

**FALKIRK COUNCIL**

**Subject: FALKIRK COMMUNITY STADIUM LTD**  
**Meeting: FALKIRK COUNCIL**  
**Date: 27<sup>TH</sup> JUNE 2007**  
**Author: CHIEF EXECUTIVE**

**1.0 INTRODUCTION**

- 1.1 This report updates Members on discussions between Falkirk Community Stadium Limited (FCSL) and Terrace Hill (Falkirk) Ltd (THFL) with regard to proposed developments at Falkirk Stadium. The report specifically asks Council to consider a range of requests from FCSL in its roles as shareholder and landlord. FCSL seeks shareholder consent to enter into a development agreement as set out in a revision to the Heads of Terms previously approved by Policy and Resources Committee. These will be made available to Members under separate confidential cover due to the commercially sensitive information contained within them. In addition, FCSL seek shareholder approval of their 2007 business plan which has been updated to reflect the changes in operating arrangements as a consequence of the proposed developments within the revised Heads of Terms. The Council also has a landlord interest in the site and this report seeks approval to add ancillary retail to the range of approved uses thereby enabling the potential development of a health and fitness centre. The Council is asked to grant a development sub lease or partial assignation to THFL. The drawing attached as Appendix 1 shows the proposed layout for the development. The report also considers a request from FCSL to enter into a contract of excambion to facilitate the proposed development of the Indoor Football Centre and to enable THFL to develop an area of ground in the Council's sole ownership. Finally, the report seeks approval to vary the terms of the financial arrangements between the Council and FCSL.
- 1.2 As well as the Heads of Terms with THFL this report seeks shareholder and landlord approval for Heads of Terms between FCSL and South Stand Development Company (SSDC), a subsidiary of Falkirk Football Club (FFC) to facilitate the development of a South Stand and provide scope for a commercial leisure development attached to the rear of the stand.

**2.0 BACKGROUND**

- 2.1 In March 2005, Members approved the FCSL business plan and in doing so agreed that private investment would be sought to facilitate the development of additional stands and corner pods to continue the development of the stadium. Members of the Policy & Resources Committee at their meeting on 4<sup>th</sup> April 2006 considered the process by which a preferred development partner had been identified and at its meeting on 17<sup>th</sup> October 2006 approved Heads of Terms between FCSL and THFL. These Heads of Terms have been refined and the final version is presented for further approval.
- 2.2 FCSL prepared a development brief that sought to develop the stadium footprint to provide additional capacity through the provision of additional stands and the creation of corner pods to infill the areas between the stands. The brief also offered scope for developers to make additional suggestions for further appropriate development on the site.

FCSL has been working with THFL to agree Heads of Terms that set out a programme for development and offer the best return to FCSL for future development in the company.

- 2.3 When FCSL was established, the Joint Venture Agreement between the company and Falkirk Council identified that shareholder consent was required for certain actions beyond those that had been set out in the original agreement. The development of the additional stands and corner pods fall within this category albeit they were always envisaged as future strands of the Stadium vision and this report asks Members to agree that the proposed lease to SSDC fits with the original company objectives.
- 2.4 The Council also has an interest as landlord in terms of the ground lease with FCSL and this report seeks approval for a sub lease to be developed between SSDC and FCSL to facilitate the development of a South Stand similar in size and scale to the current North Stand with commercial floorspace.
- 2.5 The final request from FCSL concerns land in sole Council ownership immediately adjacent to the area leased by them which they would like to exchange with the Council for land within the FCSL lease in a contract of excambion. The Council has planning consent to develop an indoor football centre on land currently leased to FCSL as part of the ground lease. **sport**Scotland has offered the Council £3m to develop the centre and a separate report on this proposal will be considered by Members in due course. In the event that Members approve the proposal but the centre does not ultimately proceed, then the Council would be free to develop the site. As a consequence of the exchange, FCSL would no longer have an interest or control over future use of that part of the overall site.

### **3.0 SHAREHOLDER'S CONSENT**

- 3.1 Under the terms of the Joint Venture Agreement, the Council, as shareholder, is required to give consent to various activities which FCSL may wish to carry out. In the circumstances of the current proposals, consent is required to:
  - 3.1.1 sell, transfer, lease, assign or otherwise dispose of any part of FCSL's undertaking, property or assets or enter into any contract other than in the ordinary and proper course of business.
  - 3.1.2 take any interest in land or agree to any variation, termination, amendment or modification to the terms of the ground lease or the footballing lease.
  - 3.1.3 carry out any development of the site other than the works (which was the development of the west stand)
  - 3.1.4 approve the business plan
- 3.2 The Heads of Terms between FCSL and THFL propose various phases of development:-
  - Zones A and B development of two north pods either side of the north stand. The north west pod (Zone A) is proposed as a health and fitness Centre and the north east pod (Zone B) as a hotel;
  - Zones C and D development of two south pods, both for use as office buildings;
  - Zone E development of the east stand including office space;

- Additional zones comprises the development of a waterside restaurant near the northern end of the site and the development of a garden centre on land currently in the sole ownership of the Council, hence the request for the contract of excambion. It had been envisaged that these additional developments would take place at the end of the project after the stadium had been completed. However an earlier opportunity may exist and FCSL have asked the Council to give specific consideration to the request now.

- 3.3 Whilst the Heads of Terms set out a proposed phasing of development, these may be run in tandem subject to agreement of both parties. The Heads of Terms allow for FCSL to receive payment for each phase of development or, at its discretion, to share in the project through sharing equity and having a return at some future point in time.
- 3.4 The proposals set out in the Heads of Terms represent the best negotiation available at this time and the FCSL Board have recommended them to both shareholders, the Council and Falkirk Football Club. In financial terms, FCSL will receive around £4.9m for the sub-lease of the land to accommodate the pods and stands set out in the heads of terms subject to further detailed surveys on costs. The Heads of Terms will form the basis of detailed legal agreements to be entered into between FCSL and THFL.
- 3.5 Members are asked to consider a separate proposal from SSDC to facilitate the construction and delivery of the South Stand. These heads of terms propose that FCSL lease SSDC the area of the south stand and the area immediately adjacent for future commercial / leisure development. This would be funded by persons associated with FFC, though a contribution is envisaged from FCSL. It is hoped this will enable development to take place next year.
- 3.6 The revised Business Plan recognises that the company will no longer provide a health and fitness centre itself (for the reasons outlined in para 3.7) and that the growth in the business will focus on increasing use of the five a side football facilities, the continued development of the conference centre including consideration of the vacant first floor space for additional larger capacity spaces. In addition, the income from rents and service charges within the West Stand is critical to the financial profile. The development of additional stands is critical to the company objectives and the plan proposes that FCSL make a direct financial contribution to the development of the South stand and considers investment in the East Stand at a point in the future. There are tax implications outlined in the business plan that need to be fully explored and the potential rollover relief available to FCSL and companies in the same tax group.
- 3.7 As previously stated, the provisions of the Joint Venture Agreement between the Council and FCSL requires each shareholder to approve the proposals and the revised business plan. In considering the request for shareholder consent, Members may want to have regard to the original project objectives. These included a desire to complete a community stadium made up of 4 stands and 4 corner pods encompassing a range of uses including those specified in the proposals. At the time of the development of the Joint Venture Agreement the provision of a health and fitness centre was intended to be accommodated within the West Stand and delivered by FCSL itself. However, the opportunity for an enhanced health and fitness facility incorporating a swimming pool and associated retail was deemed by the FCSL Board to be of greater community value and therefore it is being

recommended to shareholders. Whilst the opportunity to provide additional activities is attractive, it is suggested that the Council emphasise the desire to ensure that the overall provision is as good in terms of quality of design, layout and programme to that originally envisaged. The health and fitness centre provides further opportunities for residents to engage with the stadium and to feel a sense of ownership and pride in the developments there. The proposals to develop the South Stand outwith the Terrace Hill agreement gives FCSL more control over the timing of its delivery and the involvement of the other shareholder, FFC, and SSDC, which will be set up solely for the purpose of delivering the stand, is to be welcomed and helps ensure another stand will be available for use within a reasonable timeframe. It is recommended therefore that Members should agree that shareholder's consent be granted.

#### **4.0 LANDLORD'S CONSENT**

- 4.1 Under the terms of the ground lease between Falkirk Council and FCSL, certain uses are already permitted within the Stadium footprint. These include the offices, leisure and hotel as outlined in the proposals from FCSL /THFL. Additional landlord consent is requested for the waterside restaurant and the ancillary retail within the health and fitness centre. The addition of 15,000 ft<sup>2</sup> of ancillary retail is a necessary component of securing a prestige health and fitness facility that, together with the waterside restaurant, will complement the uses for the stadium as a whole and as a result it is reasonable to accede to these requests for landlord's consent.
- 4.2 In the report considered by Policy and Resources Committee in October 2006, agreement was given to FCSL to provide for the additional uses envisaged in the south stand. This report now seeks formal approval for the development of the south stand by SSDC. The development of the rear of the stand will follow later than the stand itself, however FCSL will want to know that the Council as landlord approves the principle of development. FCSL ask that the provision for additional rent that would normally be associated with this development be re-phased in line with other requests dealt with later in the report.
- 4.3 Insofar as the transfer of land to THFL by FCSL is concerned, if Members are minded to approve the development proposals generally, then a sub lease or partial assignment of the ground lease would be required to take them forward. These would impose development obligations on THFL. Although these alternatives achieve essentially the same results, Members should be aware that the latter puts the Council in a direct contractual relationship with THFL. The Council would need to ensure that FCSL was in a position to regulate the corresponding development obligations in the Development Agreement between FCSL and THFL.
- 4.4 Insofar as the sub lease to SSDC by FCSL is concerned, if Members are minded to approve the development proposals generally, further dialogue would be needed with FCSL and SSDC to agree the Council implications for Heads of Terms ensuring consistency with the current FCSL lease arrangements. Negotiations would be subject to agreement of satisfactory terms and conditions consistent with Best Value requirements.
- 4.5 In addition, FCSL has proposed that the Council establish a Deed of Community Burdens over the whole site which would have the effect of regulating the development carried out, together with the responsibilities for maintenance of common parts and protection of the amenity of the site. As currently proposed, this deed would appoint FCSL to oversee the management of the deed and the obligations which it imposes on the various present and future occupiers of the site. Whilst this is an effective way of ensuring adherence to the site conditions, Members should be aware that the Council may, as owner of the land in terms

of the ground lease, have a residual responsibility to enforce this deed if the proposed management arrangements are changed or dissolved.

- 4.6 Notwithstanding the terms of Section 6 of this report and the Members' decision thereon, there is potential for the development of land in Council ownership lying adjacent to, or within the footprint of, the existing ground lease. Some of these opportunities have been unlocked by recent changes in the emerging structure and local plans. The Council should seek to make it a condition of any consent, that all necessary rights of access are secured with any variation to the existing ground lease which would enable the Council to develop such opportunities.

## **5.0 REQUEST TO VARY FINANCIAL ARRANGEMENTS**

- 5.1 The Council has advanced three loans amounting to a total of £5.095m to FCSL. The first loan of £2.0m was made in 2003 having received capital expenditure consent from the Scottish Executive. The loans carry varying rates of interest, are all long term, with final repayment due in 2029. Following earlier decisions of the Council to defer the payment of interest for three years until December 2007, the interest due has been added to the amount advanced. By December of this year, the amount owed will have risen to c£5.7m.
- 5.2 FCSL now requests that the original repayment period of 25 years be extended to 40 years, aligning repayment with the Company's fixed asset depreciation period. Moreover, FCSL requests a two year extension of the deferred repayment period to December 2009. Interest due but not paid would continue to be added to the principal outstanding.
- 5.3 Unlocking development value from the existing site is critical to the financial future of FCSL. The ground lease between FCSL and the Council provides for additional rent of 10% of the net income generated from occupiers or uses to accrue to the Council. This will be a significant sum and FCSL have requested that this be paid to the Council over an extended 20 year period.
- 5.4 FCSL has undertaken to pay other sums to the Council amounting to £0.437m in respect of design team charges for professional services. It has not been possible previously to settle this debt and FCSL now requests time to pay this sum in phased payments between now and 2012.
- 5.5 The business plan highlights a steady growth in turnover despite many challenges which have emerged since the company was formed. Management Accounts for the 11 months to May 2007 indicate the company achieved a profit of c£0.07m before interest, which has been accrued within the Profit & Loss Account, although not paid because of the deferred period.

## **6.0 REQUEST FOR CONTRACT OF EXCAMBION**

- 6.1 FCSL have requested a contract of excambion which would see the Council swapping a piece of land to the north of the secondary access road (marked on plan attached as Appendix 2) for the area of ground currently under lease to FCSL for which the Council has secured planning consent for an indoor football centre. If the exchange were to happen, FCSL would then dispose of the area of land to THFL to facilitate the development of a garden centre. Until recently the land was contained within the green belt. The recent changes in the planning status referred to above mean that the entire site between the land leased to FCSL and the rail line is now potentially developable in uses compatible with the overall stadium ambitions and relevant planning policies. The Council

had not envisaged developing the land at this time. It has identified it within the HELIX bid as an area that might be developed as sports pitches and recreational land including a skate park. The proposals for a garden centre might well be accommodated comfortably within the HELIX vision in this location.

- 6.2 The District Valuer was engaged to consider the respective values of the site for the indoor football centre currently leased by FCSL and the section of Council land required by FCSL to accommodate the garden centre proposal (extending to 10 acres) from THFL. The District Valuer has valued both sites, assuming availability of all necessary statutory consents to facilitate these developments in acceptance terms. A preliminary valuation indicates that the Council's site is of greater value, therefore the proposed contract of excambion would fail to provide full market value to the Council at this time. If the Council were minded to proceed with the deal at this stage, external legal advice indicates that the contract would be contrary to State Aid rules.
- 6.3 We do propose that the Council considers its position with regard to the future development of the site and that officers be instructed to undertake further work to consider how the site might be developed in future taking account of the development of the stadium, the HELIX bid and the Falkirk Gateway site. Securing the rights of access mentioned at 4.6 would be integral to this future development.

## **7.0 PRE-EMPTION RIGHTS**

- 7.1 THFL have requested pre-emption rights for the land in Council ownership. This would mean that they would have preferred developer status in any plans the Council had for taking forward the land in its ownership. There may be financial and operational benefit in taking such an approach. However, it has been raised with officers via FCSL in the last few days and it has not been possible to fully evaluate it in time for the Council meeting. It is recommended that Council instruct officers to consider this request in more detail and report back to a future meeting ideally in partnership with the proposals for future development of the land outlined above.

## **8.0 INDOOR FOOTBALL CENTRE**

- 8.1 The Council submitted a bid for an indoor football centre as part of **sport**Scotland national and regional facilities programme in 2004. The bid provides for a full size indoor football pitch and associated changing and support accommodation. The total cost is estimated at £8m and an offer of award of £3m was announced in August 2004. Planning consent was granted for the centre in March 2006 and a final business case has been developed that shows an annual operating deficit of circa £0.25m. Further discussions between the SFA and **sport**Scotland have been ongoing to reduce the height of the building and bring the costs down. It had been hoped that FFC might invest in the centre given the proximity to the stadium and the extent of the children's and youth programmes operated by them. However, they have indicated that they would be regular users of the centre and could commit to an extensive programme although they do not have capital funds available for investment. Similarly FCSL, the other potential development partner, is focussed on the development of the stadium more generally. The other clubs in the area are interested in booking time in the centre however they are not able to contribute to the capital cost. It is suggested that officers bring a report on the indoor centre to the Policy and Resources Committee before a final decision is reached on whether to proceed with the proposal or not.

## 9.0 LEGAL IMPLICATIONS

- 9.1 The joint venture agreement between Falkirk Council and Falkirk Football Club which led to FCSL being established set out specific areas of business requiring shareholder consent. These largely concern any new developments or significant changes to the approved business plan. Similarly, the existing ground lease details what is currently permitted in terms of the lease and what proposals require additional consent.
- 9.2 The Council has assessed its legal powers in respect of involvement in the stadium project at each stage of the project. Council has also been cognisant of the risks involved throughout the process and has assessed those risks against the benefits deriving from such a high profile, ambitious and imaginative development. Members will wish to revisit that advice which is contained in reports to Council on 18 March 2003, 5 May 2004 and 2 March 2005. In summary, the advice:
- (a) outlined the powers available to the Council in terms of s.20 of the Local Government in Scotland Act 2003 (the power to advance well being) and s.15 of the Local Government and Planning Act 1982 (the duty to ensure that there is adequate provision of facilities for people living in the area to indulge in, among other things, recreational and sporting activities). Those powers remain relevant to the Council's considerations in terms of this report, and
  - (b) highlighted the need, not to avoid risk entirely, but to assess it properly, acknowledge and measure it and consider whether it is justifiable in terms of the community and other benefits it is expected to deliver.
- 9.3 A further issue for Members to be aware of is that of State Aid. This is where state resources (which include the resources of local authorities) are used to provide financial aid to entities undertaking commercial activities. European law regulates the provision of such aid if it confers a commercial advantage on a company. It is important, therefore, to assess whether, in re-profiling FCSL's repayments, a financial advantage is being conferred or whether the re-profiling would be acceptable to a creditor and investor in FCSL from the private sector, in which case there is no State Aid. The Director of Finance has concluded that a reasonable creditor and investor in an equivalent position to the Council would consider that an adjustment to repayment schedules in the circumstances outlined in this report would be a necessary and proportionate step in securing ultimate payment while also creating an environment in which the project's vision can be delivered.
- 9.4 The existing ground lease and the various sub leases are all essentially contractual documents to which the Council is a party in some shape or form. The proposed development plans have implications for these documents which must be dealt with by formal variation. It is also imperative that any new subleases or partial assignments of the ground lease are done in such a way as to ensure consistency and uniformity of conditions. In addition, FCSL is proposing that the Council implement a Deed of Community Burdens in terms of the Title Conditions (Scotland) Act 2003, which could be an effective way of regulating the responsibilities of the various occupiers on the larger site. Again care will need to be taken to ensure that the terms of this Deed are compatible with the existing and future arrangements.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 There is a risk involved to the Council in acceding to the debt re-profiling requests outlined in Section 5; that the debt is not repaid or is not repaid in full. Equally, there is a risk in not acceding to it; that an inflexible approach to repayment brings the company into immediate financial difficulty putting at risk the entire venture and frustrating delivery of the Council's original vision which informed involvement in the joint venture. The Director of Finance has assessed that the request for a further 2 years repayment deferment of the debt due by FCSL at this stage is justifiable and proportionate with a view ultimately to securing recovery while preserving the opportunity for FCSL to complete its overall development plans, recognising that those plans are consistent with the original objectives determined by Council when it resolved to participate in the joint venture. Moreover, the Director of Finance notes that FCSL remains a fledgling business and the proposal from THFL represents a real opportunity to significantly improve FCSL's financial position. In addition, it represents an opportunity to reduce risk through generating substantial income and enabling them to meet their future financial obligations to the Council.
- 10.2 Turning to the other requests relating to extending the repayment term to 40 years and repaying the additional rent over twenty years, the Director of Finance considers that these requests be held over for further consideration dependent upon progress with the development of the site.
- 10.3 With regard to the final request outlined in para 5.4, the Director of Finance recommends that a phased payment arrangement would be acceptable, subject to agreement between the parties.

## **11.0 CONCLUSION**

- 11.1 FCSL has made significant progress in the development of Falkirk Stadium. It is recognised as an iconic structure that embodies the ongoing transformation of the Falkirk Council area. Residents and visitors have identified it as a visible symbol of the area's ambition and aspiration. There are a range of opportunities for community engagement in the Stadium already and the plans outlined in this report will provide a range of additional leisure and employment opportunities.
- 11.2 FCSL has made good progress in agreeing the Heads of Terms with Terrace Hill (Falkirk) Ltd including appropriate safeguards with regard to parent company guarantees, phasing and management of risk. The granting of shareholder's consent is reasonable and straight forward. The request for landlord's consent with regard to the additional ancillary retail request and the SSDC proposals for the south stand are consistent with the original visions for the development of the stadium and it is therefore recommended that landlord's consent be granted. To the extent that the proposals require consents from the Council as planning or licensing authorities, such consents will be subject to separate applications which will be dealt with wholly in accordance with their respective legislative frameworks.
- 11.3 The request for a contract of excambion has proven particularly difficult and it is suggested that whilst this route is not currently advisable, Officers should examine alternative routes in considering options for the development of Council land. Likewise a final decision is needed on whether to proceed with the proposed indoor football centre. The offer of £3m toward the cost is significant however this has to be weighed against the overall cost and the community benefits associated with the development.



11.4 Members are asked to acknowledge the progress made to date and to ask that further reports are submitted in due course.

## **12.0 RECOMMENDATIONS**

### **12.1 It is recommended that Members:-**

- i. grant shareholder's consent to the proposals outlined in this report in line with the provisions of the Joint Venture Agreement between Falkirk Football Club and the Council;
- ii. grant landlord's consent for the development sub lease or partial assignation to Terrace Hill (Falkirk) Ltd;
- iii. grant landlord's consent for the development of the South Stand subject to conclusion of negotiations on the Heads of Terms between FCSL and SSDC.
- iv. extend the list of permitted uses in the ground lease between the Council and FCSL to include ancillary retail associated with the health and fitness centre and a waterside restaurant;
- v. approve deferment of loan repayments until December 2009
- vi. agree to the principle of re-phasing as detailed in Section 10.3
- vii. instruct Officers to bring further reports on options for development of the land owned by the Council adjacent to the stadium;
- viii. instruct Officers to report to Policy and Resources Committee on the proposals for the indoor football centre;
- ix. authorise the Chief Executive to agree to any consequential or associated amendments required to the ground lease or any other agreement or document to give effect to Members' decisions;
- x. instruct Officers to provide updates on progress.

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Chief Executive

Date: 21 June 2007

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### **LIST OF BACKGROUND PAPERS**

1. # Letter from FCSL incorporating Business Plan dated 13 June 2007.
2. # Heads of terms between FCSL and Terrace Hill (Falkirk) Ltd.
3. # Draft Heads of Terms between FCSL and South Stand Development Co Ltd

Anyone wishing to inspect the background papers listed above should telephone 01324 506002 and ask for Mary Pitcaithly.

# Not for publication by virtue of Paragraph 9 of Part 1 of Schedule 7a of the Local Government (Scotland) Act 1973.