

FALKIRK COUNCIL

Subject: COMMUNITY SERVICES TRUST
Meeting: FALKIRK COUNCIL
Date: 8 DECEMBER 2010
Author: CHIEF EXECUTIVE

1. INTRODUCTION

- 1.1 This report is prepared in response to Members' decision in February this year to approve, in principle, the proposal to create a Trust made up of the Leisure and Culture and Lifelong Learning divisions of Community Services. The Council directed officers to develop a Business Case and to carry out consultation on the proposal with employees and Trade Unions and to report back to Council.
- 1.2 The Business Case has been made available to all Members and demonstrates that if Members were minded to establish a Trust as outlined, circa £1.1m could be saved annually through establishing a not-for-profit organisation capable of securing charitable status. If the general principle to form a Trust is agreed, the report then outlines the key decisions for Members to take in this phase to structure the Trust appropriately. The Business Case describes the next steps required to deliver the Trust by 1 April 2011. The timescale has slipped and it is suggested that the earliest operational date would be August 2011 following a decision today.
- 1.3 The alternatives to establishing a Trust are discussed briefly in Section 15. However if Members decide to reject the proposal in the Business Case, then further more detailed work would be required to consider how else the savings could be achieved and where the services would fit within the revised Council structure. This would include relevant consultation on such matters.
- 1.4 The report recommends that Members agree to establish a Trust with the scope of services outlined in the Business Case. It recommends that Officers and the external advisors are instructed to complete the detailed work toward implementation supported by a Shadow Board made up initially of five Elected Members. If it is agreed to establish a Trust, a Shadow Board would be formed.

2. BACKGROUND

- 2.1 The principal driver for Members in asking officers to consider the development of the Trust has been in recognition of the serious financial challenges facing the Council. As Members are aware significant savings are needed in the next four years.
- 2.2 Around 23 Councils in Scotland have established at least one Trust to take forward some or all of the services being considered for transfer to a Trust in Falkirk. The Councils that are actively considering Trusts for the first time at present are generally looking to have a broad scope of functions considered for transfer in order to gain more than the financial benefits associated with charitable status. Leisure Trusts that have been in place for some time are considering expansion to include culture, parks, community provision and libraries. Trusts are widely established in England, many cover a diverse range of services.

- 2.3 The decision within Falkirk to consider a Trust is therefore in keeping with current approaches to protecting, and over time developing, services of this type whilst delivering tangible financial savings to the Council.

3. APPROACH TO THE DEVELOPMENT OF THE BUSINESS CASE

- 3.1 As noted above, the Business Case has been made available to Members. Members are asked to consider the full report. However an executive summary is included at the beginning of the document.
- 3.2 In summary, a Steering Board was established involving Corporate Management Team and Trade Union representatives. They approved the terms of reference for the Task Group which was made up of staff from various services supported by external financial and legal advisors. The group undertook extensive research into Trusts already established and into those authorities considering forming one.
- 3.3 A thorough analysis of services in Community Services on a function by function basis was then completed and assessed against nine criteria to determine whether it was more appropriate for the function to transfer to the Trust or for it to be retained within the Council. In addition, services in Education Services and Corporate and Neighbourhood Services closely aligned with the areas proposed for transfer were also analysed. This concluded that there was a coherence and synergy between specific groups of services. It also showed that Bereavement Services had a weaker fit with the broader Trust agenda and that local parks and play areas, because of their strong connections with neighbourhood services, were better placed within the Council than in a not-for-profit charitable organisation.
- 3.4 The group considered the legal and financial implications associated with establishing a not-for-profit organisation capable of securing charitable status. It looked at the required governance arrangements particularly in respect of the formation of a Board to lead the proposed Trust. It outlined the requirements for the development of a Services Agreement between the Trust and the Council. It also suggested that the Trust, if it is established, should initially procure its support services from the Council thereby protecting jobs in the Council and giving the Trust critical organisational support and continuity in its early formative years. It also stressed that the new organisation should be Falkirk owned and operated in order to ensure that it takes full account of the needs and aspirations of the local community. Additionally, it was emphasised that the assets will remain with the Council and be leased or licensed for use to the Trust.
- 3.5 This work concluded that there is merit in Members considering establishing a Trust made up of the services largely drawn from the existing Community Services portfolio in order to secure approx £1.1m of savings per annum and to enable it to attract external funds whilst at the same time delivering cohesive services.
- 3.6 The remainder of the report sets out specific issues and decisions for Members in respect of progressing to establish a Trust.

4. PROCUREMENT

- 4.1 The Business Case (Section 3) explains the rationale for a limited level of advertising to notify interested parties that the Council intends to transfer services to a not for profit organisation. This ensures compliance with the Scottish regulations on procurement. The reach of the advert could be extended however it is suggested that notification of the proposal via the website should suffice and Members are asked to agree this approach.

Officers will report back to Council on the result of this advertising process and will recommend the next steps to be taken.

5. GOVERNANCE

- 5.1 The Governance proposals are set out in Section 3. Members are asked to agree that the Trust be established as a company limited by guarantee and it be structured in such a way that its objectives are compliant with charities legislation and that an application is made to the Office of the Scottish Charity Regulator (OSCR) for registration. If approved, this will enable applications to be made to unlock the National Non-Domestic Rates (NNDR) and VAT savings outlined in the Business Case.
- 5.2 It is suggested that Members agree the Board composition as outlined, namely five Councillors, five independent Members and an employee representative. If agreed, a Shadow Board will be formed to assist the project team take forward the next stages of the implementation plan, particularly in respect of the development of the various agreements between the Trust and the Council. In addition it would contribute to the Trust Business Plan and the organisational arrangements prior to submission to the Council for consideration and approval.
- 5.3 The Business Case suggests that the Trust act as lead policy advisor on relevant matters and that the response to national initiatives, strategy consultations etc be co-ordinated through the Trust. Members are asked to agree that this represents best value as a consequence of all relevant staff transferring to the Trust thereby retaining the strategic and operational perspective in one team as at present.
- 5.4 This proposal does require consideration to be given as to how the Council monitors the performance of the Trust on an ongoing basis. It will be required to regularly submit timely and comprehensive reports to the Council on its performance. However it would be helpful to agree which Service within the Council is to liaise with the Trust and for them to be actively involved in contributing to and agreeing the monitoring arrangements. It is suggested that the Chief Executive assume responsibility for this process, which will enable a broad range of ideas and opinions to be included within the performance review. It also ensures that the governance arrangements are appropriately embedded in the review process and are proportionate going forward.
- 5.5 It is also suggested in the Business Case that services currently provided to Community Services on a corporate basis are provided at a cost to the Trust. This enables the Trust to be focused on its early establishment and engagement with the community whilst the Council continues to provide the essential back office support. It is suggested that this agreement between the Trust and the Council covers the initial three years of operation with the position being subject to review. As highlighted in the Business Case it is vital that the Trust can demonstrate to OSCR that it has ensured the services provided represent value for money and are appropriate and relevant to their business needs and that the Trust has complied with its procurement responsibilities.

6. SCOPE OF SERVICES FOR TRANSFER

- 6.1 The scope of services for transfer are driven by a primary recognition that the current mix of services within Community Services works very well and that it has been a successful service both in delivering its agreed outcomes and in engaging with partners and stakeholders in the achievement of its objectives. The integration benefits are outlined in detail in the Business Case.

- 6.2 Some additional services currently placed in other services are also proposed for transfer to the Trust in recognition of the synergies that could be derived. Better planning and management derived from these synergies may lead to more effective use of limited resources going forward as well as ensuring that duplication and overlap is avoided.
- 6.3 Members are asked to agree that all of Community Services (excluding Bereavement Services, local parks and play), Active Schools, Outdoor Education and Cultural Programme, as well as the grounds maintenance function of the strategic parks be transferred to the Trust as described more fully in the Business Case.
- 6.4 It is also suggested that as noted in the reports on the reorganisation of services presented to Council in February and June 2010, that Bereavement Services transfer to Corporate and Neighbourhood Services. It is suggested that this move happens as quickly as possible recognising the staff changes that are imminent.
- 6.5 It should also be noted that strategic and planning responsibility for local parks and play (along with ongoing maintenance and management) be retained within the Council.

7. EMPLOYMENT STRATEGY

- 7.1 If a decision is taken to progress toward establishing the Trust then the employee issues are governed mainly by the legislation known as Transfer of Undertakings (Protection of Employment) Regulations (TUPE). The Business Case suggests that the Council considers additional enhanced protection through:
- Requiring the Trust to have the same pay, terms and conditions as the Council (recognising that the Council will be required to meet the financial consequences of such a decision);
 - Agreeing to give protection to the pension rights of employees transferring to the Trust;
 - Agreeing to act as guarantor to the pension fund for the Trust, in respect of any shortfall in the valuation when it's carried out by the independent consulting actuary
 - Requiring the Trust to make appropriate provision for employee development.
- 7.2 The full details of the employment strategy are set out in Section 6 of the Business Case. However if Members decide to establish the Trust the detailed development of the new organisation will be a key component of the next steps action plan, including further consultation on relevant matters.

8. FINANCIAL CASE

- 8.1 As outlined in the introduction, primary savings at formation arise from the Trust being able to secure charitable status. However there are additional external funding opportunities that have not been quantified as yet but are highlighted in Appendix 7 of the Business Case.

9. RISKS

- 9.1 Any project of this degree of complexity carries a range of risks at both a strategic and operational level. The Business Case details key risks at Section 8. The most immediate risk is in securing OSCR approval and having the appropriate documentation to describe the proposed relationship between the Trust and the Council. The engagement and involvement of staff in supporting and assisting the transfer is also important. Staff make a

vital contribution to the overall success of the service and ensuring that they remain focused on service outcomes will be a key task for Managers in the coming months. Similarly, the Shadow Board has a key role in helping to establish the vision, objectives and ethos for the new organisation to ensure that it can begin positively and progress well through very challenging and demanding times.

10. FUTURE ACTION

- 10.1 The detailed action plan will be developed if a decision is made to proceed. Section 8 of the Business Case highlights the key tasks and gives an indicative work plan toward a 1 April 2011 start date. However, since the preparation of the plan timescales have shifted and a 1 August start date is now more realistic. An amended work plan will be prepared if Members agree to form the Trust.

11. LEGAL IMPLICATIONS

- 11.1 As noted, if Members determine in favour of creation of a Trust, care will need to be taken to ensure compliance with procurement requirements, State Aid regulations, the requirements of OSCR in terms of attaining charitable status and that the Council remains *intra vires*.
- 11.2 A considerable amount of work requires to be carried out in relation to checking the titles of/Council rights to properties and preparing the lease/licences for them. Likewise, detailed checks require to be carried out on contracts held by Community Services that would require to be taken over by the Trust. The preparation and agreement of the Transfer Agreement, Service Agreement, Service Level Agreements, Collections Agreement and corporate documentation for the Trust and its subsidiary trading company will also involve significant legal resources.
- 11.3 The consideration of the Council's in house and external legal advisors in relation to transfer of libraries is set out as Section 3 of the Business Case.

12. FINANCIAL IMPLICATIONS

- 12.1 The financial rationale is set out in Section 5 of the Business Case. Securing charitable status will allow the Trust to benefit from non-domestic rates (£1.1m) and VAT (£0.1m) savings. There will be additional running costs estimated at £0.1m leaving a net estimated saving of £1.1m. Moreover, the Trust will be eligible to apply to external funding sources not open to the Council.
- 12.2 A detailed Business Plan including financial projections will be developed as part of the future action plan.

13. HR IMPLICATIONS

- 13.1 If Council agree to the implementation of the Trust, a key to its success will be its employees. Any move to a Trust potentially impacts on circa 700 employees who will transfer into the employment of the Trust. Detailed work will require to be undertaken to ensure the transfer is managed effectively, in accordance with legislation and in recognition of best practice, as outlined in the Business Case; this will include consideration of the structure, terms, conditions and pensions. There will equally be a requirement to align those services being delivered by the Council to the Trust, recognising that the Trust is a separate

employer. This will be taken into account when developing the employee related aspects of implementing the Trust.

14. CONSULTATION

- 14.1 As detailed at Section 7 of the Business Case, detailed consultation has been undertaken with both Trade Unions and employees throughout the development of the Business Case for the Trust. If Council agree to the implementation of the Trust, the consultation will require to continue both to meet TUPE requirements and to ensure employees are kept informed of developments and Trade Unions are involved in shaping the employment strategy of the Trust in matters relating to TUPE and other such employment issues with officers in the Trust as they do at present with Community Services. Since circulation of the Business Case, Unison have undertaken further work and provided a response to this. The Task Group have considered this in detail and confirmed that all points raised are either addressed within the Business Case or can be refuted.

15. ALTERNATIVES TO THE TRUST

- 15.1 During the consultation phase the Unions and employees have asked about the alternative options to establishing a Trust. As Members know, the financial pressures facing the Council are significant and therefore any savings not delivered through establishing the Trust would need to come from within Community Services or from other Council services more generally. Given that these would be decisions for elected Members, the specific details of the alternatives have not, at this stage, been quantified. However, it is likely that the impact would directly affect frontline service delivery and jobs.

16. CONCLUSION

- 16.1 A significant amount of work has gone into considering what a Falkirk owned and operated trust would look like and how it could be set up and organised. The financial benefits are confirmed and quantified in respect of NNDR and VAT savings. There is an indication of potential new sources of external funding. The future actions in respect of developing the Trust are outlined in paragraph 10.1.
- 16.2 The Council will have positive control of the Trust through Service Level Agreement and approvals of Business Plan and funding. Members will be able to control fees and charges through the Business Plan and will still have day to day contact.
- 16.3 Customers, service users and stakeholders will be kept apprised of the progress toward the development of the Trust if Members decide to approve its formation. Day to day contacts will be unchanged. It would be expected that any impact of a Trust on service users would be minimal.
- 16.4 Members are asked to consider the Business Case in detail having regard to the financial context and the potential for the new organisation to continue to maintain and develop current service provision.

17. RECOMMENDATIONS

Council is invited to:

- 17.1 approve the Business Case and agree to proceed with the establishment of a Trust in accordance with the proposals and recommendations detailed in the Business Case;
- 17.2 authorise the Chief Executive or her nominee to develop and finalise, on behalf of the Council, the required suite of documentation for transfer to the Trust including the Transfer Agreement, the Service Agreement, the Service Level Agreements, the Collections Agreement, the leases and licences and the corporate documentation relative to the establishment of the Trust and its trading subsidiary and generally to take all decisions required to take forward the establishment of the Trust;
- 17.3 require the Trust to seek admitted body status with the Falkirk Council Pension Fund as part of the Local Government Pension Scheme arrangements;
- 17.4 determine the position in relation to any enhancement of TUPE protection and the duration following establishment of the Trust of any such enhancement as explained at Sections 6.20 through to 6.24 of the Business Case;
- 17.5 agree to advertisement of the services in accordance with Sections 3.2 through 3.7 of the Business Case and to receive a further report following advertisement recommending the next steps;
- 17.6 agree to receive further report(s) in the unlikely event that any issues arise during the implementation stage that would have a significantly adverse impact on the operational or financial position of the Trust;
- 17.7 agree the target start date of the Trust being 1 August 2011;
- 17.8 agree to further consultation with key stakeholder groups taking place including employees, Trade Unions, community groups, partner organisations and the wider public as appropriate; and
- 17.9 Agree to transfer Bereavement Services to Corporate & Neighbourhood Services at an appropriate date in early 2011.

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Chief Executive
25 November 2010

Contact Officer: Maureen Campbell Ext: 0902.

LIST OF BACKGROUND PAPERS

- 1. Business Case (available on-line at www.falkirk.gov.uk/coins/calendar)
- 2. Project Files **

** Not for publication by virtue of Paragraphs 1, 8, 11 and 12 of Part 1 of Schedule 7a of the Local Government (Scotland) Act 1973.