

Decision Report - Executive Decision

Forward Plan Reference: FP/23/11/09

Decision Date – 15/1/2024

Key Decision – Yes



Framework for Asset and/or Service Devolution

Executive Member(s): Cllr Theo Butt Philip - Lead Member for Transformation and Human Resources

Local Member(s) and Division: Applicable to all members/divisions

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Summary / Background

1. Somerset Council has committed to supporting communities to have greater influence over the assets and services that are most important locally, through devolution. To support that aim, an Asset and Service Devolution Framework has been drafted to guide discussion both externally and internally, set out principles and support effective governance and opportunity and risk management.
2. Work to develop the framework began pre-Vesting Day and has continued in Somerset Council through a cross service working group. The Framework outlines the principles that we will work to, to support and achieve devolution where appropriate to do so.
3. The Council has had ongoing engagement with the City, Town and Parish Council sector about devolution and this has informed the proposed approach.
4. The purpose of this report is to ask Executive to consider the approach within the Framework and agree to adopt it.
5. It should be noted that the current financial emergency faced by the Council is impacting the context for and pace of devolution discussions with our partners, particularly City, Town and Parish Councils. This means that some devolution activities will need to move at a faster pace than was previously envisaged,

however it is just as important to ensure that the principles of good governance and effective risk management continue to be observed.

6. The Draft Devolution Framework supports the principles outlined in the Council Plan
 - A responsible council that acts with integrity
 - A listening, empowering council
 - A council with evidence-based and open decision making
 - A collaborative council

Recommendations

7. That the Executive:
 - a. Considers the overall approach to devolution set out in this report which reflects the draft Asset and Service Devolution Framework.
 - b. Agrees to adopt the draft Asset and Service Devolution Framework.

Reasons for recommendations

8. To support the appropriate management and governance of asset and service devolution activity. Acknowledging the financial emergency and imperative to work swiftly with our community leaders in the short term to resolve immediate issues.

Other options considered

9. Careful consideration was given to whether the draft Framework was still relevant and likely to fit for purpose in the current context. This was one of the reasons why discussion at Corporate and Resources Committee was considered essential.
10. Noting the significant work that has gone into the development of the Framework, with input from subject matter experts from a range of services and stakeholders, along with the need to ensure that devolution activity is well managed, the preferred option is to proceed to seek its formal adoption.

Links to Council Plan and Medium-Term Financial Plan

11. Whilst devolution is not specifically noted in the Council Plan it is a factor in the delivery of sustainable services and to be an enterprising and forward-thinking council.

Financial and Risk Implications

12. In undertaking a review of the effects of the Financial Emergency and MTFP, consideration should be given to those projects brought forward that can transfer assets and/or services to be managed via other organisations to benefit the community. In particular, the financial sustainability of the proposals and any positive effects on the Council's financial position will need to be prioritised.
13. When considering any devolution of assets and/or services, early conversations with organisations such as City, Town and Parish Councils have been carried out for precept arrangements to be considered and implemented to ensure the financial sustainability of any proposals in the short term, whilst also keeping long term aspirations under review.
14. Key risks
Failure to have in place a devolution framework, with associated principles and robust processes could result in uncoordinated ad-hoc devolution activity across the Council that is not aligned with strategic priorities and corporate outcomes. There would also be risks to effective governance and to the sustainability of devolved activities.

The risks summarised below, whilst arguably less to do with the Framework itself and more reflecting risks in relation to acceleration of devolution discussions in the context of the financial emergency, are considered worth including here. They also reflect stakeholder feedback and concerns.

Risk	Mitigation	Score	Mitigated Score
Failure to provide adequate resource in proposed service areas could delay or miss any opportunity	Resource allocation overseen by service directors	16	

for devolution impacting the financial emergency budget gap.			12
The inability to articulate costs of services by service area and geographic area could result in local councils not willing to take on assets / services.	Considerable work is being undertaken in services to explain/disaggregate costs where it is possible to do so.	20	12
Lack of clarity of which services and for which areas are on offer will lead to frustrated ambitions of partners in Councils and missed opportunity	Frequent correspondence and meetings with the sector undertaken. More clarity will be provided in January 2024 as part of budgetary decision making.	9	6
Legal and Regulatory Challenges: Ensuring compliance with all relevant laws and regulations will be a complex task, potentially leading to legal challenges if not handled correctly.	Ongoing consultation and dialogue with the sector and subject matter experts.	12	6
Reputation and Accountability: Somerset Council remains accountable to some extent for the delivery of services, and any issues with devolved services can impact reputation and public accountability.	Ongoing consultation and dialogue with the sector.	12	6
Administrative Burden: The devolution process may intensify administrative responsibilities and complexities for Somerset Council. Mechanisms required to manage contracts, asset transfers, and oversight efficiently.	Oversight of process by appropriate board.	16	6

Legal Implications

15. There are no immediate legal implications associated with a decision to adopt the Framework. However, as services or assets are agreed to devolved, appropriate legal advice will need to be sought. Whilst this was proposed to be done on a case by case basis, reflecting the differing needs of each transaction, consideration needs to be given to the cumulative impact on legal capacity if, as part of the financial strategy, devolution activity is accelerated. The city, parish and town council sector has discussed appointing a single set of solicitors to represent them to ensure an effective and holistic approach.

HR Implications

16. There are no direct HR implications to this decision. Consideration of HR implications, such as TUPE, of individual decisions reached through the devolution process are being and will be worked through at the appropriate time.

Other Implications:

Equalities Implications

17. Whilst a full Equalities Impact Assessment (EIA) is not considered to be a requirement for this report, all asset and service devolution agreements need to take account of the Council's equalities duties and the impact on protected groups of any changes in responsibility. The organisation taking on greater responsibility for an asset or service may not be subject to the same duties as the Council and, in the case of full devolution of an asset or service, the Council would no longer be able to directly manage any equalities implications. An EIA will therefore be required to inform all decisions to devolve any asset and / or service. A high-level EIA will also be prepared to support the emerging programme of devolution.

Considerations for any devolution project include:

- Does it impact accessibility to the asset or service
- For assets, who would have responsibility for reasonable adjustments / accessibility of the space
- If it is a service, how can the Council work with the organisation it is being devolved to support understanding of equalities considerations.

These considerations have been added to the principles in the draft Asset and Service Devolution Framework.

Community Safety Implications

18. There are no direct community safety implications as a result of adopting the Framework, however they will need be considered as part of any devolution project.

Climate Change and Sustainability Implications

19. Somerset Council have declared both a Climate and Ecological Emergency. Through that, the Council has committed to working towards making the whole county, including our own estate and operations, 'Carbon Neutral' by 2030 and to take positive action to reverse the damage on our natural habitats by man-made activity. We have also pledged to ensure that Somerset is resilient to, and prepared for, the effects of Climate Change.

There are no climate change and sustainability implications directly arising from the adoption of the Framework.

Health and Safety Implications

20. There are no direct health and safety implications from the adoption of the Framework. Changes to Health and Safety responsibilities will need be considered as part of any devolution project.

Health and Wellbeing Implications

21. There are no direct health and wellbeing implications from the adoption of the Framework, however local management of assets and services can impact community wellbeing.

Social Value

22. Whilst the adoption of the Devolution Framework does not directly deliver social value benefits, it is expected that social value benefits will accrue from the devolution of services and assets as an outcome in due course. This will depend on the extent and type of services and assets being devolved, and the organisation taking them on, but could include:

- Developing employment, skills and training opportunities, particularly for hard-to-reach/disabled/target groups
- Improving health and wellbeing, maintaining independence and reducing inequalities of local residents and employees
- Helping build community capacity and playing an active role in the local community, especially in those areas and communities with the greatest need
- Creating opportunities for micro-providers, the voluntary sector, small and medium enterprises to be part of supply chains which support Somerset Council priorities and service delivery

Scrutiny comments / recommendations:

23. Corporate and Resources Scrutiny Committee considered the draft Devolution Framework on 5 December 2023. Much of the discussion related to the practical application of the Council's approach to asset and service devolution in the current context. Particular issues were raised in relation to the timing of decisions by the Council about which services and assets it may no longer be able to provide directly, and the information City, Town and Parish Councils required in order to plan their budgets and precepts. Other concerns raised including the ability of smaller parishes to respond and what that might mean for equality of service provision across Somerset.
24. It was noted that there were ongoing and iterative discussions about this with the local council sector.
25. Whilst there were observations and recommendations about the Council's approach to devolution, which have been noted, there were no formal changes proposed to the Framework itself.

Background

26. A Framework for delivering and managing asset and/or service devolution has been developed and accompanies this report as Appendix 1. This Framework forms the backbone of our commitment to responding to the needs and wishes of the community to deliver the best services across our county. Considerable information and substantial resource will be required to enable this, alongside significant conversations, and interaction with our community leaders. This

Framework outlines our overall approach to achieving devolution by cooperating with organisations across the county.

27. The Framework recognises that there are differing approaches to devolution and illustrates that there is a spectrum of influence that communities can potentially have on the asset and services that matter most to them, from influencing to full devolution of assets and/or services. From Somerset Council's perspective, the approach must strike a balance between the immediate needs created by the financial emergency, aspirations of local communities to take on more influence, control, or guardianship of assets and/or delivery of services, with the duty of care it must have in safeguarding the best interests of Somerset residents. This should be a shared concern.
28. The Local Government Reorganisation Programme Board had agreed a phased approach in September 2022. This phased approach set out a structured devolution programme, which included the production of this framework. ,
 - Phase one - Planning and Development: In this phase the focus is on developing the framework, Medium Term Financial Plan (MTFP) review, engaging with organisations and learning from the Bridgwater Town Council pilot.
 - Phase two - Engagement and Review: In this phase the focus was initially on developing further pilots, thematically and/or geographically based, where there is greatest potential for community benefit and to understand any challenges / difficulties from organisations.
 - Phase three - Action: This phase is to provide a wider roll out of assets and/or services to organisations where applicable, through dedicated resource.
29. Whilst this phased approach remains logical, the context has changed significantly since September 2022. Whilst future pilots could still be an option, the reality of the current financial emergency facing Somerset Council means that some devolution projects will need to be accelerated as part of the immediate objective to achieve financial stability and where possible continuity of services that are of value to the public.
30. A wide-ranging pilot has been undertaken in conjunction with Bridgwater Town Council and the former Sedgemoor District Council. The initial Bridgwater pilot proved to be more complex and therefore slower to deliver the original aspirations of either party but has allowed much learning to be gathered on the challenges that an asset and/or service devolution project presents.

31. This has directly influenced the development of the Framework. The pilot continues to be progressed and is informing how other devolution projects will be managed, with particular focus on finding more agile approaches and working in partnership with communities to remove barriers.
32. Even with the current financial challenges and the need to move at pace, it is important to have a strategic approach to devolution, as proposed in the draft Devolution Framework, to provide principles and guidance and ensure sound governance, for devolution activities in both the short and longer term. It is likely however that in the short term some stages of the process will need to be condensed to enable timely solutions and mitigate the impact of Council budget reductions. Risks in relation to this will need to be carefully identified and managed.
33. The main points of the Framework are described below.

The principles for devolution

Devolution must align with strategic priorities of the new Somerset Council

- i. Certain assets may be needed for statutory service delivery and those of strategic or financial significance.
- ii. Somerset Council will need to maintain viable and efficient services and may have contractual constraints.
- iii. Devolution must reflect the financial emergency and align with the immediate strategic needs of the authority and must align with Somerset Council's approach to its Medium-Term Financial Plan.
- iv. Asset / service devolution must reflect the climate emergency and align with the Somerset Climate Emergency Action Plan.

Our approach should be co-produced.

- i. Consultation with customers and communities: using the Local Community Networks as an effective forum: ensuring we work to deliver what communities want/need.

- ii. Engagement with staff impacted by any proposals, may be required, fulfilling our duties as a responsible employer.
- iii. Engagement with communities of interest/stakeholders impacted by any proposals.

Devolution of services and/or assets should be sustainable.

- i. Be resilient/sustainable over time.
- ii. Involve honest conversations from the outset: achieving/delivering more may cost more or be unrealistic.
- iii. Have transparency in monitoring impacts and lessons learnt.

Devolution should have clear benefits to the community.

- i. Service improvement business case: how will it deliver desired benefits to the community and manage risks.
- ii. Does the proposal help deliver the receiving authority's/local community's wider vision for the area.
- iii. Financial and asset management plans: how will it be sustainable.
- iv. Services and buildings should be well governed and compliant with all relevant legislation (e.g., equalities, health, and safety)

34. **The stages for devolution transfer decision making.**

Pre-application stage

This will include provision of information, where appropriate and available, to potential applicants on the specification of services and running costs of assets to help inform the development of proposals.

Expression of interest submission

Checking that the application meets eligibility criteria. Significant exchange of information including costs. Consultation with service/asset areas and division members.

Business case stage

This is likely to consider an asset or service request in relation to its Fixed Asset Record book value, market value and overall costs likely to be incurred. A business case will also be required for all key decisions or whereby the application concerns the devolution of a statutory service. The Council recognises that completing a business plan will take the applicant time and effort and will only request one in situations where that time and effort is commensurate to the value or significance of the asset(s) or service(s).

This is also the stage where in depth conversations across finance, legal, service areas and HR would be finalised.

Negotiation and transfer

The detail of legal agreements for the transfer of an asset and/ or service will take place following approval of a business plan, although Heads of Terms may be required in advance. The applicant may be expected to meet some or all of Somerset Council's legal costs incurred because of any transfer agreement. The decision on the sign-off of all transfers will be made in accordance with decision-making rules as set out in Somerset Council's constitution.

35. *Exceptions to the above process* - the purpose of this framework is to encourage conversations between Somerset Council and receiving organisations. It is on this basis that no exceptions to asset devolution have been specifically identified, however it is likely that in certain circumstances some assets will not be eligible for devolution.

This may include:

- Assets that generate significant income or are held to fulfil strategic priorities.
- Assets held for future capital realisations.
- Assets or land held for future development of a Council or partner scheme.
- Vacant land or buildings that can generate a significant capital receipt.

In such circumstance Somerset Council would aim to provide clarity as early in the process as possible and/or to identify what alternative arrangements or devolution outcomes may be deliverable.

36. Devolution can be delivered across of range of options including influencing, enhanced or joint delivery or full asset or service transfer. There are five possible outcomes for

service and/or asset devolution as set out by the Somerset Association of Local Council Councils and the Society of Local Council Clerks in their paper 'Recommendations on the role of Parish Councils in the event of Local Government Reorganisation in Somerset.'

- Influencing and monitoring
- Joint/enhanced delivery
- Agency agreements, management agreements, licences, and sponsorship
- Delegated authority
- Full transfer of services or assets

37. Whatever the devolution option that is pursued, it is recognised that community organisations bring:

- A close knowledge of the needs of their communities, with ability to tailor activity accordingly.
- An ability to mobilise their communities, coordinating and harnessing individuals and groups to address local priorities.
- In the case of city, town, and parish councils the ability to raise money locally through a precept.

38. The above principles, stages and exceptions are designed to enable managed conversations with organisations in which expectations on both sides are clear from the outset.

39. Proposals for the transfer of assets to 'organisations' will be assessed against the following criteria:

- Transfer will provide social, economic, or environmental well-being benefits to the local community.
- 'Tidying up' – e.g., passing incidental pieces of land and landscaping or parts thereof to the local level.
- It will provide a community facility which the transferee has demonstrable skills, drive, resources to deliver and sustain.
- It will facilitate the continuation of service that Somerset Council is no longer able to provide. It will facilitate access to funding not available to Somerset Council.
- Consider whether there are any relevant covenants or other restrictions on land/assets. –
- Alignment with the Council's Assets Disposal Policy.

40. Proposals for the transfer of services will be considered. In some circumstances Somerset Council may only delegate services rather than devolve assets. Examples of where a service level agreement 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 (by a developer typically)
- 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 'organisation' are prepared to fund the transfer).
- Where responsibility for discretionary services is transferred, Somerset Council will cease to be responsible and accountable for the delivery of these services.

41. *Governance* – the Framework references a decision-making board which would consider asset and service devolution proposals. Rather than look to create a new board, it is proposed that devolution proposals be considered in the first instance by the officer board that will oversee the Partnerships and devolution elements of the Council's emerging Transformation Programme, with referral to Executive or Asset Management Group as appropriate to the decision required. The Framework will be revisited in due course to reflect this approach.

Background Papers

Recommendations on the role of Parish Councils in the event of Local Government Reorganisation in Somerset. Authors – Somerset Association of Local Councils and Society of Local Council Clerks, 2020.

Note For sight of individual background papers please contact the report author.

Appendices:

- Draft Asset and Service Devolution Framework

Report Sign-Off

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	04/01/2024
Communications	Peter Elliott	29/12/2023
Finance & Procurement	Jason Vaughan Nicola Hix	04/01/2024
Workforce	Dawn Bettridge	27/12/2023
Asset Management	Oliver Woodhams	05/01/2024
Executive Director / Senior Manager	Alyn Jones	04/01/2024
Strategy & Performance	Sara Cretney	04/01/2024
Executive Lead Member	Cllr Theo Butt Philip	22/12/2023
Consulted:	Councillor Name	
Local Division Members	N/A	
Opposition Spokesperson	Cllr Faye Purbrick Opposition Spokesperson for Transformation and Human Resources	Sent 22/12/2023
Scrutiny Chair	Cllr Bob Filmer for Scrutiny Corporate & Resources Committee	Sent 22/12/2023