



**Somerset
Council**

Draft Framework for Asset and/or Service Devolution

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Purpose

The purpose of this framework is to set out Somerset Council's approach to the devolution of Assets and/or Services to give greater local control and influence to reflect what is most important to local communities.

The new Somerset Council seeks to be proactive to build ambitious programmes of delegation and devolution. We want to be an organisation that responds to the needs and wishes of its local communities. The Council hopes that this framework will encourage openness, conversation and understanding between themselves and the wider community.

This framework reaffirms the commitment that was first made within the One Somerset Business Case and seeks to provide clarity not only to local City, Town, and Parish Councils but also to Community and Voluntary Groups and local communities (known hereafter for the purpose of this framework as 'organisations') within Somerset on the approach to devolution and the options that may be available. We want this framework to be a vehicle to influence place shaping and to help deliver the priorities and vision for an area.

Somerset Council recognises that the devolution of assets and services to a more local level can create a sense of community ownership and facilitate the delivery of stronger, more resilient, and sustainable services and resources. Community led solutions have the potential to achieve better outcomes than centrally administered initiatives. The ability of these groups to access funding not necessarily available to Somerset Council creates the opportunity to modify or enhance physical assets or to deliver and adapt services in a way that more closely matches or responds to the needs and expectations of local communities.

Devolution can be delivered across of range of options including influencing, enhanced or joint delivery or full asset or service transfer.

Whatever the devolution option that is pursued, '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.

Introduction

This framework seeks to recognise that Somerset Council must strike a balance between the aspirations of local communities to take on the guardianship of assets and/or delivery of services, with the wider services and priorities of the Council to achieve mutual benefits for all parties, including the community at large.

The funding and cross subsidisation of services and assets within an organisation the size of Somerset Council is a complex matter. The income generated by a specific asset or service may subsidise the delivery of other less profitable Council services which themselves may be unrelated either functionally or geographically. Therefore, each expression of interest will have to be carefully considered in this context.

This framework seeks to clearly set out the procedures and identify the information that will need to be provided to enable a fair and transparent assessment of any request to be made. This was a key learning point from the Bridgwater pilot outlined below.

As part of the transition from 5 Councils to the new Somerset Council in 2022/2023 a pilot study for the devolution of assets and services was undertaken with Bridgwater Town Council. This pilot clearly demonstrated the ambition of a Town Council to deliver for its community but also the challenges of seeking to progress the devolution of assets or services in the absence of a clearly defined procedure and framework and limited cost data to help support a sound business case.

Somerset Council recognises that devolution can stimulate the involvement of local people in shaping their environment and communities, it can be a catalyst for social, environmental, and economic regeneration. However, the full transfer of assets or services may not be appropriate in all instances especially where the transfer would not align to the priorities of Somerset Council. Where opportunities do exist, this framework seeks to bring clarity and structure to the process as well as setting out expectations and responsibilities.

Local Government Reorganisation in Somerset

The devolution of assets and services was a key deliverable of the One Somerset Business Case to remain connected with the communities the Council serves. That commitment remains as Somerset Council embeds its priorities and Council Plan. What the business case sets out, and is repeated below, is that devolution can be delivered in several ways.

The One Somerset Business Case repeated a list of 5 different levels at which parish and town councils ('organisations') could be involved in influencing the use of assets. These levels, or outcomes, were first presented in a paper jointly produced by the

Somerset Association of Local Councils and the Society of Local Council Clerks entitled *Recommendations on the Role of Parish Councils in the event of Local Government Reorganisation in Somerset*. The 5 potential outcomes are as follows:

Outcome 1. Influencing and Monitoring.

This could include changes to the way existing contracts held by Somerset Council are delivered and /or input into the requirement when new contracts are retendered. Organisations can play a role in monitoring existing service delivery in their area. They may also seek to influence the way an asset is utilised or managed.

The financial impact of any changes to the delivery of services or management of assets should be financially sustainable unless agreed by Somerset Council.

Outcome 2. Joint /enhanced delivery

To enhance an existing service by funding additional work that exceeds the baseline service provided by the council. Organisations may also choose to deliver additional services not provided by the council. This could be through a separate contract or by extending an existing one.

Various options to enhance assets and/or services are.

- Encouraging community participation with support / sponsorship from local businesses.
- Procuring a separate contract (with a 'local' contractor).
- Employing their own staff / wardens.
- The use of volunteers / volunteer teams.
- Purchasing additional services via an existing contract.
- Managing or utilising an asset (or part of it) in a different way or by a different organisation.

This option has scope to enhance the value and cost of services and/or assets already provided by Somerset Council. The funding for enhancement would be expected to be met by the 'organisations'.

Outcome 3. Agency Agreements, management agreements, licences, and sponsorship

The Council can offer agency agreements for service and / or assets to enhance services or assets locally. The agreement sets out basic standards and conditions (e.g. health and safety) and may include a lump sum based on the minimum level of service the Council would undertake.

For example, the maintenance and enhancement of areas within the highway boundaries in one of three ways;

- Licence – a license may be granted to maintain and enhance an area of highway verge. This is often used to cover 'flower beds' and landscaped areas.

- Management agreement – Agreement to manage a public area or asset – often ones used for events etc.
- Sponsorship – private organisations can pay a fee to sponsor the maintenance of a highway feature for which they get local recognition via appropriate signage. This is often used on roundabouts or ‘welcome to’ signage.

Under this option Somerset Council may provide some or all the funds needed for work undertaken on the council’s behalf to a base level of standard. Any enhancement should be funded by the ‘organisations’ unless otherwise agreed..

Outcome 4. Delegated Authority

To take on full responsibility for the delivery of a local service on behalf of the Council. Many of these services are discretionary, however, some of the services could be statutory duties of Somerset Council.

The financial position must be agreed between all parties as part of a formal Authorisation document or Delegation Agreement. While it may be possible to delegate the delivery of a statutory service it is not possible to delegate responsibility therefore Somerset Council will likely require a formal legal agreement to be entered into in such circumstances.

In respect of assets this could include tenancy or lease agreements with the freehold and some residual landlord responsibilities retained by Somerset Council.

Outcome 5. Full transfer of services or assets

Where ‘organisations’ take on the full ownership and responsibility for an asset or delivery of a service. Depending upon the value of an asset to be transferred Somerset Council may need to satisfy ‘best consideration’ and ‘publicity’ obligations. Any full transfer proposal will need to demonstrate that the freehold is a necessity for success and provide reassurance of the long-term benefits to the community.

The application process – eligibility and assessment, within this framework goes into further details that will be used in considering devolution applications, including Somerset Council’s Asset Disposals Policy. This policy establishes the basis for which the Council disposes of its property assets. Within this policy it sets out the Member engagement.

Local Community Networks (LCN)

While assets and services cannot be devolved to Local Community Networks (LCN) the Council does consider these to be an essential forum to prioritise and debate options. As a collective that would cover several parish and town areas. Each LCN can work with their constituent organisations as delivery partners to help facilitate discussions about them taking on delegated responsibilities from Somerset Council. This approach may well present opportunities to work across boundaries for cluster working to give the best possible delivery model for the area.

Principles

The following table sets out the key guiding principles that will be applied to the devolution of services and assets programme.

<p>Our approach should be co-produced:</p>	<ul style="list-style-type: none"> i. Consultation with customers and communities: using the LCN's 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. TUPE arrangements iv. Engagement with communities of interest/stakeholders impacted by any proposals v. Framework will be developed in liaison with representatives; including the Somerset Association of Local Councils (SALC) and the Somerset branch of the Society of Local Council Clerks (SLCC)
<p>Devolution of services and/or assets should be sustainable</p>	<ul style="list-style-type: none"> i. be resilient/sustainable over time ii. have honest conversations from the outset: achieving/delivering more may cost more or be unrealistic iii. have transparency in monitoring impacts and lessons learnt
<p>Devolution should have clear benefits to the community</p>	<ul style="list-style-type: none"> 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)
<p>Devolution must align with strategic priorities of the new Somerset Council</p>	<ul style="list-style-type: none"> 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. Asset / service devolution must reflect the climate emergency and align with the Somerset Climate Emergency Action Plan.

	iv. Must align with Somerset Council's approach to their Medium-Term Financial Plan
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Asset Devolution

Somerset Council have responsibility for land and buildings through various means:

- Owned assets – where the Council holds the freehold interest or a long lease
- Dedicated assets – where the Council have a historical contractual obligation, but do not have the freehold ownership, e.g. areas of open space or play areas under planning agreements
- Statutory responsibility – where the Council have a duty to maintain assets (and provide services) under legislation, e.g. highway land.

Any 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.
- Will facilitate the continuation of service that Somerset Council is no longer able to provide.
- Will facilitate access to funding not available to Somerset Council.
- Consider whether there are any relevant covenants or other restrictions on land/assets.

Where an asset is identified as potentially being eligible for transfer Somerset Council will consider both Freehold and long-term lease options.

Exceptions

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.

Funding

Any asset transfers would also be expected to be funded locally in the first instance. However, depending upon the submitted business case Somerset Council may consider a one off or other financial contribution if the transfer can clearly demonstrate its sustainability, community benefits and alignment with the Council's priorities.

Transfer Agreements

Any transfer agreements are likely to include clauses, such as:

- Somerset Council to have first refusal should the asset subsequently be sold on (if within 10 years of transfer)
- A requirement that benefits the wider community i.e. maintains the community's access and use of the asset
- An overage agreement should the asset subsequently fall out of community use and be sold on the open market or leased at commercial rates to ensure that the Council receives an additional sum if the original purposes are no longer met.

Best Consideration

The Council may dispose of surplus land and property having regard to the provisions in section 123 of the Local Government Act 1972 and the General Disposal Consent 2003. This legislation ensures that public property is disposed of at the best price obtainable subject to certain exceptions.

The exception is where the disposing authority considers that the purpose of the disposal at less than best price will achieve the promotion or improvement of the economic, social, or environmental well-being for the area and/or local residents. Somerset Council will secure valuation advice that sets out the unrestricted (best price obtainable) and restricted values, together with the value of any proposed conditions. Any costs incurred by Somerset Council in seeking relevant valuation advice could be met by the applicant, but this would be subject to discussion.

When considering the disposal of public open space, the legal requirements of the Council to advertise proposed disposals and consider objections, must be complied

with. Open Space is defined as “any land, laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground”.

The Council is obliged to give notice of the intention to dispose by placing a public notice in the local newspaper for two consecutive weeks. As this is older legislation, more modern social media methods would likely be used to additionally raise awareness. Any objections must then be considered by the appropriate decision maker. Applicants may be required to meet the costs of advertising the proposed disposal, again, subject to discussion.

Service Devolution

The transfer of both statutory and discretionary services can be considered; although where services which Somerset Council has a duty to provide have been transferred, the ultimate responsibility will remain with it. Responsibility for delivering the service may be transferred under clear contractual arrangements. The receiving organisation will then become responsible for the delivery of those services in accordance with the terms of a Service Level Agreement. Where Somerset Council has an underlying statutory responsibility, it must be able to terminate the service level agreement at any given time, where the SLA is not being met. It should be noted that service monitoring meetings would identify issues during the delivery and therefore avoid this outcome if at all possible. Similarly, the receiving authority depending on the contractual arrangements may have the ability to terminate.

In some circumstances Somerset Council, will 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. There is no guarantee that the Council would consider re-assuming delivery of the service.

Application Process - Eligibility and Assessment

The Devolution Transfer Process Decision-making

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Following consideration of devolution requests, and negotiations, a decision by Somerset Council will be taken on individual devolution transfers. All such decisions will be taken in accordance with this policy, the Somerset Council Asset Disposal Policy and Somerset Council's Constitution. Key decisions on significant devolution transfers will be taken by Executive and/or Lead Members. Non-key decisions will be taken by the relevant officers in accordance with the scheme of delegation. Considerations over whether a decision is a key decision or not are likely to be determined by the size, scope and complexity of the project proposed.

A Devolution Advisory Board will consider all devolution requests and oversee the devolution programme. This will comprise the relevant Lead Member, and senior officers from within the council (Service Directors of Partnership and Localities and Strategic Asset Management, relevant representatives from legal and finance, and possibly other bodies such as SLCC or SALC, where appropriate). The Board will make recommendations to the relevant decision-maker (officer/member) on the detail of transfer agreement terms and sign-off.

The Council may need to balance the competing interests of community and voluntary groups and/or local councils and an assessment will need to be made as to the option that will deliver most sustainable benefit to the local community. Where possible, potential beneficiaries can be brought together in a partnership where this can result in a collective benefit to residents. We would encourage any such opportunities to be explored through the appropriate Local Community Network.

Pre-Application Stage

As part of Somerset Council's commitment to supporting the transfer of services and/or assets, support will be provided to 'organisations' to enable them to consider submitting expressions of interest. This will include:

- Online guidance and information including template expressions of interest form and business plan.
- 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.
- A named contact to support organisations to submit expressions of interest, support business plan development, and to keep the applicant updated at all stages of the transfer process.

Stage 1: Expressions of Interest Submission

Somerset Council will:

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- Check that the application meets the eligibility criteria to be considered and notify the applicant accordingly.
- Notify the relevant local member(s) and seek their views.
- Notify the relevant service areas, including Strategic Asset Management and seek their views.
- If the request is in relation to service devolution, information will be provided to the applicant regarding service specifications and costs (where possible an estimate of disaggregated costs).
- An initial assessment of the potential application of TUPE regulations will be undertaken.
- If the request is in relation to community assets, the following information will be provided to the applicant:
 - Estimated costs for maintenance of the asset.
 - Estimated market value of the asset (if any).
 - Condition survey report.
 - Any outstanding loan or funding agreements in place
- If the applicant wishes to then proceed with the transfer request, in light of this information, then the expression of interest will be considered by the Devolution Advisory Board.
- The Devolution Advisory Board will determine if the application passes the stage 1 assessment and next step options which are:
 - a) Business plan required before decision.
 - b) Business plan not required, and a decision can be agreed (either as an offer decision or Executive Member if a key decision).
 - c) A decision in-principle can be agreed subject to further information being submitted and/or financial/legal arrangements being agreed.
 - d) Application rejected and feedback provided to the applicant.

Stage 2: Business Case Stage

The Council wishes to ensure that the transfer is successful for all parties. As such a business case will normally be required. 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).

Where the application concerns a package of asset and service devolution only a single business case will be required. It is likely that this document would be co-developed in partnership.

If a business plan is required, it should clearly illustrate the:

- Status, background, and governance arrangements of the applicant

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- A summary of the project
- Aims and objective for the asset or service.
- Identified need or demand.
- Benefits to local community and how it helps to deliver the vision for the area.
- Alignment with the priorities of Somerset Council
- Financial sustainability assessment
- Risk assessment
- Property Management Plan

It is anticipated that supporting evidence will also be requested on the following areas:

- Health & safety arrangements in place
- Safeguarding arrangements
- Equalities
- Staffing and/or contractual arrangements/implications
- Insurance
- Operational procedures
- Governance

All business plans will be considered by the Devolution Advisory Board prior to a recommendation to the decision-maker(s) (normally the Executive Lead Member or Members).

The Council will consult local member(s) prior to a decision on transfers that require a business plan. Somerset Council also reserves the right to engage with the appropriate Local Community Network on any relevant applications.

The internal assessment process will also likely engage the following services as necessary:

- Finance
- Legal
- Strategic Asset Management
- Street Scene/Clean Surrounds/Neighbourhood Services
- HR (TUPE/Redundancies)

Somerset Council will also, at this stage, consider their obligations under section 123 of the Local Government Act 1972 if the proposal concerns the potential disposal of public open space and the associated requirement to advertise.

Stage 3: 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 as a result 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.

Timescale

It is anticipated that Stages 1 to 3 above will be completed within 6 months subject to available resources. However, any timelines provided are indicative and will vary depending on the complexity of each application and responsiveness of applicants. The process of transfer takes time and must be fully understood by all parties and reflected in decision making and budget settlement.

It is anticipated that timescales will be better understood over time as processes and procedures are formulated, reviewed and amended.

It is important to note that there is no requirement to participate in this process and it is acknowledged that the appetite, capacity, and capability will differ between organisations. It may be that cluster working, if appropriate, to unlock further potential is more beneficial to the community.

Appeals

All applicants are entitled to appeal against decisions made if they feel that a decision has been unfair/and or there has been a breach of this policy.

Appeals shall be made in writing, stating clearly the issue or reference to the part of the policy that has been breached, within 28 days of the decision being made.

The appeal will be managed in line with the Council's stage 2 complaints procedure.

Background Documents

Property Asset Management Strategy and Plan - The document sets out the Council's strategic objectives for property asset management, the approach the Council will take to managing its property assets, and a series of high-level commitments to guide property asset management decisions and policy making

Assets Disposals Policy - This policy establishes the basis for which the Council disposes of its property assets. Within this policy it sets out the Member engagement.

Appendices

- Expression of Interest Form
- Business Case Toolkit
- Flow Chart (EOI, Business case, Assessment, Heads of Terms Decision Making, legal Agreement)
- Powers of a Parish and Town Council