwise for the services delivered and the management of the amenity assets and their services provided on the highway.

3.4.7. 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.

3.5. Asset Transfers

3.5.1. The preference for asset transfers is that all assets within the locally defined Town/Parish boundary are transferred at the same time, although the transfer either single or groups of assets will be considered.

3.5.2. Where not all assets are transferred to a particular town/parish, Wiltshire Council will not be obliged to facilitate any further transfers within a six year period.

3.5.3. The approach taken may differ depending on whether Town/Parish councils that

have already been through the Service Devolution and Asset Transfer Policy, including earlier versions:

- With a Service Devolution agreement – the opportunity to approach Wiltshire Council for the further transfer of assets; either single or a group.
- Without a Service Devolution agreement – the opportunity to approach Wiltshire Council for the further transfer of assets; either single, a group or all service-based.

3.5.4. In all cases the approach set out in paragraph 3.5.1 will apply.

3.5.5. It should be noted that asset transfers for Parish councils are governed by the Cabinet resolution of 27 November 2018, which will carry forward and remain relevant under this policy. This resolution allows for up to 10 assets to be transferred provided they are of nominal value. The time constraints specified in 3.5.1 regarding possible further transfers will apply.

3.5.6. The freehold transfer will be drafted on the following basis:

- (1) 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.
- (2) If the transfer needs to contain the reverter, Wiltshire Council will not be under any obligation to accept an asset back. However, Wiltshire Council will need to assess at the time if there are strategic reasons that Wiltshire Council should take the asset back.
- (3) If Wiltshire Council decides to take an asset back it will be under no obligation to continue community use of the asset. If Wiltshire Council disposes of the asset at a future date there will be no requirement to provide any of the capital receipt to the Town/Parish council.
- (4) The transfer will include a provision for Town/Parish councils to pay 50% of the capital receipt to Wiltshire Council should they dispose of those assets for non-community uses to a third party.
- (5) In the case of community buildings and land, the permitted community use is defined in the standard lease or freehold transfer.

3.5.7. In some instances, transfer of the freehold would not be appropriate due to adjoining or neighbouring assets. In these instances, 125 year leases will be granted with a break clause for Wiltshire Council to regain the asset should either disposal or redevelopment of the wider area is being considered.

4. Financial considerations

4.1. Income producing assets as listed in Appendix 2 remain excluded from any service devolution and asset transfer packages.

4.2. Any service devolution and/or asset transfer must be in the best financial interest of Wiltshire Council and generate a saving in costs to Wiltshire Council.

4.3. Transferring services and assets to town/parish councils placed a financial burden on

them, and to support this transition an element of financial support could be considered in the SDAT package.

4.4. A reducing financial contribution will be provided in the following circumstances:

- All services within the entire town/parish boundary are being devolved, either with or without assets.
- Where all assets within the entire town/parish boundary are being transferred.
- Where single or groups of assets are being transferred, where a service devolution agreement exists.

4.5. The financial contribution will be based on the revenue savings generated by Wiltshire Council, being 15% in Year 1, 10% in Year 2 and 5% in Year 3. This contribution will not take into account any future / potential cost liability.

4.6. Wiltshire Council will not undertake major or capital works to any assets being considered for transfer; due to potential design and defect liability complications.

5. Governance

5.1. Following agreement with the Town/Parish council, the service devolution and asset transfer package will be presented to Wiltshire Council's Cabinet for a resolution.

5.2. Single or group asset transfers to Town councils will be presented to Wiltshire Council's Cabinet for a resolution.

5.3. Once Cabinet has made a resolution, officers will be delegated to complete the necessary documentation, including any minor amendments to the terms within.

6. 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 dispose at less than best consideration provided the value forgone is less than £2m (in capital terms) and the transaction benefits the economic, social or environmental well-being of the area. If the value forgone is greater than £2m approval from the Secretary of State is required.

Local Government Finance Act [1988]

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

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

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

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

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

Appendix 2 – 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 net 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, or of strategic importance - 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

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	<p>General up keep and maintenance including:</p> <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	
The public open space where the hard asset is managed is:	<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:

- Play & Display Car Parks
- Highway assets (without prior agreement – see below)
- Campus or Hub areas
- Housing Revenue Areas

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

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

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