

**FALKIRK COUNCIL**

**Subject: FALKIRK COMMUNITY TRUST: IMPLEMENTATION UPDATE**  
**Meeting: FALKIRK COUNCIL**  
**Date: 27 APRIL 2011**  
**Author: CHIEF EXECUTIVE**

**1. INTRODUCTION**

- 1.1 This report updates Members on progress towards implementing Falkirk Community Trust as agreed at the meeting of Falkirk Council on 8 December 2010. The report provides a summary of progress. Since the Business Case was prepared a report pertaining to charitable sector governance has been published and issues in relation to this are highlighted in the report.
- 1.2 Members are asked to consider the proposed organisational structure which will be issued for consultation to employees and Trade Unions and to agree that suitable arrangements are put in place to allow appropriate time off for Trade Union representatives who have responsibility for Union members in both the Council and the Trust.

**2. BACKGROUND**

- 2.1 A Project Management Group is leading the work to implement the Trust and a number of Task Groups have been established to take forward discrete areas of work. All project Task Groups are working well and significant progress has been made with early key milestones achieved, most notably the undertaking of the advertisement for tender exercise, establishment of the Interim Board and submission of an application for charitable status.
- 2.2 Project work streams are supporting completion of the Transfer Agreement and Funding Agreement which will form the main legal documentation between the Council and the Trust. The Project Management Group is currently focusing on the detail of these documents.
- 2.3 To enable agreement to be reached between the Trust and the Council a “Go Active” period for the Trust has been built in to the programme ahead of the “Go Live” date on 1 July. “Go Active” is currently programmed to commence from 30 May. At this point Shepherd and Wedderburn, the project legal advisors, will transition to providing legal advice to the Trust. Legal advice to the Council will be from Legal Services. This ensures that both the Council and the Trust avoid any conflict of interest in respect of legal advice they both receive.

### **3. PROGRESS HIGHLIGHTS**

- 3.1 An advertisement tender exercise for the services transferring to the Trust has been undertaken. No interest was received.
- 3.2 The application for charitable status was submitted to the Office of the Scottish Charity Regulator (OSCR) on 22 March. The application included draft Memorandum and Articles and a first draft of a Business Plan. An early response has been received from OSCR seeking further information such as model lease, details of concession scheme and further clarification on some clauses within the Memorandum and Articles which Shepherd and Wedderburn are dealing with. The Project Management Group believes the queries do not pose any significant problems and have responded promptly to OSCR.
- 3.3 OSCR have replied again seeking clarification on the Council's employee leisure pass scheme and it has been clarified that the Council will discuss appropriate membership benefits with the Trust and develop an appropriate funding agreement commensurate with the current take up by Council employees. This ensures that the Council is still able to offer this benefit to employees whilst addressing the issues raised by OSCR.
- 3.4 Service Level Agreements (SLAs) are to be developed for services to be provided to the Trust by the Council based on current service arrangements. SLAs are a vital component of the Transfer Agreement between the Council and the Trust and will be put in place for a period of three years. This is a significant piece of work requiring input from across the Council and workshops have been held to progress documentation.
- 3.5 Work on due diligence in relation to property and contracts is progressing and no unexpected issues have been encountered to date.
- 3.6 A new ledger structure for the organisation has been created, along with ensuring key financial arrangements such as sundry accounts, creditors and banking are in place. The indicative annual net budget for the Trust is circa £11.8m. This reflects the current budget provision for those service areas transferring to the Trust. Work is continuing to finalise the budget, including incorporating functions from within Education and Corporate & Neighbourhood Services. The finalised net position will eventually represent the funding required to be paid by the Council to the Trust.
- 3.7 As indicated in the Business Case a Trading Subsidiary requires to be established to enable activities which are not considered charitable to be carried out. This includes catering services and the shop at Callendar House. The ledger structure has been developed to account for trading activities separately. There are no implications for employees who deliver these services.
- 3.8 A tender has been issued for the provision of insurance and claims services required by the Trust, including employers' liability, public liability and officials' indemnity. It is anticipated that a report will be prepared for the Interim Board by the end of May recommending the preferred tender.
- 3.9 TUPE consultation meetings are also progressing well with Trade Union colleagues. This includes development of the employee transfer list, discussions on terms, conditions and policies and other related matters. One issue raised by the Trade Unions is in relation to time off facilities for lay officials of the Unions who have responsibilities which cover union members in both the Council and the Trust. Under the current arrangements, the cost of providing time off to lay officials who undertake Council wide

responsibilities is split across all Services of the Council. To enable such arrangements to continue and to ensure Trade Unions can continue to operate on this basis, it is proposed that Council agree that lay officials can continue to provide representation to both Council and Trust employees and that a mechanism is put in place between the Council and the Trust to split the cost of this on an appropriate basis.

#### **4. IDENTIFICATION OF COUNCIL MEMBERS AS BOARD DIRECTORS**

- 4.1 Further to the report to Falkirk Council at its meeting on 2 March arrangements for creating an Interim Board have now been put in place. The Interim Board is meeting regularly and has dealt with the draft Memorandum and Articles and submission to OSCR and the recruitment process for independent directors.
- 4.2 At the meeting on 2 March the Council identified five Council Members to join the Trust Board. The two Council Members from the SNP group have since resigned.
- 4.3 The company incorporation documents have been prepared and, pending OSCR approval of the memorandum and articles of association, the company can be incorporated quickly. On incorporation the company's interim board will be able to appoint other directors. The full board will be established when all director posts are appointed to. For the purposes of holding a quorate meeting, the minimum number of directors shall be five, consisting of at least two Council appointed directors and three independent directors. As referred to above this is subject to final OSCR approval.

#### **5. ORGANISATIONAL STRUCTURE UPDATE**

- 5.1 As detailed in section 6 of the Business Case considered by Members in December 2010, there is a need to design a management structure for the Trust. The Trust Interim Board has now given this matter consideration, taking into account the current structure within Community Services and the financial implications of any structure design, ensuring that the cost of any revised structure can be maintained within existing budget.
- 5.2 The Interim Board has also received legal advice on the stage at which a structure can be formally approved. The legal advisers to the Trust have confirmed that the organisational structure for the Trust can only be approved by a fully constituted Trust Board, once the Trust is established as an organisation in its own right, as outlined in paragraph 4.3 above.
- 5.3 In light of this advice, the Interim Board has agreed a draft structure for presentation to relevant stakeholders for consideration and comment. The cost of the draft structure can be contained within the staffing budget for those service areas which are transferring to the Trust. This is attached for Members' consideration and comment at Appendix 1.
- 5.4 An employee consultation exercise will also be undertaken on the draft structure. To enable this, a copy of the structure will be provided to relevant employee groups and Trade Unions for comment following consideration by Council.
- 5.5 Feedback from the consultation, together with a proposed structure, will be presented to one of the first meetings of the fully constituted Trust Board for consideration and agreement, in line with legal advice.

## **6. ISSUES**

- 6.1 OSCR have very recently issued new guidance in relation to control and independence in Scottish charities. The guidance appears to have been predicated on issues that have arisen where charities have close relationships with Government or Local Authorities and specific case studies of difficulties encountered by Leisure Trusts in meeting charitable obligations are illustrated.
- 6.2 The Project Management Group have reviewed this document particularly in relation to conflict of interest policy, board director nominations, extent of discretion over services and charging policy, demonstrating contract benefit for the charity and clarity on website relationships and communications. It is anticipated that the proposed governance structures and planned direction of travel for the Trust will satisfy OSCR; nonetheless the Trust will require to be mindful of this as final Agreement is reached with the Council.

## **7. CONCLUSION**

- 7.1 Work is currently progressing according to programme and the issues reported above are not causing delay. Timescales for establishing the Trust are very tight however the prompt feedback from OSCR gives improved comfort that the critical milestone of a decision on charitable status can be achieved by mid May.
- 7.2 An organisational structure for the Trust has been prepared for consultation purposes with Trade Unions and employees and this will be approved by the Trust Board in due course once the company is fully set up.

## **8. RECOMMENDATION**

**Members are asked to:**

- 8.1 **Note the progress and issues identified in implementing the Trust;**
- 8.2 **Note and consider the organisational structure for the Trust;**
- 8.3 **Agree that suitable arrangements are put in place to allow appropriate time off for Trade Union representatives who have responsibility for Union members in both the Council and the Trust.**

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**CHIEF EXECUTIVE**

## **LIST OF BACKGROUND PAPERS**

**Nil**

# Community Trust



