West Northamptonshire Council

Adoption of Assets Policy – draft v0.5

1. Introduction

1.1 Through the processes of development and change, assets of various types frequently come to require a new custodian. This occurs, for example, when public open space and other community assets are created as part of development, but it also arises in a wide range of situations. The taking on of a new asset is often referred to as 'adoption'.

1.2 The Council is concerned to ensure that assets of public value are properly managed for the public good, whilst also ensuring that the interests of taxpayers and residents are protected.

1.3 The Council, and parish councils[1] in West Northamptonshire, are often called on to adopt assets. Other assets, particularly where new development is involved, may be adopted by management companies.

1.4 This policy defines the Council's approach to assets it is asked, or agrees to, adopt. It also represents the approach it seeks to take in relation to parish councils and management companies. Parish councils in West Northamptonshire are invited to adopt it, with necessary changes, for their own use.

1.5 There are specific legal regimes for adoption of water and sewerage systems (by water and sewerage undertakings), and highways (by WNC). Those are not covered by this policy.

2. Definitions

2.1 For the purposes of this policy, the following definitions are used.

2.2 'Assets' – any land, building or structure on land or water, which has a public use or value. In most cases such 'assets' are in fact liabilities, in that they cost money to maintain and manage, but generate no or insufficient income to cover those costs.

[1] For brevity, 'parish council' is used in this policy to refer to all such entities, whether they have the style of town council, community council or other permitted style.

2.3 ‘Adopt’ – to take ownership of and responsibility for. As noted in 1.5, this document does not cover adoption of water, sewerage, or highways under the specific legislation which relates to those. For the avoidance of doubt, this does not include the transfer of an asset between two councils.

2.4 ‘Adoption Sum’ – in relation to any asset, the total of the commuted sum calculated in accordance with 8.4 and the other costs calculated in accordance with 8.5.

2.5 ‘Management company’ – a company or other entity (apart from WNC or a parish council) which owns and manages, or is proposed to own and manage, an asset.

2.6 ‘Net zero’ – delivering net zero (or less) emissions of carbon dioxide and other gases implicated in global warming, measured as carbon dioxide equivalent warming impact.

2.7 ‘Promoter’ – the person or organisation seeking to have an asset adopted. This will normally be the person or organisation who owns the asset.

3. Considerations

3.1 There are several considerations which arise when an asset is considered for adoption. These include:

- 3.1.1 How provision is to be made for upkeep.
- 3.1.2 The most appropriate body to adopt the asset in question.
- 3.1.3 How the interests of the public as users, taxpayers, and (in some cases) charge payers are protected.
- 3.1.4 The terms on which the asset is offered for adoption.

3.2 These considerations are addressed below.

4. Providing for upkeep

4.1 If an asset has a net positive value – that is, income generated from it is likely to exceed costs incurred in looking after it – provision for upkeep it not normally a concern. However, even in such cases it might be necessary to consider management of risk, especially if the adopting body has limited resources to cope with changes in income or costs arising from the asset (for example, if it is a smaller parish council or a management company).

4.2 In other cases, there is a generally a net annual cost of looking after an asset. It is this net cost which is the concern, along with consideration of risk. As with net income-generating assets risk is a particular issue if the income stream is significant, costs may vary significantly, or the adopting body has limited resources to cope with changes in income or costs arising from the asset.

4.3 Considering provision for funding net cost, Appendix 1 sets out the relevant content of two background documents, ODPM Circular 5/05 and the Chris Britton Consultancy (CBC) paper 'Commuted Sums for Future Maintenance in relation to Adoption and Transfer of Infrastructure Assets'. Circular 5/05 was withdrawn when the National Planning Policy Framework was introduced, but without any suggestion that its contents were considered invalid or inappropriate.

4.4 Circular 5/05 suggests that where facilities are:

4.4.1 Purely for the users of a development it may be appropriate for the developer to make arrangements to fund their upkeep in perpetuity.

4.4.2 For "wider public use" the costs should be taken on by the new owner, but funding ("pump priming") for the gap before the public sector funding streams arise may reasonably be sought from the developer.

4.5 These principles commend themselves in logic and accordingly are considered relevant even though Circular 5/05 has been withdrawn given that there is nothing similar replacing them in the National Policy Framework or currently inconsistent with them. They can reasonably be argued to logically apply whether or not development is the cause of a desire to pass the asset to a new owner.

4.6 In the case of assets solely for a specific local public use, these principles can be applied straightforwardly. It is clearly right that the public at large should not be required to fund maintenance and management of an asset that is of benefit to only a small number of people or, in the extreme, to only one person, such as a developer.

4.7 However, further consideration is needed for assets in wider public use; specifically, what is an appropriate "pump priming" period? The Circular suggested this should be until "inclusion in public sector funding streams". However, the structure of local government funding is such that it cannot be assumed to meet the costs of new assets. Council Tax income does not assist, because the grant arrangements deduct assumed income from these sources. Allocations of Non-Domestic Rates (NDR) are time limited. Accordingly, it would be possible to conclude that pump priming should be for an indefinite period, that is, in perpetuity. However, this conflicts with the express wording of the paragraph. Use of a period of ten years may represent an acceptable compromise between those two positions.

4.8 Typically, provision for in-perpetuity net costs is made by way of commuted sums. Such sums are designed to produce an income each year which matches the expected annual net costs relating to the asset.

4.9 The CBC paper identifies a long-term real interest rate of 2.2%. Analysis set out in Appendix 2 suggests that for WNC the long-term real interest rate is around 2.1%. Using the 2.1% figure would mean that for WNC to receive annual income (actually, reduce its debt costs) by £Z per year would require a commuted sum of £X, calculated as follows:

$$\pounds X = \frac{\pounds Z}{0.021}$$

4.10 If a parish council or management company was to receive a commuted sum rather than WNC the money may be placed in an interest-bearing account (rather than being used to reduce debt) and thus earn a lower real interest rate. This would mean a higher commuted sum. However, it would be unreasonable for the promoter to face a higher cost merely by a change in adopting body. Given this, and given how close the CBC report figure is, it seems reasonable to apply 2.1% in all cases.

5. Adopting bodies

5.1 WNC is a large unitary council serving a diverse area. It recognises the important role parish councils play in managing local facilities for their communities. This is reflected in transfers of, for example, local open spaces and community centres to parish councils by WNC (and by its predecessor councils in preparation for the new local government arrangements from 1st April 2021).

5.2 More generally, there is value in facilities used purely or mainly by a specific group of people being looked after by that group of people. They can decide how much they wish to invest in upkeep, and can make changes to reflect local needs and wishes.

5.3 It therefore seems reasonable that where a facility is purely or mainly for local public use, the preferred adopting body would be either a management company controlled by those who would pay for upkeep, or a parish council. Conversely, where an asset is of benefit to people from an appreciable portion of West Northamptonshire, being more than one parish, it would be most appropriate for WNC to adopt it.

5.4 However, as noted in 4.1 and 4.2, it is important that smaller adopting bodies have means to manage the risks involved in owning assets, especially those where there is material risk of significant change to either income or costs. This may in some cases justify WNC itself adopting the assets.

6. Protecting public interests

6.1 Where assets are adopted by public bodies such as local authorities, the combination of democratic accountability to local people and the statutory regime acts to protect the public interest. However, where adoption is by a management company there is a risk that the public interest is not prioritised, or that the entity is not responsive to local concerns. Management companies come in many forms, both legally and practically, including those tied by ownership, control, or contract to service providers.

6.2 It is therefore important that the constitutional and contractual arrangements for management companies, where they are used, are designed to secure genuine local control, efficient and effective management, and a focus on the public interest.

6.3 These requirements are also important to WNC financially, because if they are not met the Council may in the future to be asked to adopt the asset in question to remedy poor management or local concern about charges levied by the management company.

7. Terms of adoption

7.1 It is important that any asset adopted is free from unnecessary controls and can be effectively managed over the long term. This will normally mean the adopting body receives freehold ownership free of all restrictions except those requiring the asset to be used for the purpose intended. These should provide sufficient flexibility to allow for changes in circumstances over time.

7.2 The adopting body will also need sufficient rights of access and any other rights necessary in each case to effectively operate and maintain the asset.

8. WNC approach

8.1 In considering adoption of assets, the Council will make reasoned decisions based on the facts of each case, guided by the following.

8.2 In considering any potential adoption the Council will assess if there is a need for adoption at all (for example, if the promoter of the adoption is able to continue caring for the asset and will or can be compelled to do so), and there is no other reason to favour adoption. Where the Council chooses to adopt an asset which could reasonably be retained by the promoter the commuted sum will be calculated on a perpetuity basis.

8.3 The preference for adoption of other assets is set out in the table below, together with the implications in terms of the commuted sum required.

Area of benefit	Default adopting body	Modifying factors	Revised adopting body	Commuted sum
Discrete small estate or community with only very limited use from wider parish	Management company meeting requirements given in 8.9	None	N/A	Pump priming
		Parish council wishes to adopt	Parish council	Pump priming
		Risk is too great for management company to manage	Parish council if willing; otherwise WNC	Perpetuity

Area of benefit	Default adopting body	Modifying factors	Revised adopting body	Commuted sum
		Significant strategic interest for WNC to adopt	WNC	Pump priming
Wholly or mainly one parish in scale	Parish council	None	N/A	Pump priming
		Risk is too great for parish council to manage	WNC	Perpetuity
		Parish council declines to adopt	WNC	Perpetuity
		Significant strategic interest for WNC to adopt	WNC	Pump priming
More than one parish in scale*	WNC	None	N/A	Pump priming

Note: * An asset which happens to be on or close to a parish boundary does not fall into this category simply by that fact, if where it further from the boundary it would be recognised as benefiting a single parish.

8.4 Commuted sums shall be assessed by assessing the expected net annual maintenance and management costs ('£Z) and calculating:

8.4.1 Perpetuity: £Z divided by 0.021.
8.4.2 Pump priming: £Z multiplied by 10.

8.5 In addition, any costs that are reasonably estimated would be incurred in the process of adoption and bringing the asset into an acceptable state shall be added. This includes any necessary environmental works, including costs of managing the asset to achieve net zero.

8.6 The full Adoption Sum must be paid as part of the adoption unless the promoter and any other person who might financially benefit from the adoption is incapable of making payment and the adopting body (and WNC, if not the adopting body) judges that it would nonetheless be in the public interest for the asset to be adopted. In such cases the promoter (or other financially benefiting person) shall pay as much of the Adoption Sum as it can afford.

8.7 WNC may treat any sum paid to it as either capital or revenue depending on the proper accounting treatment of its expenditure.

8.8 No part of any Adoption Sum will be repayable in the event that the net costs are lower than the estimate on which the commuted sum was based. This is because the adopting body has taken a downside risk in accepting a particular commuted sum will be adequate and is accordingly entitled to benefit from any upside risk.

8.9 Any management company considered for adoption of an asset should meet the following requirements:

8.9.1 Be incorporated as a charitable incorporated organisation (CIO), or as a community interest company or community benefit society, in either case with an asset lock and prohibition on distribution of profits.
8.9.2 Have suitable objects, such that the asset would be used for its intended purpose and available for all those it is expected to serve.
8.9.3 Be empowered to meet any funding needs by means of a rentcharge or other appropriate mechanism on properties benefiting from the asset in question.
8.9.4 Have as the only members and able to appoint directors (or other persons in control of the management company's business) the persons liable to pay rentcharges or other payments as may be appropriate to the management company ('members'). Only if the members fail to appoint sufficient directors for the management company to function shall any other person have the power to appoint directors. That person shall be the parish council and failing action by the parish council, WNC.
8.9.5 Have no material debt or obligation to take on debt.
8.9.6 Not have any contractual commitments to third parties on onerous terms, and in any event no contractual commitment at point of transfer of the asset which extends beyond 12 months.

8.10 Adoption of an asset should be by means of transfer of freehold title at nil value. In exceptional cases, such as where the promoter does not hold the freehold, the adopting body may consider a lesser form of ownership e.g., long leasehold on a peppercorn rent. The transfer to the adopting body must include all necessary rights (e.g., of access) to enable the asset to be used as intended, maintained, and managed.

8.11 The terms of transfers of assets to the adopting body should include such restrictions as are necessary to ensure that the asset is used for the function(s) which it is intended to perform. There should be no other restrictions or matters which impact on this. The restrictions which are imposed should be designed to allow sufficient flexibility such that the asset can still be of value when circumstances change, such as changes in recreational habits.

Appendix 1: Background documents

Two documents are of particular value when considering the Council's approach to adoption of assets. These are given below.

Former ODPM Circular 5/05: Planning Obligations

Circular 5/05 represented Government policy in connection with the use of planning obligations in connection with development control. It was withdrawn with key points included in the National Planning Policy Framework, but without any suggestion that its approach was flawed. It contains provisions relating to the assets that are capable of wider use.

Paragraphs B18 to B20 discussed maintenance payments:

- B18 states that in the case of " …facilities which are predominantly for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance (i.e. physical upkeep). Such provision may be required in perpetuity."
- B19, however, provides that "where an asset is intended for wider public use, the costs of subsequent maintenance and other recurrent expenditure … should normally be borne by the body or authority in which the asset is to be vested. Where contributions to the initial support ("pump priming") of new facilities are necessary, these should reflect the time lag between the provision of the new facility and its inclusion in public sector funding streams, or its ability to recover its own costs… Pump priming maintenance payments should be time-limited and not be required in perpetuity…"

Commuted Sums for Future Maintenance in relation to Adoption and Transfer of Infrastructure Assets

This document was produced by the Chris Britton Consultancy for Department for Transport and others and exists in a draft version dated June 2008. Publication was expected under the banner of the UK Roads Liaison Group (UKRLG). Although it is understood this did not occur, the substance of the document remains valid.

Appendix 5 (p26) of the report states that an appropriate real long term interest rate when considering adoption of assets is 2.2%. This represents the difference between nominal interest rates and inflation rates in the UK, averaged over a long period of time.

Appendix 2: WNC interest costs

Given the date of the Chris Britton Consultancy document, it is appropriate to consider if real interest rates have materially changed since its publication. It is also useful to ensure the rate applied relates to the circumstances of WNC.

In practice, if WNC is paid a commuted sum, it is likely to use it to offset borrowing it already has or would otherwise incur. Like most principal councils, the Council has significant debts built up from the provision of capital assets and this position is unlikely to change. This means that the interest rate to be used for these purposes should reflect WNC's borrowing costs rather than the sums earned if it invested the money concerned. This means a slightly higher interest rate is applied (which corresponds to slightly lower commuted sums).

To form a reasoned view of real interest rates over a substantial period of time, CPI inflation was compared against the Public Works Loan Board (PWLB) interest rate for new maturity loans each year. To reflect the spread of maturity periods the Council is likely to use, the average interest rate for all available loan lengths was used. As PWLB interest rates vary over time, the yearly rate was taken as a weighted average of interest rates applicable over the different periods of the year. Thus, the yearly average interest rate is calculated as follows:

$$r = \frac{\sum ip}{P}$$

Where:

r = Yearly average interest rate.
i = Average interest rate in any period.
p = Period during which interest rate i applied.
P = Sum of p during the year (it should be noted that because interest rates do not change exactly at year ends, P varies slightly from year to year).

The results were as follows:

Year	*P*, days	%		
		Yearly average interest rate (*r*)	CPI inflation	Real interest rate
1998	364.0000	5.6	1.6	4.0
1999	364.0000	4.9	1.3	3.6
2000	365.0000	5.2	0.8	4.4
2001	364.0000	5.0	1.2	3.8
2002	370.0000	5.0	1.3	3.7
2003	360.0000	4.7	1.4	3.3
2004	368.0000	4.9	1.3	3.6

Year	P, days	%		
		Yearly average interest rate (r)	CPI inflation	Real interest rate
2005	364.0000	4.5	2.1	2.4
2006	364.0000	4.4	2.3	2.1
2007	365.0000	5.7	2.3	3.4
2008	366.0000	4.6	3.6	1.0
2009	367.0000	4.1	2.2	1.9
2010	365.3861	4.2	3.3	0.9
2011	364.0187	4.5	4.5	0.0
2012	364.9811	3.7	2.8	0.9
2013	365.0001	4.0	2.6	1.4
2014	365.0050	3.9	1.5	2.4
2015	366.9946	3.2	0.0	3.2
2016	365.0001	2.7	0.7	2.0
2017	364.0008	2.6	2.7	-0.1
2018	364.9938	2.7	2.5	0.2
2019	364.9993	2.5	1.8	0.7
2020	367.9976	2.5	0.9	1.6
2021	365.0024	2.0	2.6	-0.6
Average				2.1

Whilst the yearly averages vary significantly, the average over 24 years (the longest period for which data was available) should give a sensible view of likely typical real interest rate. It is of note that the 2.1% calculated is very close to the 2.2% given in the Chris Britton Consultancy document.