

The background of the slide features the Falkirk Council Coat of Arms. It is a shield divided into four quarters. The top-left quarter shows a saltire (X-shaped cross) with a cross fleury in the center. The top-right quarter shows a stag's head facing left. The bottom-left quarter shows a three-masted sailing ship on wavy lines representing water. The bottom-right quarter shows a crowned eagle with wings spread. Above the shield is a crown with four fleurs-de-lis. A ribbon at the bottom contains the motto 'A'NE FOR A' in Gaelic script.

Agenda Item 11

Falkirk Community Stadium Limited

Falkirk Council

Title: Falkirk Community Stadium Limited

Meeting: Executive

Date: 30 November 2021

Submitted By: Chief Executive

1. Purpose of Report

- 1.1 This report provides Members with an update in respect of Falkirk Community Stadium Ltd (FCSL), being a wholly owned subsidiary of the Council.
- 1.2 It is important to note that FCSL has no involvement with Falkirk Football and Athletic Club (the Football Club), other than a landlord/tenant relationship. The primary aim of the report is to receive member approval that would enable arrangements to wind up FCSL and transfer FCSL's assets to the Council.

2. Recommendations

- 2.1 **It is recommended that the Executive authorises the Chief Executive or his nominees to finalise the legal and financial arrangements to wind up FCSL and transfer the stadium assets to the Council.**

3. Background

- 3.1 Following a demerger in 2009 of the original company set-up to build and develop Falkirk Community Stadium, new companies were created with the assets and activities being allocated between the Council and the Football Club. The new company (FCSL) was created with specific responsibility to develop and manage the assets owned by the Council, principally all commercial activities (including all non-football tenancies in the West Stand) and development plots. The Football Club took responsibility for all football related areas in the West and North Stands, pitch, floodlights and development of the South and East Stands. The Council agreed the company directors of FCSL would be the Director of Development Services, Director of Community Services (now Falkirk Community Trust Chief Executive) and Head of Accountancy Services (now Senior Corporate Finance Manager). This report is solely focussed on the arrangements for managing the Council's assets and has no direct effect on the Football Club.

- 3.2 A number of reports have been presented to Members on FCSL over the years, the last being a report to Council in March 2014. Members were then presented with a proposal that would split the stadium's assets between the Council (development sites) and Falkirk Community Trust (west stand). The proposal, at that time, aimed to solve a number of issues, in particular
- The share capital structure of FCSL was no longer considered appropriate, with the Council having preference shares in a company which it is the sole shareholder
 - FCSL had accrued debt to the Council (principally the loans for constructing the stadium) which it is unlikely to repay
 - If the development sites were sold by FCSL there would be a capital gain on which FCSL would be required to pay corporation tax. The proposal aimed to minimise the impact of corporation tax by offsetting the gains made on transfers by using the accumulated losses in FCSL and also creating further capacity by gifting some of FCSL's assets to Falkirk Community Trust (FCT), with the gift giving further tax relief on the transfer of qualifying interest in land to a charity
- 3.3 The steps required to address these issues would simplify the share capital of FCSL, capitalise the existing debt due by FCSL to the Council by issuing the Council with new shares in satisfaction of the debt due to it, allow the transfer of FCSL's assets to the Council and FCT and wind up of FCSL.
- 3.4 The above arrangement required the agreement of FCT and a report was presented to FCT Board in August 2014. After due consideration the FCT Board agreed that it would be preferable to obtain a better sense of the future direction and receive a forward business plan for the stadium before making a final decision.
- 3.5 The decision by FCT coincided with the ongoing development of the Falkirk Gateway primarily through the Tax Incremental Financing (TIF) initiative. The approach to disposal of development sites would be an important aspect of a business plan. A report to members in March 2016, noted that one of the main outputs was to prepare a development framework covering the Falkirk Gateway and Community Stadium sites and a proposal on the transfer of FCSL assets to enable the development to proceed would be the subject of a future report to the Executive. Since that date, marketing has been undertaken on the Gateway site and a preferred developer appointed.
- 3.6 In May 2018 a proposal to progress the Council's HQ office requirements, which included a proposal to fit-out Suite 1b at the stadium for resilience purposes was presented to the Executive. Members chose to reject the proposed development at the stadium in 2018. However, as part of the Council's civic headquarters and arts centre replacement project, Members agreed to fit-out Suite 1b as office accommodation in September 2020. These works are being progressed following the completion of interim office accommodation at the Foundry, Larbert.

- 3.7 Over the last few years there have been tentative enquires from the Football Club about potentially buying the stadium/west stand. Despite officers having some limited conversations with the Club, nothing substantial has developed from these enquiries.
- 3.8 In January 2021, Members agreed to bring the services provided by FCT back in house. This decision effectively blocks the proposal in March 2014 to gift the West Stand to FCT. It also reinforces the need for the Council to consider how to progress its relationship with FCSL.
- 3.9 This report aims to provide proposals for addressing the issues noted at 3.2 and present a settled way forward for the stadium over the medium to long term.

4. Considerations

FSCL debt outstanding and capital restructure

- 4.1 As part of the initial construction of the stadium, the Council advanced loans of £5.1m (valued at £6.2m with the capitalisation of interest) to FCSL with the expectation of repayment. As a result of the demerger process in 2009 these loans ceased to exist with the Council receiving assets in lieu of the sums outstanding. Since then the Council has borne the cost of repaying these loans with a balance outstanding of c£2.5m at March 2021.
- 4.2 However the loans are still recorded in FCSL's balance sheet and as result the liabilities are significantly in excess of the assets. Independent legal advice was taken in 2018 and the original steps outlined in 2014, to capitalise the debt by issuing the Council with new shares in satisfaction of the debt due and at the same time reclassifying the share capital, still appear to be the most effective means of dealing with this issue. The legal documents to complete these steps have been drafted and this remains a key action with any proposal to wind up FCSL.

Corporation Tax resulting from the sale of assets by FCSL

- 4.3 One of the Council's key objectives in 2014 was to return FCSL's development sites to the Council so that those assets can be sold without a corporation tax charge being suffered by FCSL. In order to achieve the tax sheltering effect necessary to allow the return of the development sites to the Council it was proposed to transfer to FCT all of FCSL's property (i.e. the west stand) other than the development sites. The recent decision to bring the services managed by the Trust back in-house means that this is no longer a viable proposal.
- 4.4 With regard to corporation tax, a potential tax liability would only be triggered by the sale or transfer of the assets and would be payable on gains over and above the costs actually paid for the assets and after taking into account capital

allowances and previous tax losses. However, from discussions with the FCSL's external auditor (Drummond Laurie) there is now no expectation there would be any tax due if the assets were transferred or sold, as the current net book value of the assets per the accounts of c£4.6m is significantly below the value of costs/allowances/tax losses of c£14.1m. Further independent corporation tax advice was received from accountancy firm Saffery Champness. This confirmed that if there was a transfer of assets within the same tax year then any gains arising would be offset by the corresponding loss on the other assets. The key difference between 2014 and the current position is that a fall in the value of the sites and the availability of losses means the additional relief on the disposal to FCT as a charity is no longer required.

- 4.5 Given the change in the tax circumstances there is now no financial impediment to FCSL being wound up, as previously agreed by the Council, but with all the assets, principally the west stand and development sites, transferred directly to the Council.

Managing the stadium going forward

Governance Arrangements

- 4.6 The current management arrangements, where senior officers have been appointed as directors to FCSL, have been in place since the first company was formed in 2003. In 2017/18 External Audit recommended that these governance arrangements would benefit from review which would allow an assessment of any issues around conflict of interest.
- 4.7 The main reason for FCSL continuing following the demerger in 2009 was the tax liability that would need to be paid had FCSL been wound up. However, as noted above, there is no financial impediment to FCSL being wound up with all the assets, principally the west stand and development sites, transferred directly to the Council.
- 4.8 Under this proposal the stadium will be directly managed by the Council. It is likely that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to the transfer. This will require further consideration of both the current staffing arrangements and operational consequences of the Council taking direct responsibility for managing the stadium. This will be aligned to the work being undertaken to bring the services provided by FCT in-house.
- 4.9 Since the retirement of the Director of Development Services in 2020 and the departure of the Trust's Chief Executive at the end of August, there is only one director on FCSL's board. Assuming that Members accept the report's recommendation to take steps to wind-up FCSL and transfer the assets to the Council, it is suggested that the Chief Governance Officer is appointed to the FCSL Board to help manage this process.

Financial Arrangements

- 4.10 The Council currently does not make any direct financial contribution to FSCL, other than payments made to the company as landlord for the office units occupied by Council staff. The company derives rent and service charge income from its tenants as well as conference and catering activities. The following table provides a summary of the financial results in the years 2014/15 to 2019/20.

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
	£'000	£'000	£'000	£'000	£'000	£'000
Income						
Rental Income	196	195	217	217	218	220
Service Charges	225	206	233	247	260	293
Five-a-side	37	29	24	-	-	-
Conferencing & Catering (Net)	130	131	172	122	128	125
Other Income	18	17	22	28	23	23
	606	578	668	614	629	661
Expenditure						
Employee Costs	249	259	259	175	230	239
Other Expenditure	327	319	352	337	391	409
	576	578	611	512	621	648
Net Expenditure/(Income)	(30)	-	(57)	(102)	(8)	(13)

- 4.11 The above demonstrates FSCL's finances are relatively stable, with five of the six years in surplus, prior to the impact of depreciation. This is despite the loss of income from the five aside football pitches and a significant gap in rental income due to the void space (suite 1b) on the first floor.
- 4.12 There are, however, emerging issues relating to the condition of the building. A building condition survey commissioned during 2020, estimated repairs as c£2m over a 30 year period. There is now a need to proactively manage the backlog maintenance to prevent the build up of significant future problems. This will require to be accommodated within Council property maintenance and capital programme budgets. FSCL also recognise a need to refresh the internal fabric and configuration of the building to ensure the stadium can continue to provide a competitive service provision and be in a position to take advantage of the opportunities flowing from the Gateway development.
- 4.13 Despite these property issues, overall the west stand is still in reasonably good condition and, placed in the context of the Council's recently approved Property Strategy and Implementation Plan arising from the Strategic Property Review, and the recent agreed investment with the fitout of suite 1b, this should be an asset that the Council appropriately maintains. The financial implications for the Council and the other tenants (primarily the Football Club)

for dealing with the backlog maintenance and enhancing the building will be assessed and aligned to the Strategic Property Review which will be reported to a future meeting of the Executive.

- 4.14 Aside from the landlord responsibilities of managing the building, the other significant aspect of FSCL's business relates to conferencing and catering. Over the last six years this has produced an average net income of c£135k. Prior to the café being directly managed by FCSL, it is worth noting that other commercial operators were unable to make it work as a standalone business and each resulted in liquidation. Scope to enhance service provision and increase profitability would potentially be addressed by some investment to improve the internal configuration of the West Stand and this business development remains an untapped opportunity.
- 4.15 Within the Council's accounts, the stadium's net asset value is aligned to an investment of £3.597m and a long term debtor of £1.009m, which is an amount owed by FCSL in respect of professional fees and pre-2009 payroll costs. It is therefore anticipated that on completion of the transfer that the Council's investment and long term debtor will be covered by the value of the assets that are transferred.

Development sites

- 4.16 Marketing of the Falkirk Gateway sites has focussed on the Westfield and Middlefield sites which are owned by the Council (following an excambion with Callander Estates). Following market testing, a preferred developer, Fintry Estates/Hargreaves was appointed and proposals to establish a development agreement for delivery of the Gateway scheme were presented to the Executive at the end of 2019. Further work to conclude this development agreement has taken place and following a Members' briefing, was considered and approved by the Executive on 19 October.
- 4.17 It is anticipated that marketing of the remaining sites at the stadium can proceed once the agreement on progressing the Gateway is in place and the Council's approach to refurbishment of the Stadium has been finalised. In the meantime agreements have been reached with Falkirk Football Club over a lease variation at the site to enable the provision of an electric vehicle hub facility and provision of additional football pitch provision at the stadium site. These developments have enhanced the marketability of the Stadium site and it is proposed that an exercise be conducted to consider the approach to marketing of these sites to identify suitable uses and options for development.

5. Consultation

- 5.1 The proposed change in governance arrangements will likely result in staff transferring with TUPE rights from FCSL to the Council. As with any change this will need to be managed in accordance with relevant legislation and Council policies. All appropriate consultation will be undertaken, in particular with FCSL staff and current stadium tenants.

6. Implications

Financial

- 6.1 Financial implications arising for managing the stadium going forward will be identified and considered within the overall capital and revenue resources over the next five years, with a business case prepared for the future marketing and investment in the stadium facilities.
- 6.2 Undertaking the capital restructure and transfer of assets will require external support in terms of financial and legal advice. Estimated costs of c£20,000 will be sourced from existing budgets.

Resources

- 6.3 Input to this exercise will be required from services across the Council, primarily finance, legal, property and human resources.

Legal

- 6.4 Legal work has been undertaken to draft the suite of documents to capitalise the debt and reclassifying the share capital. Further legal work will be dependent on the options taken forward for managing the stadium.

Risk

- 6.5 Without a clear direction of travel on how the stadium is managed and financed there will be a higher risk of building or operational failure which will ultimately compromise the stadium finances and may lead to issues with the Football Club.

Equalities

- 6.6 There are no equalities implications arising from the report recommendations.

Sustainability/Environmental Impact

- 6.7 A sustainability assessment was not required.

7. Conclusions

- 7.1 The outstanding issues relating to Falkirk Community Stadium need to be addressed and this report outlines a number of steps to be taken to move matters forward. These steps include completing the financial and legal arrangements to reclassify the share capital and transfer stadium assets to the Council.

- 7.2 Taking these steps will leave the Council to manage the stadium going forward. It would therefore be appropriate to align the plans for maintaining and developing the stadium in line with the findings of the Council's recently approved property strategy and to explore options for enhancing the profitability and sustainability of the services provided.

Chief Executive

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Date: 5 November 2021

APPENDICES

None

List of Background Papers:

The following papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973:

None