

FALKIRK
COMMUNITY
TRUST

BUSINESS CASE



SEPTEMBER 2010

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EXECUTIVE SUMMARY

Introduction

- 1 This Business Case has been prepared to enable Members to reach a decision on whether to transfer services, mainly provided by Community Services currently to a Trust. The Trust would be an independent organisation that is Falkirk “owned” and operated and capable of securing charitable status. The preparation of the Business Case has been undertaken by a group of Officers from Law and Administration, Finance, Corporate and Neighbourhood, and Community Services supported by External Advisors, Grant Thornton (Finance) and Shepherd and Wedderburn (Legal). The work of this Task Group has been overseen by a Steering Board comprising the Council’s Corporate Management Team and representatives of Trade Unions.

Background

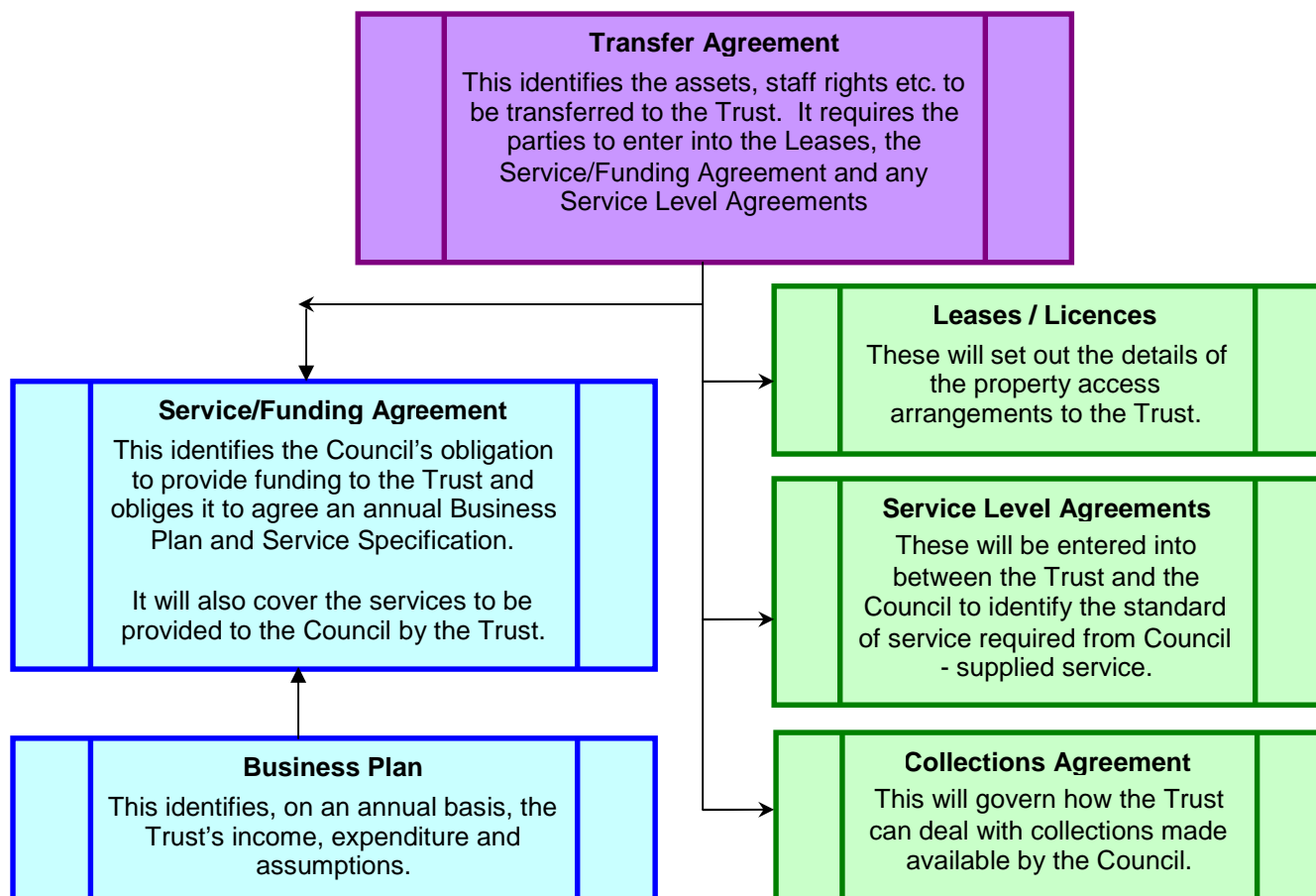
- 2 The consideration of the Trust comes at a time when local government is facing some of its toughest challenges ever. The financial constraints facing the public sector are well documented and are widely reported in the media. Within the Council, it is estimated that £45m will require to be saved over the next three years. As a consequence all aspects of service delivery are under review. Careful consideration needs to be given to striking an appropriate balance between maintenance of essential services that ensure the safety and well being of individuals alongside the wider need to ensure that the area continues to thrive, providing a place that is attractive to investors and has a good range and quality of services to ensure that everyone has the opportunity to fulfil their potential.
- 3 In the development of this Business Case, experience has been drawn from other organisations set up to deliver some or all of the services that are being considered for transfer to the proposed Trust. The Task Group found that similar organisations have been created across the UK and that while there are some common characteristics each has been finely tuned to meet local needs and to incorporate individual elements reflective of the organisation’s previous history and its future vision and aspirations. In Scotland at least 20 local authorities have established a Trust or separate Arms Length Organisation (ALO) to manage elements of their sport, leisure and cultural provisions.
- 4 This Business Case demonstrates the financial rationale for the Trust and how the experience gained from other organisations can be used to inform a Falkirk owned and operated Trust recognising the specific local needs of the Falkirk area. However the main task of creating the new organisation, its ethos, structure and organisation will follow if the general rationale is accepted and the areas for transfer agreed.
- 5 The evidence from elsewhere shows that much can be achieved if the new organisation is widely supported and valued from the outset. If it can secure the backing of the community and can adapt to new opportunities with new partners and funders then it can make an even greater contribution to the fulfilment of the area’s goals. Based on others’ experiences the financial benefits that can accrue to the Council are significant. However the real prize would appear to be the

opportunity to create a new focussed organisation that can seek to protect and, in time, enhance community facing services.

Legal Framework and Governance

- 6 As with any transfer of significant areas of work from the Council to a third party consideration needs to be given to the procurement methodology. This is to ensure compliance with the relevant statutory and regulatory frameworks. It is proposed that the Council advertises a “public services contract” outlining the full scope of the services proposed for transfer to the proposed trust. This would allow parties with relevant experience who are able to meet the criteria set out to tender for a contract for the services. In practice, the Council’s external legal advisors suggest that the prospects of another organisation meeting the entry criteria are low. Given the scale and monetary value of the services, consideration was also given to compliance with state aid rules. Helpfully, the proposed transfer would appear to comply with a public sector exemption within the relevant framework, and discussions in this regard are underway with the State Aid Unit.
- 7 Clearly it is vital that the formation of the Trust is fully compliant with the appropriate legislative frameworks. The guidance from the Council’s own legal team and the external advisors will be paramount in ensuring that the creation of the new organisation and the transfer itself are effectively managed.
- 8 It is proposed that the Falkirk Trust is a not for profit organisation with charitable status and will adopt the structure of a company limited by guarantee (CLG). Meeting the requirements of The Office of the Scottish Charity Regulator (OSCR) will be a further critical piece of work for the implementation stage. It is recommended that the proposed Trust will be led by a Board of 11 Directors made up of five Councillors, five independent Directors drawn from business, sports, culture, community learning and development and the broader community along with an employee representative. It is proposed that the Board of the Trust would also allow for the appointment of two additional co-opted Directors, should the Board wish to do so. It is envisaged that independent Directors would be non-remunerated volunteers recruited through an open recruitment process managed by a nominations committee established within the Trust.
- 9 The governance documentation will be drafted to take full account of these requirements and those attributable to individual trustees (Board Directors) including those in respect of conflict of interest.

The model overleaf summarises the governance documentation required to facilitate the development of the relationship between the Trust and the Council.



- 10 The Transfer Agreement requires the parties to enter into the Leases, the Service / Funding Agreement, the Collections Agreement and Service Level Agreements (SLA's) and identifies the process required to transfer the properties, assets and business and personnel.
- 11 The Trust's relationship with the Council would be set out primarily in a Service Agreement that would describe what work is to be done and what outcomes are expected. Each year the Trust would submit its Business Plan to the Council for approval and funding would be allocated accordingly. The Council would have a key role in determining the Trust's strategic priorities and in reviewing the achievement of its objectives and outcomes and to amend future targets accordingly.
- 12 The Trust Board would have responsibility for determining how best to deliver the objectives and outcomes agreed with the Council and for reporting on progress and making recommendations for future priorities and action.
- 13 The vision for the Trust would embrace national, area and local interests and importantly the vision of the Council and its partners. Strategic objectives and values for the Trust would reflect the Corporate Plan and Community Plan but also the opportunities presented through the creation of the Trust, such as partnerships and funding, flexibility and focus, and new perspectives. The development of vision, objectives and values for the Trust would follow on from the Business Case and be part of the business planning for the Trust. The Trust would also contribute to the Single Outcome Agreement as a key partner with the Council.

- 14 It is proposed that a Shadow Board, initially comprising of elected members, for the proposed Trust be established to assist in its formation and to act as a sounding board for officers in the implementation phase. It should be noted that this does not remove the need to report to Members more formally.

Scope of Services for Transfer to the Trust

Summary of Community Services

- 15 Community Services is a key front facing service department of Falkirk Council, it is a main contributor to ensuring a good quality of life for people living, working in and visiting the Council area. It does this through:
- Stimulating and enriching the cultural life of the area and contributing to enhancing the image of the area;
 - Supporting the learning, and information needs and wants of individuals and the wider community through our libraries and encouraging literacy and the enjoyment of reading;
 - Strengthening communities, reducing social exclusion and increasing active citizenship through developing lifelong learning, youth learning and community capacity building;
 - Encouraging individuals and communities to engage in healthy living and physically active lifestyles;
 - Providing quality sport and recreation services in a manner which encourages sustained participation.
- 16 The Service comprises five operational units which are managed through two divisions. Services are delivered from a diverse range of operational facilities including two significant local landmark buildings, Callendar House and the Hippodrome.
- 17 Community Services has developed a proactive approach to internal and external partnership working. Within Community Services this approach has worked well and brought benefit to local communities and stakeholders in a number of ways:
- Bringing together complementary skills available through community learning and development, arts, heritage, libraries and sport and recreation;
 - Developing creative ways of engaging participants;
 - Developing learning opportunities that are flexible, innovative and can target particular groups within communities;
 - Attracting external funding;
 - Creating pathways between disadvantaged or targeted groups and mainstream services.
- 18 The wide range of partnerships with external organisations can be based around joint working and collaboration, formal partnerships, funding arrangements or in a membership or advisory capacity.

Trust Scope

- 19 The Task Group took as its starting point a presumption that all functions within the remit of Community Services would be considered for transfer to the Trust.
- 20 The group also identified services in other parts of the Council that might have a better strategic fit within the Trust and considered these for inclusion too. The group drew upon experience from other local authority areas to assist in identifying transfer issues and challenges associated with splitting discrete elements from organisational groupings that had originally been constructed to seek synergy and co-ordination. The group also mapped the services provided by other parts of the Council to those areas identified for transfer and looked at the practicalities as well as the value of the works to inform the principles of the SLA's and to identify the detailed work still to be done in the creation of the Service / Funding Agreement between the Trust and the Council.
- 21 This work concluded that all of Community Services with the exception of the Bereavement Services Section and local parks and play development remits should be transferred to the proposed Trust and in addition appropriate elements from Education Services and Corporate and Neighbourhood Services should be included. This means that approximately 700 staff and the associated Community Services budgets to a value of £17.5m would transfer to the Trust.

Support Services

- 22 In respect of Support Services currently provided by the Council on a predominantly corporate basis including finance (accounting and budgeting, invoice payment and processing, payroll, capital finance support), HR advice, external funding, facilities management, architectural design services and graphic design, marketing and communications, it is proposed that the Trust hold the budget for the services and have them provided via a SLA with the Council for an initial period of 3 years thereby allowing the Trust to become established whilst continuing to be supported in key functions. One of the critical considerations has been the requirement going forward to assess value for money for the Trust and to be able to demonstrate to OSCR that it is operating independently and obtaining appropriate support services at the most economical price and best value service provision. Another consideration is that the Trust would require to comply with requirements.
- 23 Clearly the advantage of this approach is that it enables the Trust to become established in its own right and for its Board to have time to determine the services that it is capable of delivering first hand and those for which it requires to seek external support, either via the Council or from new third parties.

Service Rationale

- 24 The most compelling case for the formation of the Trust, along with financial savings, is the ability to create a new organisation that can fully focus on community facing developments. It brings together the cohesive power of the existing relationships that have been developed internally along with maintaining and developing external partnerships. It is suggested that the scope and scale of the services earmarked for transfer offer the best foundation for the new organisation to develop and flourish. The added benefit of the close proximity to

the “Council family” provides support in its early years, from which greater resilience and stability can grow in the years beyond.

Financial Rationale

- 25 It is estimated that £1.1m net of savings from current operational budgets could accrue annually subject to satisfying OSCR requirements in the formation and organisation of the new Trust. The savings come from reductions in the payment of National Non Domestic Rates (NNDR) and more favourable treatment of VAT available only to charities and similar organisations. In addition a number of potential external funding options were identified that are only available to charitable organisations particularly in the areas of tackling social exclusion, supporting and engaging young people and investing in facilities. The potential to secure additional external funding has not been included in the estimated savings.
- 26 For the Business Case, an analysis has been prepared to estimate the potential for recurring annual net savings to the Council when compared to the "as is" position of retaining the Community Services within the Council.
- 27 A financial model has been developed by the Task Group, supported by independent advisers, Grant Thornton. This incorporates the 2010/11 Council budgets that are anticipated to transfer to Community Services adjusted for the anticipated rates savings and a current assessment of the VAT implications associated with the transfer. Reference figures outlined in Section 5 of the Business Case will change as the Council forms its revenue budget for the financial year 2011/12.

Trading Subsidiary

- 28 A trading subsidiary would be set up within the Trust framework to accommodate specific activities, such as retail, that fall outwith the scope of the charity itself. Profit generated by the subsidiary would be passed to the Trust via gift aid. This is a well used and effective mechanism that ensures compliance with OSCR and HM Revenue & Customs (HMRC) regulations.

Employment Strategy

- 29 Given the nature of the Trust and the focus on service delivery, one of its key assets will be its employees. The ethos of the Trust will not only be commensurate with that of Community Services at present, it will also require its employees to develop skills which promote the Trust in a more commercial way. It is essential that the employment strategy used by the Trust is one which reflects this, represents best practice in Human Resources and meets the standards which an employer of choice would deliver. It is also essential that the Trust takes account of relevant employment legislation, delivering on such requirements as would be the case within the Council.

TUPE Transfer

- 30 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies to situations where an undertaking, e.g. a function of service delivery, transfers to a new provider. Those individuals working wholly or mainly in the area of work being transferred will be entitled to transfer with the work and

their employer will change to the new provider. Under TUPE these individuals will receive TUPE protection which in general terms protects an employee's continuity of employment, their pay and their contractual conditions.

- 31 In the case of a Trust being created, an assessment will require to be made of the work carried out by employees to confirm whether they work wholly or mainly within the functions being transferred to the Trust. Where this is the case, the employees will transfer to the Trust and become employed directly by the Trust. In this scenario, TUPE will apply and the employees will receive the protection provided by TUPE. It should be noted that temporary employees will only have a right to transfer where their contract remains in existence at the point of transfer to the Trust.
- 32 As is required by legislation, consultation on the transfer must take place in accordance with the TUPE Regulations (section 13). This will involve representatives from both the Council as the current employer and (if created prior to transfer) the Shadow Board of the Trust.
- 33 As detailed above, the pay, terms and conditions of employees transferring to the Trust are protected by TUPE legislation. There is no time limit on the period over which protection applies nor minimum period during which it must remain in place. If the Trust wished to change the pay, terms or conditions of employees following creation of the Trust, it would be open for it to do so provided it met the requirements of having a justifiable reason under TUPE.
- 34 With this in mind, it may be considered appropriate to provide added protection to employees over and above that provided by TUPE. It is proposed that the Trust be required to align with the Council's pay structure, terms and conditions.

Pension Provision

- 35 Consideration must also be given to the issue of employee pensions within the Trust. It should be noted that pension arrangements are not protected by TUPE to the same level as pay, terms and conditions.
- 36 The Trust will require to be a different organisation and employer from Falkirk Council to satisfy OSCR requirements. As such, the Trust does not automatically become a member of the Falkirk Local Government Pension Scheme. Instead, subject to the Trust Board's agreement, the Trust must apply for admission. It is suggested that the Council requires the Trust to apply for admission as part of the agreement to create a Trust, with a view to protecting the pension benefits of employees transferring to the Trust.

Workforce Planning

- 37 The Shadow Board will require to assess the organisational structure for the Trust having particular regard to the skills and expertise that will be required especially in respect of social enterprise activity including fundraising, sponsorship and marketing. Such work will require to take place prior to the creation of the Trust and any transfer of employees to the Trust. Relevant Officers within both Community Services and other Services of the Council will support the Shadow Board in this work taking account of best practice HR requirements including TUPE legislation.

Property Matters

- 38 It is proposed that all existing properties used in the delivery of services transferring to the Trust are similarly transferred either on a lease basis or on an access agreement. Both options allow the services to be delivered as at present. Further due diligence is required to check ownership and title conditions and burdens relative to all affected properties. In the unlikely event that any significant issues are encountered in this process that would affect operational or financial outcomes these will be reported to Council.
- 39 Routine maintenance would be part of the Trust regular remit and would initially be carried out by the Council as part of the service level agreement between the Trust and the Council.
- 40 The properties would remain in ownership of the Council and as such the Capital Programme would remain there too. Submissions for investment in existing properties would be made as part of the usual Council capital programme. Where new properties are being developed with Council funding, the Trust would act as client on the scoping of project briefs and when complete the service charge from the Council would be revised accordingly. It is hoped that additional external investment for properties would be secured from the proposed external funding programme.

Consultation

- 41 Over 200 employees have actively participated in the consultation briefings held for employees potentially affected by the proposal to establish a Trust. Whilst there is no clear consensus either for or against the Trust proposal, employees have acknowledged the financial position and that the proposal has merit. Their primary concerns relate to their own job security, terms and conditions and pension rights. Many staff identified positive service opportunities and reported on experiences from Trusts elsewhere.
- 42 There have also been regular meetings with Trade Union representatives.
- 43 The external stakeholders are apprehensive about what the Trust might mean for them and the changing relationships that would follow. As much reassurance as is practical has been given based on experience from elsewhere and on an understanding of how the Trust in Falkirk would work. They suggest that protection of services must be a compelling consideration.

Future Action

- 44 If Members decide to proceed to create a Trust as outlined in the Business Case, further more detailed work will be completed in respect of employee matters, property, governance, finance and business planning. An initial implementation date of 1st April 2011 has assisted the Task Group analyse the range of tasks and projects to be completed in advance of the “go live” date. This is an extremely demanding timescale and it may be more prudent to take a few months longer. However any delay in the Trust formation has direct financial consequences.
- 45 If Members approve the Business Case, a comprehensive next stage plan will be prepared that takes full account of the work needed along with the employee consultation requirements.

Conclusion

- 46 The work completed by the Task Group demonstrates merit in transferring services currently provided by the Council to a new organisation. Services would continue to be provided in the current manner and at the current scale, albeit this may change in future as a consequence of wider financial pressures whether the Trust is created or not.
- 47 The creation of a not for profit organisation with charitable status comprising the services outlined in this report that is Falkirk “owned” and operated would derive significant financial saving for the Council at the same time as offering potential benefits for wider community ownership and engagement. A series of additional steps that would require to be progressed in establishing the Trust are identified and outlined in Section 8.

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1 INTRODUCTION

Background

- 1.1 At its meeting on 10th February 2010 Falkirk Council agreed, in principle, to the creation of a Trust made up of the Leisure and Culture and Lifelong Learning divisions of the Council's Community Services. The Council directed Officers to develop a Business Case in relation to a Trust, to carry out consultation on the proposal with employees and Trade Unions and to report back to Council.
- 1.2 The Trust would be a company limited by guarantee, an independent organisation that is capable of securing charitable status.
- 1.3 A Task Group was set up involving representatives from Finance, Law and Administration, Corporate and Neighbourhood, and Community Services. Additional external advice has been provided by Shepherd and Wedderburn (Legal Advisors) and Grant Thornton (Financial Advisors). The Task Group met frequently to progress the project plan, to gather and analyse information and to complete the preparation of the Business Case. The Task Group also completed the consultation exercise as required by the Council decision and the findings are outlined in Section 7. The feedback from the consultation has been incorporated within the appropriate sections of the Business Case.
- 1.4 The consideration of the Trust comes at a time when local government is facing some of its toughest challenges ever. The financial constraints facing the public sector are well documented and are widely reported in the media. Within the Council, it is estimated that £45m will require to be saved over the next three years. As a consequence, all aspects of service delivery are under review. Careful consideration needs to be given to striking an appropriate balance between maintenance of essential services that ensure the safety and well being of individuals alongside the wider need to ensure that the area continues to thrive providing a place that is attractive to investors and has a good range and quality of services.
- 1.5 The proposal to create the Trust offers an opportunity to create a new organisation with greater focus and emphasis on creating the environment for delivering an attractive and appealing place that has opportunities for everyone to achieve their full potential. The Trust would be able to draw from the expertise and knowledge built up within the Community Planning Partnership and as a Council service, whilst engaging new ideas and contributions from the new Board that would be created, and from the new funding and partnerships that could emerge. It is an exciting time to develop new ways of working, new roles and new opportunities.
- 1.6 In the development of this Business Case, experience has been drawn from other organisations set up to deliver some or all of the services that are intended for transfer to the proposed Trust. The Task Group found that similar organisations have been created across the UK and that while there are some common characteristics, each has been finely tuned to meet local needs and to incorporate individual elements reflective of the organisation's previous history and its future vision and aspirations. This Business Case demonstrates the financial rationale for the Trust and how the experience gained elsewhere can be reflected in a Falkirk "owned" and operated Trust. However the main task of

creating the new organisation, its ethos, structure and organisation will follow if the general rationale is accepted and the areas for transfer agreed, as set out in later sections.

- 1.7 The evidence from elsewhere shows that much can be achieved if the new organisation is widely supported and valued from the outset. If it can secure the backing of the community and can adapt to new opportunities with new partners and funders then it can make an even greater contribution to the fulfilment of the area's goals. Based on others' experiences the financial benefits that can accrue to the Council are significant. However the real prize would appear to be the opportunity to create a newly focussed organisation that can protect and, in time, enhance community facing services.

Community Planning

- 1.8 Falkirk Council works in partnership with a wide range of organisations and local communities through its Community Planning structures to help improve the lives of local people.

The area's Community Plan (2005-2010) has six key themes:

- Improve the performance of the local economy and tourism
- Enhance lifelong learning and opportunity
- Creating a sustainable local environment and improving transport
- Regenerate our communities
- Enabling our citizens to live safely
- Improving health and well-being.

- 1.9 Community Services makes a significant contribution to the Community Plan. The work is underpinned by a strong coherent programme of activity that drives service improvement and ensures a high level of community engagement and participation. Community Services operates at all levels across the area, supporting individuals, groups and communities to achieve their aspirations. At an area wide level Community Services leads the creation, development and maintenance of a diverse portfolio of services and initiatives that:

- Improve the life chances for those living in the area;
- Create places that are highly valued and appreciated by residents and visitors;
- Engage in meaningful partnerships, especially supporting, recognising and valuing community contributions;
- Provide for fun and enjoyment.

Task Group Remit and Terms of Reference

- 1.10 The Task Group sought approval from a Steering Board comprising the Council's Corporate Management Team and Trade Union representatives for Terms of Reference (see Appendix 1) for developing the Business Case. This established the key objectives for the Task Group and the parameters for the work.
- 1.11 Whenever a service is being considered for review and new options are identified it is helpful to consider the widest range of options in the first instance and then to discount those that do not meet the key criteria. In this case the options that could have been considered might have included:
- Outsourcing to a private contractor – either in packages or as one contract - such providers are widely used for leisure and culture services in the South of England;
 - Connecting with an existing service provider to develop a contract or service agreement for some or all of the services proposed for transfer;
 - Seeking a third sector organisation, with a track record in the delivery of this range of services elsewhere, to manage and develop the services going forward;
 - Seeking a partnership with existing neighbouring Trusts to deliver shared services; or
 - Creating a Falkirk “owned” and operated Trust with an appropriate range of integrated and complementary services.
- 1.12 In preparing the Terms of Reference, the Task Group did consider whether the brief should address the options above. However there was a strong sense that, whilst the remit provided impetus for an independent organisation that was capable of securing charitable status and the subsequent financial and other benefits, there was a reluctance to place the services more remotely from the Council than was essential. It was the Task Group's view that the area's needs and the Council's objectives could be best met by a new organisation that was created in Falkirk, based on local knowledge and experience, and that took account of local circumstances whilst drawing on the best of relevant experience from elsewhere. The Steering Board endorsed this position and so it was agreed that the organisation to be created would be Falkirk “owned” and operated and would have as its primary focus the services being transferred from the Council.
- 1.13 The Task Group took as its starting point a presumption that all functions within the remit of Community Services would be considered for transfer to the Trust. Detail of the services covered can be found in Appendix 5. The group also identified services in other parts of the Council that might have a better strategic fit within the Trust and considered these for inclusion too. The group drew upon experience from other Local Authority areas to assist in identifying transfer issues and challenges associated with splitting discrete elements from sections that had originally been constructed to seek synergy and co-ordination.
- 1.14 The group also mapped the services provided by other parts of the Council to those areas identified for transfer and looked at the practicalities as well as the value of the works to inform the principles of the SLAs and to identify the detailed

work still to be done in the creation of the Service / Funding Agreement between the Trust and the Council.

- 1.15 A compelling case for any Council considering the formation of such a Trust is the ability to create a new organisation that can focus on community facing developments. Crucially the new organisation can apply for charitable status which in turn offers eligibility for substantial financial savings in NNDR and VAT as well as an ability to apply for funds only available to third sector organisations.
- 1.16 These factors were paramount in the Task Group's consideration of whether the Business Case for Falkirk is robust enough to progress to implementation, through the Business Case development. The Task Group set out to determine if the new organisation could demonstrate the following:
- Ability to secure charitable status and thereby access significant financial savings in NNDR and VAT;
 - Evidence of strong possibility of securing external funds from sources not available to the Council;
 - Ability to capitalise on the area's tradition of thinking differently in its approach to continuous improvement;
 - Ability at minimum to offer a level of protection to existing services;
 - Potential to develop existing services and create new ones;
 - Ability to make a significant contribution to the delivery of the Council's strategic goals and the community plan aims.
- 1.17 More specifically the new organisation needs to demonstrate initial and continuing compliance with the requirements of OSCR including those set out in Section 3.18.

2 CONTEXT

The Development of Trusts Elsewhere

- 2.1 A key activity of the Task Group was to find out about Trusts that had been established elsewhere.
- 2.2 As of August 2010, at least 20 of Scotland's 32 local authorities have established a Trust or a separate Arms Length Organisation (ALO) to manage elements of their sport, leisure and cultural provision. These range from Glasgow Life, which offers a fully integrated Trust covering culture, sport and leisure and community learning and development, to those which manage a single sports facility (Inverness Leisure) or arts venues (Horsecross Arts in Perth and Kinross).
- 2.3 One of the earliest to be established in Scotland was Edinburgh Leisure in 1996. Whilst this was initially a financial decision it was quickly realised that the successful establishment of the Trust was dependent on more than just budget savings, so a policy decision followed. The good partnership working between the Leisure Trust and Edinburgh City Council continues to be important to the success and growth of the organisation some 14 years later.
- 2.4 VOCAL (The Voice of Chief Officers of Culture and Leisure Services in Scotland) organised a conference in May 2010, to share experiences and issues around establishing ALOs. This was organised in response to the number of local authorities actively considering alternative models of service delivery. In addition to those Trusts already established, a number of local authorities (including Falkirk Council) were considering setting up new trusts (e.g. East Dunbartonshire) or including additional services in already established organisations (e.g. South Lanarkshire where South Lanarkshire Leisure would shortly include Libraries, Cultural Services and Community Halls).
- 2.5 While it was recognised that each local authority should respond to their own local situation, a number of common messages emerged, including:
 - The Business Case for a Trust should not be based on financial savings alone, but should demonstrate other benefits to the community;
 - A robust governance structure for the Trust and good partnership working between the Trust and the local authority is critical to success;
 - A high quality and accessible service to the public is essential and the Trust must have the capacity to sustain that quality of service.
- 2.6 Further afield, Trusts are well established in England and the last couple of years has seen a growth in the number of these organisations which include leisure and culture. Recent examples include trust development in Peterborough, Rochdale and Luton, whilst Wigan Leisure and Culture Trust provides a good example of an integrated approach that has been in existence since 2003.
- 2.7 Within this wider context it is possible to see that Falkirk Council's consideration of establishing a Community Services Trust is very much in line with strategic thinking in other local authorities in Scotland and England who wish to ensure the continued provision of high quality leisure, cultural and community services for the benefit of the local community.

The Falkirk Story

- 2.8 In creating a new Trust there is an expectation that innovative ways will be found to organise services that drive ever greater efficiency.
- 2.9 Looking back through history, the area has had a strong tradition of innovation and has contributed enormously to the growth and development of the economy at Scottish and UK level. It has created a number of firsts in community life and has a tradition of creating new ways of working with a number of partners.
- 2.10 The Council has supported diverse businesses and organisations in recent times responding to their changing environment. The formation of My Future's in Falkirk was rooted in a very significant reorganisation of BP Grangemouth in 2001 that resulted in the creation of a unique partnership between public and private sectors. This has over time grown to involve many businesses, communities, young people and the key public sector agencies.
- 2.11 In 2002 a cross disciplinary group of experts in the International Futures Forum (IFF) came to explore how the area was responding to complex economic and social problems and in particular examined the action being taken to address the challenges of the day. They found that the area was in reactive mode trying to adjust to the new circumstances and seeking a new way of working that would protect the area's traditions and values whilst creating a better environment for growth and prosperity.
- 2.12 This was the beginning of a fruitful relationship that has enabled individuals from the IFF to support the local partners generate new ideas and implement new ways of working that shifted the area from one which had been looking back to better times to one committed to enthusiastically embracing change and delivering a more ambitious approach to transforming the area into one fit and ready to continue to make its mark in the 21st century.
- 2.13 In 2007 the IFF group returned to see how the vision for the area had progressed. They noted:
- "What impresses me is the change in mood. It's not just the leaders. It has permeated a long way down.....it's an aspirational language. Over the next five years the way you can take this forward is really quite dramatic. You now have the confidence to say: we are not just reacting against forces in the external world, we can take charge. There is the possibility for Falkirk area to be exemplary for the rest of the world, not just a little gem in its own right but something that radiates out. ... I can see potential here for that."*
- 2.14 They also noted that *"The other thing to underline is how important the personal has been in the story.... You are showing us how the personal sphere and the public sphere not only can come together but have come together to do the kind of work you are doing."*
- 2.15 These brief comments summarise an approach to engaging communities; bringing people together to develop and deliver a common agenda – to improve the area – and taking charge in creating the future against a backdrop of uncertainty and challenge.

- 2.16 The relationship with the IFF continues and their members observe progress, engage and bring visitors on learning journeys to share in the experiences and lessons learned. The Task Group invited one of the IFF to reflect on the potential formation of the Trust in the current environment, (See Appendix 2). The extracts below highlight a confidence around the area's capability and adaptability - he wrote:

"Falkirk Council wishes to set up a Community Trust. It won't be the first Council in Scotland to do so. Over the years many have already chosen this way to deliver specific local services, notably leisure services. There are sound tax incentives to do so.

But Falkirk's Community Trust will be one of the most ambitious to date. The plan is for it to embrace a range of services from sport and leisure facilities to arts and culture, libraries, strategic parks, community learning and community centres.

Because Falkirk doesn't only want the financial benefits which come with Trust status. The more important goal is to secure an over-arching framework for the many community services that together contribute to improving life chances and quality of life in Falkirk. This is not just about doing more with less - it is about doing better....

Hence the attraction of the Community Trust model. It certainly saves money. Just by virtue of its charitable status it will achieve considerable tax benefits not otherwise available for Council services. That's why the model has been adopted increasingly across Scotland and further afield.

But it also offers a way of addressing the tough spending decisions ahead in a more strategic fashion: maintaining a balanced portfolio of services that will promote quality of life and better life chances for people in Falkirk.....

But perhaps the most interesting potential lies in the scope for more direct community involvement. The Helix project was founded on the principle that it would develop people, place and enterprise at the same time. It won the largest Big Lottery grant in Scotland's history for that reason. Community involvement and engagement has been more than an optional add-on. It has been the lifeblood of the project.

Imagine what would be possible if we could say the same of today's Community Services? That is the vision for Falkirk's proposed Community Trust. And it is a vision that grows from Falkirk's unique experience and DNA. Establishing the Trust is not a cynical evasion of responsibility; or an ideologically driven purchaser/provider split; or a caving in to the modernist mantra of market-led provision and the small state. Nor is it risk free. But it is born of a genuine commitment to thinking differently about how we deliver services and a rare ambition not just to preserve quality in this age of austerity but, patiently and over time, to improve it....."

- 2.17 The extracts above demonstrate a belief that if the Trust is created it can be an organisation that is innovative and dynamic while respecting its relationship with the Council and its requirement to establish and maintain effective and engaging community partnerships at both an individual and collective level.

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3 LEGISLATIVE FRAMEWORK AND GOVERNANCE

- 3.1 In taking forward the Trust proposals, the Council needs to have regard to a number of legal requirements and governance factors. The key issues such as Procurement, State Aid and Charity Requirements are expanded on below along with structural governance considerations and some specific legislative requirements. It can be seen that these matters can and do have an influence on each other. For instance, while a lesser degree of Trust independence can lessen procurement requirements, a broader degree of independence is looked for by OSCR in terms of determining charitable status.

Procurement Requirements

- 3.2 The Council, as a public body, is subject to both European and national procurement requirements. In all potential procurement scenarios, consideration must be given to the need to advertise in the Official Journal of the European Union (OJEU) or, even where that is not required, to advertise in an appropriate manner in line with requirements of national legislation.
- 3.3 In the case of the Trust as proposed, no OJEU advertisement would be needed given the nature of the services involved. However, it is recommended, that appropriate advertising is undertaken to ensure full compliance with national requirements.
- 3.4 Competing factors have been taken into account in considering this recommendation. An exemption from any form of advertisement is available if the arrangement with an entity such as the Trust is so close that the Council would exercise a control similar to that exercised over its own departments. Accordingly, the more independently the Trust can act, the less likely this exemption would apply.
- 3.5 On the other hand, in order to attain charitable status, which the Trust would require to do to attain the relief of NNDR, OSCR requires to carefully examine the governance structure of the Trust. In doing this, OSCR would normally expect a charitable body to have some degree of independence to meet the charities test.
- 3.6 Whilst what is detailed above is a balancing exercise, the potential risk of not advertising is that the Council could be challenged by an operator who is aggrieved at not being given the opportunity in terms of the Regulations to tender for a contract for the services. Challenge of this sort could be taken through the Sheriff Court or Court of Session. If the challenger was successful, which is not necessarily certain, it could seek to claim compensation for lost profits. It is also worth pointing out that, setting aside potential for challenge by an operator, if it could be shown that the Regulations were not fully complied with, Audit Scotland could potentially raise a challenge with associated risk of reputational damage.
- 3.7 As noted above, it is recommended that an appropriate level of advertisement take place. This need not be in OJEU and the form and timescale involved simply needs to be sufficient to allow interested parties a reasonable prospect of identifying the opportunity through their own market research. It should be possible to complete the process relatively quickly. A potential bidder would

require to bid for the full suite of services and would not be able to cherry pick services proposed to transfer.

Charitable Status

3.8 In order to achieve charitable status, application must be made to OSCR. In deciding whether or not to award charitable status to an organisation, OSCR places a heavy emphasis on issues of good governance with special attention being paid to the relationships between the Council and the Charity. Some examples of the areas that OSCR will examine are:

- That the organisation demonstrably fulfils a charitable purpose as recognised in Section 7 (2) of the Charities Trustee and Investment Scotland Act 2005;
- That the organisation has charitable purposes;
- That its resources are not used for non charitable purposes;
- That the organisation provides public benefit;
- That there will be training and induction of Board members so that they are aware of their duties under the charities legislation and in particular the issues relating to independence;
- That there is access by the Board to independent legal and other technical advice so that they can critically appraise the overall legal framework and take an active part in negotiating the terms;
- That there is independent appraisal of contracts between the Council and the Trust so that the Board of the Trust can be satisfied that it delivers value for money from the perspective of the Trust;
- That any Service Level Agreements between the Council and the Charity allow for appropriate review/break points so that value for money can be tested periodically;
- That the articles of association of the Trust include a comprehensive set of provisions directed towards good governance, including an obligation to comply with a code of conduct for Directors, and with the possibility of removing a Director who commits a significant infringement.

3.9 The structure and governance arrangements for the Trust are of key importance and are discussed in more detail on pages 10-14. They drive and are driven by not only a number of key factors detailed above but also influence the development of ongoing relationships between the Council and the Trust and the individuals within each.

State Aid

3.10 A further consideration is State Aid. State Aid involves the transfer of state resources which confers an economic advantage to an undertaking that would not otherwise have been received in the course of business and has a potential effect on competition and trade between member states. On the face of it, particularly in respect of leisure services which compete with the private sector, all the components of the State Aid test are satisfied and thus State Aid will be granted by the Council to the Trust.

- 3.11 There are however a number of exemptions that can be relied on by public bodies. In this case, the Council would seek to rely on the public service compensation exemption which allows public service compensation of less than EUR 30 million (the GBP equivalent as at 7 September being circa £25m to be granted to an undertaking with an annual turnover of less than EUR 100m (circ £82m) where the contract specified certain requirements related to the obligations and compensation. Discussions at the time of writing this Business Case are ongoing with the State Aid Unit to confirm the availability of this exemption.

Service Legislative Factors

Libraries

- 3.12 The Public Libraries Consolidation (Scotland) Act 1887 governs the provision of library services by local authorities in Scotland. The Act states that local authorities “shall manage, regulate and control all libraries and shall have power to do all things necessary for such management”. The legislation focuses on the management control of the libraries, rather than the library buildings and services themselves. There is no prohibition on the transfer of the buildings or services. The transfer documentation will be structured in a way that allows the Council to lease the libraries but still “manage, regulate and control” them. This can be achieved by drafting a service specification which sits beside the lease and allows the Council to manage and control the level of service. In short, the 1887 Act leaves room for manoeuvre in terms of control of the management function and property rights. The structure of the documentation can be tailored to comply with the legislation. To achieve this, there would be a lease of the facilities supported by a service specification. This specification would be drafted to ensure that the Library Service would fit the control and management function described in the 1887 Act and include “stay open” provisions.

Archives

- 3.13 In terms of Sections 53 and 54 of the Local Government (Scotland) Act 1994 the approval of the Keeper of the Records of Scotland is required prior to any transfer of the Archives Service. Preliminary discussion has already taken place with the Keeper and he has set out his requirements. It is considered that these requirements can be met in terms of the structure of a Trust.

Trust Structure

- 3.14 It is recommended that the Trust would adopt the structure of a company limited by guarantee (“CLG”). A CLG is similar to a company limited by shares but with two important differences:
1. It is a “not for profit” organisation and any surplus income requires to be put towards carrying out the CLG’s objectives (not paid out to shareholders); and
 2. As there are no “shareholders”, the members of the CLG are just that: members. Like shareholders they would be liable to contribute a sum (usually £1) if the CLG went into insolvent liquidation. Members derive no financial benefit from their membership.
- 3.15 A CLG’s constitution and objectives consist of its Memorandum and Articles of Association. These set out its powers and regulate how it is to be run. Such a

structure is flexible, commonly used for similar proposals and well known to the public and businesses.

- 3.16 Within the CLG structure, there is scope, mindful of OSCR requirements, to determine the composition of the Board of Directors. It is proposed that the following structure would be appropriate and meet the needs for appropriate independence, allow a reasonable structure to account for conflict of interest issues (a significant issue for OSCR) and involvement of persons on the Board with skills useful to the Trust.

It is recommended that the proposed Trust will be led by a Board of eleven Directors made up of five Councillors, five independent Directors drawn from business, sports, culture, community learning and development and the broader community along with an employee representative. It is envisaged that independent Directors would be recruited through an open recruitment process managed by a nominations committee established within the Trust and submitted to the Council for approval. It is proposed that the Board may also be enhanced with the ability to appoint two additional co-opted Directors should the Board wish to do so. This would allow Directors with relevant skill sets of use to the Board to be appointed as required.

- 3.17 The Memorandum and Articles of Association of the Trust referred to above would include provisions relative to the following:

1. The name of the Trust is proposed to be “Falkirk Community Trust” albeit this can be changed if considered appropriate.
2. The appropriate charitable purposes applicable to the activities which form the subject of the transfer which will be based on the service objectives as outlined in para 4.1.
3. The area of operation which would be anticipated to be the geographical area served by the Council.
4. Provisions relevant to winding up. All assets remaining after settlement of the Trust’s liabilities would be transferred to the Council, subject to them being held for charitable purposes. These surplus assets to be held for charitable purposes would not include the properties leased by the Council to the Trust or the assets covered by the Collections Agreement which would transfer back to the Council under the terms of the relevant lease or the collections agreement.
5. It would be anticipated that the Council would be the sole member of the Trust.
6. The composition of the Board as noted above.
7. The retirement and reappointment of Directors on the Board is proposed to operate on the basis that all Directors will each be appointed for a two year period and will be able to sit on the Board for a maximum of three such terms.
8. The quorum for meetings is proposed to be five Directors with the additional requirement that not less than three Councillors be present and not less than two Independent Directors be present.

9. The Chair of the Board is proposed to be appointed by the Board from the Independent Directors. It is proposed that there be a Vice Chair who will be appointed from the Councillor Directors.
10. It is proposed that Directors would not receive any payment for providing their services to the Board.
11. A trading subsidiary would be set up within the Trust framework to accommodate specific activities, such as retail, that fall outwith the scope of the charity itself. Profit generated by the subsidiary would be passed to the Trust via gift aid. This is a well used and effective mechanism that ensures compliance with OSCR and HMRC regulations.

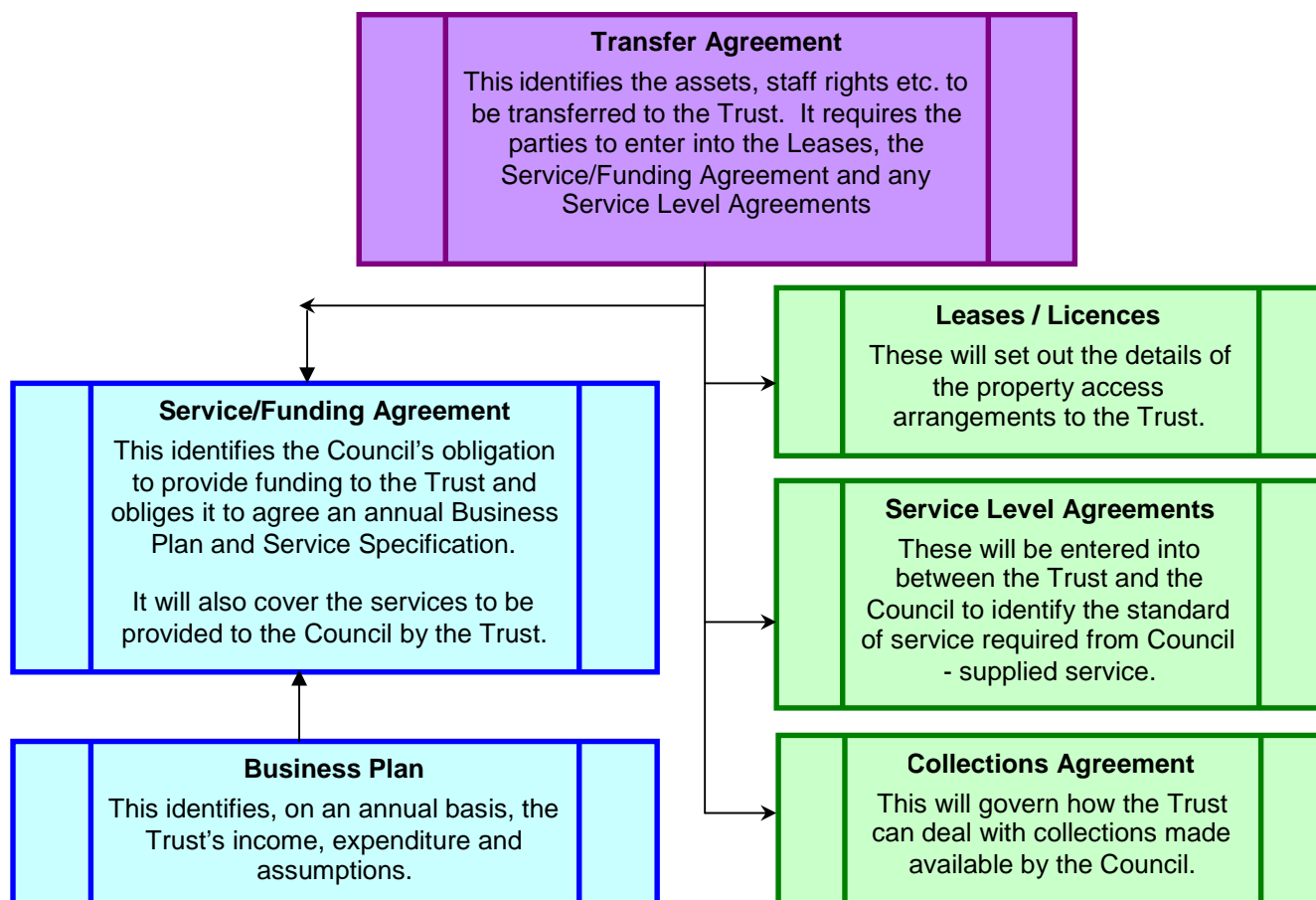
- 3.18 If established, the Board of the Trust will have to take care that any new income generating activity is appropriately assigned either to the Trust or to the non-charitable trading subsidiary depending on the way in which it would be viewed from a charity tax perspective.

Governance

- 3.19 Governance in this context is extremely important and has a number of strands. Effective governance can lead to improved service and greater accountability to users, donors and other stakeholders.
- 3.20 Governance is influenced by the structure of the Trust. The CLG structure, as outlined in para 3.14, in itself will contain certain in-built governance elements. As noted, the Memorandum and Articles of Association will determine how the Trust as a CLG will be run. Similarly, as the Trust will seek charitable status, charity law will regulate the activities of the Trust as a charity. Members of Falkirk Council will be on the Board of the Trust; while subject to fiduciary duties as the Director of a company and also mindful of the key importance of conflict of interest issues, this does create a strong link between the Council and the Trust.
- 3.21 The contract or service specification agreed between the Council and the Trust will drive governance in terms of the requirement for compliance with its terms.
- 3.22 The management and governance structure internal to the Trust itself needs to be a robust structure with clear reporting lines to facilitate the communication of key issues. This is a key piece of work to be taken forward in the implementation phase.
- 3.23 In terms of the relationship between the Council and the Trust, it is recommended that there is clear responsibility within the Council for liaison with the Trust.
- 3.24 It should be noted that the approach taken at the outset should not necessarily be considered to be the approach that requires to be followed in all time coming. It is recommended that there should be the wherewithal to adapt should it be found, over time, that the approach would benefit from amendment.

Contractual Structure

The contractual structure that would be involved with a Trust arrangement is set out diagrammatically below:



- 3.25 The Transfer Agreement requires the parties to enter into the Leases, the Funding Agreement, the Collections Agreement and any Service Level Agreements and identifies the process required to transfer the properties, assets, business and personnel.
- 3.26 The Service / Funding Agreement is a core document and not only deals with the financial obligations of both the Council and the Trust, with an annual Business Plan being produced by the Trust for consideration by and agreement with the Council, it sets out in detail the services to be provided by the Trust to the Council. This requires to cover the full suite of services detailed in Appendix 5.

Leases and Licenses

- 3.27 In terms of the Leases / Licences, the Council will let the premises to the Trust. It is proposed that this applies to all existing properties used in the delivery of services transferring to the Trust. There will be a separate lease in respect of each main facility. The rent payable will be £1 per annum, if asked. If a commercial rent were to be required by the Council this could create potentially adverse VAT implications for either (or both) the Council and the Trust. The length of the lease will be between 25 and 50 years. In order to secure the rates relief the Trust must have a registerable interest which requires a lease of at least 20 years. A longer lease may also assist the Trust to raise external finance.

Service Level Agreements (SLAs)

- 3.28 In terms of the Service Level Agreements, the models for the delivery of support services to leisure and culture Trusts vary. However, it is normally the case that at least in the short to medium term, Trusts will buy in some support services from the Council such as Finance, ICT and HR. Such arrangements are governed by Service Level Agreements which set out the responsibilities and obligations to the Trust of the relevant Council Services.

Collections Agreement

- 3.29 The Council owns a number of assets, which are held within its Museums, Art Galleries, Libraries and Archive Collections (the Collection). In addition, the Council is responsible for the management and conservation of assets which it has been given on loan, or which it has been charged with maintaining and conserving on behalf of other bodies or on behalf of members of the public e.g. Archives. A Collections Agreement will be entered into whereby the Trust will be granted a licence to use the Collections for the provision of these services and will maintain and conserve these assets in exchange for payment of a fee and subject to any conditions of grant, loan or bequest. No right of ownership in the Collections will pass to the Trust. The licence granted under the agreement will be subject to any previous licence, deed, bequest or other instrument in relation to the Collections.

Vision and Objectives for the Trust

- 3.30 Important to the governance of the Trust would be a shared agreement and understanding of its vision and objectives; these would require to reflect the charitable purposes as set out in the Memorandum and Articles (see Section 3.17).
- 3.31 It is proposed that the vision for the Trust will embrace national, area and local interests and importantly the vision of the Council and its partners. At a national level it is known that there are significant challenges associated with individual health and well being particularly in terms of engagement in physical activity and a range of leisure and cultural pursuits. The current budget constraints are such that a major shift in community empowerment and encouraging individuals and groups to take greater responsibility and ownership for their own community's destiny is being sought.
- 3.32 At an area level this will initially require greater support in community capacity building and for establishing mechanisms for new partnerships and relationships with the Council and other community planning partners (including the formation of the Trust itself). Lifelong learning and personal achievement are key themes in the Community Plan. The Trust would have a critical role in continuing current work including supporting the hardest to reach groups to find and explore appropriate routes to active participation.
- 3.33 Much has been achieved in recent years in delivering the place making dimension of the Corporate Plan and the Community Plan. Improving quality of life through place would be a continuing theme for the Trust and it would be well positioned to attract new resources for investment in parks, facilities and programmes that engage and support new and existing audiences and service users.

- 3.34 Strategic objectives and values for the Trust would therefore reflect the Corporate Plan and Community Plan but also the opportunities presented through the creation of the Trust, such as partnerships and funding, flexibility and focus, and new perspectives. The development of vision, objectives and values for the Trust would follow on from the Business Case and be part of the business planning for the Trust.
- 3.35 The Business Plan would set out local measures for the success of the Trust in terms of, for example, increasing participation, improving life chances, creating places that are valued and delivering quality and value for money services, and would form the basis for the Council to monitor the Trust's performance. In addition, the Trust would contribute in its own right to the Community Plan and SOA objectives and it is likely the associated outcomes would be described in the Service /Funding Agreement and in the Trust Business Plan.

Lead Policy Role in Advising the Council

- 3.36 It is proposed that the Trust provides strategic policy advice to the Council on matters in relation to culture, libraries, heritage, sport, physical activity, community learning and development and the development of strategic parks. The rationale for this is that the technical expertise and knowledge associated with the development of these services would initially rest within the staff transferring to the Trust. They would be continually developing and utilising their skills and knowledge and would be best placed to advise the Council on new developments, shifts in strategic thinking and creating new ways of working to respond to challenges ahead.
- 3.37 Much of the work transferring to the Trust is influenced at a national level through organisations such as Creative Scotland, **sportscotland**, Learning and Teaching Scotland, Museums Galleries Scotland, etc. As the Trust would have an operational relationship with these organisations, it would make sense for the Council to discharge its strategic relationship with them through the Trust. This would ensure that conversations at a strategic and operational level are joined up and that the area's needs are appropriately reflected at both levels through a single approach thereby reducing inefficiency and duplication. This requirement would be set out in the Service / Funding Agreement between the Trust and the Council.
- 3.38 At a local level the Trust would be required to establish relationships with a range of partners and it is more appropriate that they have delegated responsibility for the associated strategies and plans. This is likely to increase ownership and understanding between the partners and ensure that the Trust is not required to revert to the Council on routine matters. The Trust would also advise on the specification and technical requirements for relevant new facilities as well as improvements or renovations of existing ones
- 3.39 The following strategies would be led by the Trust on behalf of the Council:
- Culture and Leisure Strategy
 - Arts Strategy
 - Heritage Strategy
 - Public Art Strategy

- Community Learning and Development Strategy
- Physical Activity Strategy
- Sports Development Strategy
- Strategic Parks Management and Development Plans.

3.40 If this policy role were retained by the Council, additional staff with appropriate skills, knowledge and expertise would be required at additional cost thereby reducing the savings identified elsewhere in this Business Case. There is also the risk that, as some other authorities have found, the teams within the Council and the Trust do not engage effectively leading to tension and debate about appropriate strategy, resourcing and operational impact. Whilst this integrated policy advisor role is recommended at creation of the Trust, it can be reviewed ideally in two to three years when the requirements and the relationships are fully developed and the appropriate organisational needs better understood.

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4 SCOPE OF SERVICES FOR TRANSFER TO THE TRUST

Summary of Community Services at Present

- 4.1 Community Services is a key front facing department of Falkirk Council, it is a main contributor to ensuring a good quality of life for people living, working in and visiting the Council area. It does this through:
- Stimulating and enriching the cultural life of the area and contributing to enhancing the image of the area;
 - Supporting the learning and information needs and wants of individuals and the wider community through our libraries and encouraging literacy and the enjoyment of reading;
 - Strengthening communities, reducing social exclusion and increasing active citizenship through developing lifelong learning, youth learning and community capacity building;
 - Encouraging individuals and communities to engage in healthy living and physically active lifestyles;
 - Providing quality sport and recreation services in a manner which encourages sustained participation.
- 4.2 The service comprises five operational units which are managed through two divisions with a total of 885 permanent, temporary and casual posts, and a revenue budget of c£25.5m gross. Services are delivered from a diverse range of 148 operational facilities including two significant local landmark buildings, Callendar House and the Hippodrome. Main operational facilities are outlined per Service Unit in Appendix 3. Additionally accommodation at Falkirk Stadium provides the Service HQ.

Culture & Lifelong Learning Division

- 4.3 The Culture and Lifelong Learning Division is influenced by many national priorities and its three units all have a significant role in building community capacity and community empowerment, developing learning and participatory opportunities that are creative, flexible and innovative, providing high quality cultural venues and visitor attractions and supporting national initiatives such as the Curriculum for Excellence, improving literacy and numeracy and widening participation in culture. The Division has responded to the Council's increasing focus on the needs of young people through providing an integrated approach to activity development. Culture and Lifelong Learning Services is responsible for taking forward the following Council strategies:
- Arts Strategy
 - Heritage Strategy
 - Public Art Strategy
 - Community Learning and Development Strategy.

Community Learning and Development Unit

- 4.4 There are three main areas of focus for Community Learning and Development. Youth work is the process of creating an environment where young people can engage in informal/non-formal learning and development activities. Different varieties of youth work include centre-based work, outreach work, detached work and school-based work. Youth work complements more formal educational approaches as delivered within schools, training providers and colleges through the development of young peoples' core skills of literacy, numeracy, communications, working with others, problem-solving and information communications technology (ICT).
- 4.5 Community capacity building is a coordinated process of deliberate interventions to improve individual's skills, knowledge and understanding, develop confidence, improve organisational procedures, and strengthen community organisations. Community capacity building refers to the investment in people, community organisations and practices that will enable communities to achieve their aims. Local Community Planning is delivered through Community Learning and Development enabling the development of local initiatives and plans that support the aspirations of local communities.
- 4.6 Adult learning is a process undertaken voluntarily by individuals who participate within informal/non-formal learning and development activities. The learner is enabled to identify their learning and development needs and is supported to develop a curriculum to address their first step learning needs that will contribute to them achieving their full potential in their personal, family, community or working lives.
- 4.7 Community Learning and Development Unit staff mainly operate from Grangemouth Municipal Chambers and deliver services from Community Centres and school wings as well as providing support to Community Education Associations.

Cultural Services Unit

- 4.8 Cultural Services consists of three interconnected sections: Arts, Heritage and Learning and Visitor Services.
- 4.9 The service creates opportunities that encourage engagement with and exploration of arts and heritage across a range of creative platforms: exhibitions, performing arts, film screenings, museum collections and a wide range of development initiatives (dance and drama, film and media, music, visual arts and heritage). Engagement and exploration can happen through participation in workshops, courses and projects, as an audience member or a visitor to an exhibition.
- 4.10 The service works in partnership with a variety of partners to deliver programmes that help enhance community wellbeing and can contribute to meeting a range of learning, economic, social and environmental objectives.
- 4.11 Programmes are delivered in the service's own network of venues and museums as well as in community facilities across the Falkirk Council area.
- 4.12 Arts and heritage programmes are supported by a range of Visitor Services including marketing (design, audience development and box office services),

facilities management and administrative services as well as services designed to add value to the visitor experience - bars and catering, and retail.

Library Services Unit

- 4.13 The Library Service is delivered through a network of public library buildings, a mobile library and a homebound service (for those who cannot easily reach a static or mobile library). The Service provides books and other resources to all sections of the community and has an active reader development programme aimed at encouraging children, young people and adults to enjoy more reading, develop new skills, improve literacy or participate in learning opportunities. Whilst much of this is delivered through library facilities, an active outreach service can be provided to those in residential care, local play groups and to young offenders.
- 4.14 Free access to the internet is provided to all members of the public who join the Library Service and the development of digital technology skills is encouraged through taster sessions and classes, some in partnership with Community Learning and Development.
- 4.15 Libraries provide a wide range of reference and general information and advice (from local history information to local statistics to general healthcare) which can support the business community as well as local communities and individuals.

Leisure Services Division

- 4.16 Through its two units the Leisure Division manages a wide range of community infrastructure and facilities to promote good health and well being and improve life experiences, particularly for young people. To support the area's Health Improvement Plan the division has grown its capacity to deliver targeted healthy lifestyle initiatives in recent years, including schemes such as GP exercise referral and a wide range of young people specific promotions such as Youth Only Zone and Teen Gym. Leisure Services is responsible for taking forward the following Council Strategies:
- Parks Development Plan
 - Sports Development Strategy
 - Physical Activity Strategy.

Parks & Recreation Unit

- 4.17 This unit delivers a range of services including outdoor activities which provide training and skills acquisition to all ages including through a programme dedicated to 50+ participants and to young people. The Sport 4 Youth programme is an outreach programme delivered in target areas experiencing multiple deprivations.
- 4.18 Sports development classes, currently focused around 10 local target sports, provide the opportunity for individuals, particularly young people, to develop within sport from introductory 'foundation' levels right up to excellence level and are coordinated with partners.
- 4.19 The service oversees twenty four small to medium-sized Community Halls and directly manages the Town Halls at Bo'ness and Grangemouth as well as a

range of community events.

- 4.20 Parks are promoted and developed, through prioritised investment to improve infrastructure, encourage partnership activity and generate community involvement through friends of parks groups. Parks consist of major strategic resources through to smaller local parks as well as grass sports pitches and a full size golf course. Closely linked to the development of Parks is a programme of modernisation of play areas.
- 4.21 Muiravonside Country Park is operated as a regional centre for visitors which include a ranger service, staffed visitor centre and a small farm. Activities such as guided walks and natural history workshops are delivered on a seasonal basis through the ranger service.
- 4.22 A Bereavement Service which manages the cremation and burial functions within the Falkirk Council area and the crematorium provides a wider Central Scotland resource. The Crematorium carries out approximately 2,400 cremations annually and around 900 burials take place each year in 12 operational cemeteries.

Sport & Leisure Unit

- 4.23 The main focus for this service is the management of a wide range of facilities and delivery of attractive facility based programmes, coaching & instruction and events that encourage sustained participation, repeat and new visits. The service is responsible for taking forward the Physical Activity Strategy specifically to:
- Optimise community sports, school and leisure facilities in tandem with parks, pitches and green spaces;
 - Prioritise the initial efforts and delivery on reducing barriers to physical activity for those ages 0-24yrs (although not in a way that is detrimental to other age groups in communities);
 - Incorporate all of the Council's secondary schools into the vision of developing and sustaining physically active communities;
 - Establish strong partnerships between Council departments and external agencies to improve health through physical activity and reduce health inequalities across the Council area.

Current Partnership Working

- 4.24 Community Services has developed a proactive approach to internal and external partnership working. Within Community Services this approach has worked well and brought benefit to local communities and stakeholders in a number of ways:
- Bringing together complementary skills available through community learning and development, arts, heritage, libraries and sport and recreation;
 - Developing creative ways of engaging participants;
 - Developing learning opportunities that are flexible, innovative and can target particular groups within communities;
 - Attracting external funding;

- Creating pathways between disadvantaged or targeted groups and mainstream services.

- 4.25 There is a wide range of partnerships with external organisations. These relationships can be based around joint working and collaboration, formal partnerships, funding arrangements or in a membership or advisory capacity.
- 4.26 Some key partners include British Waterways and Central Scotland Forest Trust to deliver the Helix, **sportscotland** to deliver sports-related projects and programmes, Youthscotland to deliver youth work and capacity building programmes to youth groups, Scottish Library Information Council to support the development of strategic initiatives in Libraries and Creative Scotland to support the strategic development of the arts.

Service Function Review

- 4.27 This section outlines the appraisal process used to assess and scope the type of services that could be accommodated in the Trust, and sets out the options that were considered in the provision of support services for the Trust.
- 4.28 The appraisal process involved Community Services being split into forty one different functions and each function was assessed individually against nine criteria. In addition areas with a strong strategic fit to the proposed Trust in other Council services, most notably Education, were tested in a similar manner.

The criteria for assessment were:

- Potential for rates relief benefits to be achieved;
 - Potential for achieving VAT savings;
 - Ability to secure external funding that is unavailable to the Council;
 - Opportunities for more commercial income generation without detriment to service delivery;
 - Legislative impediment or perceived impediment to transfer;
 - Potential for new or stronger partnerships that may not be available to the Council;
 - The level of cohesive purpose with other functions within the Trust;
 - The level of cohesive purpose with services delivered by other Council Departments;
 - Evidence that this function works elsewhere within a Trust.
- 4.29 The group used an assessment matrix on an iterative basis during the exploration and evaluation stage. The matrix provided an at-a-glance overview of all the functions including summarised income, expenditure, staff and property information. A 'traffic light' score flagged each criteria for each function on a red/amber/green basis. As knowledge and learning increased the assessment was revisited and it provided a guide for further work.
- 4.30 The following issues emerged as part of the appraisal exercise which were robustly explored with other Trusts, Council services and specialist advisers and

informed work to develop the rationale for recommending services to be included in the Trust:

- VAT issues, limited potential for stronger partnerships and higher levels of cohesive purpose within the Council for bereavement services;
- The effect of provisions contained in the Public Libraries Consolidation (Scotland) Act 1887;
- Uncertainty about how extensively parks, play and community learning and development are embedded in other Trusts;
- Potential for high level of cohesive purpose for archaeology services and library support for schools within the Council;
- Practical issues around how shared facilities might operate which could be resolved at implementation stage.

4.31 The final assessment matrix evaluation is set out in Appendix 4. This identifies:

- 36 functions that the Task Group recommend would benefit from inclusion in a Trust, particularly as a collective unit;
- 2 (Cemeteries and Crematorium) which have no clear benefit being included in the Trust;
- 1 (Play Development) where there is insufficient evidence that inclusion in the Trust would yield benefits; and
- 1 (Parks Development) where benefits for partial inclusion in the Trust are identified.

The functions proposed for inclusion are listed in Appendix 5.

Service Rationale

4.32 During the course of the work of the service function review careful consideration and analysis was made of the various functions and how they relate to each other and to the rest of the Council. The templates in Appendix 6 show how a core group of services particularly in recreation, sport and leisure, cultural services and libraries that if included in a Trust, with charitable status, can attract significant financial savings with no impact on service delivery. The reviews then analyse and consider the high level of integration between the various activities and the extent to which this fit is better with the functions transferring to the proposed Trust or with the Council more generally.

4.33 The synergy between functions outlined above and community learning and development are considered to be critical as its services often provide the entry point to wider participation and community engagement especially for those who did not engage through the more formal school based programmes (including those in sport and the arts). In recent years the service has placed a strong emphasis on internal project support and joint working to ensure that young people in particular are appropriately supported at the various transition points along the participation / development pathway. Community learning and development has also provided a gateway to external funding streams for targeted activities by other sections of Community Services.

- 4.34 A number of services currently delivered within Education Services are suggested for transfer. There is scope to derive greater planning and management efficiency through integration. This would avoid duplication and ensure clarity of roles and purposes and may additionally provide some protection to services that might otherwise become subject to reduction were they to remain within the Council.
- 4.35 Engaging and supporting people to fulfil their potential are at the heart of this approach.
- 4.36 In terms of place making the proposals in the function review seek to confirm clear management responsibility for outdoor (parks) facilities. It seeks to build on the work that has been ongoing in the Council over the years to unpack the arrangements established in the 80's and 90's in response to compulsory competitive tendering legislation. This shift from the old client and contractor relationship to one service being responsible for all of the service is much more efficient and makes it easier for customers and users to connect with the service provider.
- 4.37 In this respect it is proposed that the entire management and operation function associated with the strategic parks (Muiravonside Country Park, Callendar Park, Kinneil Estate, Zetland Park and Dollar Park) be considered for transfer to the Trust along with the golf course. This ensures that all elements including key facilities within the parks and the parks themselves will be managed in an integrated and coordinated manner with clear accountability and responsibility for their management and development including the Grounds Maintenance function. It is hoped that this approach will offer the parks in particular access to external funding through the Trust for upgrading and operation that would not be routinely available to the Council. The parks are highly valued assets and every effort should be made to provide resources for their protection and enhancement.
- 4.38 While efficiencies of scale and purpose can be identified for the major larger scale strategic parks, the operational efficiencies driven by an integrated neighbourhood services approach especially in respect of local parks and play areas, point to these being retained within the Council, certainly in the short to medium term. It may be that if the Trust were set up it could, over time, take on a larger remit in terms of grounds maintenance in local parks and pitches.
- 4.39 The approach being outlined in terms of what is included or excluded demonstrates commitment to continuous improvement and ensuring that services are organised to deliver value for money. These factors have played a significant role in the setting up of other ALO's such as Glasgow Life, Wigan Leisure and Culture Trust or Link4Life, the trading name of the Rochdale Culture and Leisure Trust. In these organisations, the inclusion of a similar range of services has avoided duplication or competition with Council-run services, maintained and developed existing synergies and internal partnerships and allows an appropriate balance between social and community objectives and income generation.
- 4.40 The proposals are in keeping with emergent approaches elsewhere in Scotland. The development of trusts in Scotland and the rest of the UK initially focused on leisure or cultural facilities. More recently the new trusts have been much more all embracing, encompassing a broader more diverse range of services similar to those proposed for transfer to the Trust in Falkirk. Existing trusts are considering

whether their remit could be expanded and smaller single site or theme trusts are looking at mergers to improve efficiency and long term viability.

The main reasons for this approach are;

- Retaining and capitalising on the integration benefits;
- Extending financial benefits derived from NNDR savings;
- Ensuring economies of scale in governance and management capacity;
- Offering better prospects for sustainability.

Support Services Review

- 4.41 Support services are identified as those services currently provided by the Council on a predominantly corporate basis. They include finance (accounting and budgeting, invoice payment and processing, payroll, capital finance support), HR advice, ICT, external funding, facilities management, architectural design services and graphic design marketing and communications. In developing the mechanism for the delivery of support services for the new organisation there were a range of options available:
- To allocate funding for the provision of support services to the Trust and for the Trust to seek to procure these services externally;
 - For the Council to retain responsibility and budget for these services and to provide them to the Trust via a service agreement; or
 - To allocate funding for the provision of support services to the Trust and for the services to be provided by the Council via a service level agreement.
- 4.42 The Task Group were of the view that the latter option i.e. the Trust holding the budget for the services and having them provided via a service agreement with the Council for an initial period of 3 years, allowed the Trust to become established whilst continuing to be supported in key functions. One of the critical considerations has been the requirement to assess value for money for the Trust and to be able to demonstrate to OSCR that it is operating independently and obtaining appropriate support services that have regard to Best Value provisions. This proposal is in line with arrangements other authorities have put in place when setting up a Trust.
- 4.43 Given that the Trust will be negotiating with the Council from time to time on the Business Plan, the service agreements (for services both from the Council and to the Council) and leases and licenses as well as requiring to take independent corporate company law advice it will from time to time require independent legal advice. It is also likely to require additional financial advice particularly with regard to VAT and audit. Both of these cost elements are provided for within the budget profile set out in Section 5.7.
- 4.44 Clearly the advantage of this approach is that it enables the Trust to become established in its own right and for its Board to have time to determine the services that it is capable of delivering first hand and those for which it requires to seek external support either via the Council or from a new third party. In the short term one of the advantages of this approach is the protection of jobs in the

Council within those areas which provide services to Community Services at present.

New Opportunities

Partnerships

- 4.45 As outlined in para 4.24 Community Services has developed a wide range of external partnerships and this strength has been reflected in innovative and improved service delivery. As part of the preparation for the Business Case the existing relationships between external partners and the Council have been considered, with a view to determining whether moving to a Trust would have a detrimental effect on these.
- 4.46 In many cases these external partnerships are informal and based on joint working to deliver particular projects or programmes. These would continue much as at present, and indeed, may develop further as opportunities to apply to new grant funding schemes arise. In some other cases, the partnership is based around membership of organisations and these would continue with little change, as the Trust would become a member of certain external partners rather than the Council (e.g. Museums and Galleries Scotland, Scottish Library Information Council).
- 4.47 With other partners, the development of new or changes to existing agreements would be required to reflect the move of Community Services to the Trust (e.g. Youthscotland, British Waterways, Community Education Management Committees). However, overall there is absolutely no reason to suppose that these existing partnerships would not continue to flourish within the Trust.

External Funding

- 4.48 Allied to this work has been an exercise in identifying new sources of external funding. At present, the Council is eligible to apply for capital and revenue grants from a range of external organisations such as the Heritage Lottery Fund, Big Lottery Fund and sportscotland. The Trust would continue to be able to apply to these bodies, but in addition there are a number of new opportunities for grant funding that are not available to local government.
- 4.49 These include capital and revenue grants from trusts and foundations, the corporate sector and individuals. There are large numbers of trusts (e.g. the Robertson Trust, the PF Charitable Trust and the Impetus Trust) which could support the range of activities encompassed within the Trust such as work with young people, adult learning and literacy, community development and community-based programmes which help break the poverty cycle and develop new skills. Improving community health and environmental issues also feature as priorities amongst such organisations.
- 4.50 Corporate and individual giving is less predictable and more affected by the current economic climate. Nevertheless, many of these potential funders would identify with the objectives of a Community Services Trust.
- 4.51 If these two pieces of work are considered together, there is real potential for the Trust to draw down new sources of external funding to support a range of projects and programmes and also for these new funding opportunities to enable

the development of new partnerships, potentially within the Third Sector, as well as supporting existing partnership work. External Funding Sources are listed in Appendix 7.

- 4.52 In order to maximise these new opportunities, the Trust will need to be able to successfully promote and market itself and its activities. This will be critical both to accessing new funding and to increasing participation in and attendance at activities and venues. One of the advantages for the Trust will be its ability to have a clearer focus on its users and potential users with flexibility to respond to and shape programmes and activities to better suit community needs and aspirations. Examples of this would be to develop a dedicated Trust website (this has been successfully implemented elsewhere by other Culture and Leisure Trusts) and to make better use of networking sites.

5 FINANCIAL RATIONALE

- 5.1 Faced with critical budget pressures, the potential to deliver significant annual savings to the Council is a strong financial driver for the creation of a Community Services Trust. At this stage, an analysis has been prepared to estimate the potential for recurring annual net savings to the Council when compared to the "as is" position of retaining Community Services, as described in Section 9.
- 5.2 A financial model has been developed by the project team, supported by independent advisers, Grant Thornton. This incorporates the 2010/11 Council budgets that are anticipated to transfer to Community Services and hence to the Trust, adjusted for the anticipated rates savings and a current assessment of the VAT implications associated with the transfer. An estimated 2010/11 Service Charge which would be payable by the Council to the Trust has been calculated; however, this is indicative and predominantly used to drive the VAT analysis.
- 5.3 The wider direct and indirect taxation implications are detailed in the Grant Thornton paper included in Appendix 8.

Model Assumptions

- 5.4 The financial model has been developed by aggregating the current budgets for each of the service functions proposed to transfer and applying a number of adjustments to reflect the delivery of these services by a Trust.
- 5.5 The Council management assumptions for the purpose of the financial model include:
- Services will be delivered from a limited company with charitable status;
 - Inputs are based on 2010/11 budgets;
 - VAT is calculated at the recently announced rate of 20%;
 - Budgets for those services not anticipated to transfer have been removed from the analysis;
 - Capital Charge Depreciation budgets have been removed as these are not cash budgets that would transfer;
 - All internal recharges within Community Services and between Community Services and the Council have been retained in the model.
- 5.6 For the avoidance of doubt the analysis reflects a current position and does not provide projections for the Trust from the implementation date. A detailed budgeting model would require to be developed during the implementation phase to reflect the projections for the Trust and calculate the Service Charge payable by the Council to the Trust.

Summary of Savings

- 5.7 The table overleaf details the estimated savings and costs incurred by the Council in transferring the services to the proposed Trust on a per annum basis. The following sections detail the supporting analysis and assumptions driving the table outputs:

	£'000 2010/11
Recurring savings (Trust)	
Rates relief	1,061
VAT savings	<u>128</u>
	1,189
Recurring costs (Trust)	
Annual running costs	(95)
Estimated net annual saving to the Council	1,094

National Non-Domestic Rates Relief

- 5.8 One of the main financial advantages of gaining charitable status is that charitable organisations are eligible for National Non-Domestic Rates Relief (NNDR).
- 5.9 NNDR is levied on the occupiers of properties in use other than for domestic purposes. There are various reliefs from NNDR which charities and other not-for-profit bodies can access. Mandatory relief of 80% of NNDR is allowed where premises are occupied by a charity and those premises are wholly or mainly used for charitable purposes. The costs of mandatory relief are met from the Scottish Government, and therefore do not create a cost to the Council, albeit it does reduce the aggregate pool for redistribution to local authorities.
- 5.10 Discretionary relief can be awarded to "top up" the mandatory relief to 100%. Unlike mandatory relief, only 75% of the additional 20% cost of discretionary relief is covered by Scottish Government. As such, where the Council awards 100% relief to the Trust, the Council would benefit from an annual recurring saving of 95% of the NNDR bill. The ongoing cost to the Council would be equivalent to 5% of the total unrelieved NNDR bill.

The NNDR saving is estimated as follows:

	£'000
Community Services Rates Budget 2010/11	1,211
Adjust for Crematorium and Burial Grounds	(94)
Total NNDR	1,117
Saving to the Council @95%	1,061
Residual 5% NNDR cost to Council	56

Notes:

1. It is assumed that the Council will support the cost of the 5% unrelieved NNDR.
2. The calculation is based on the current rates budget and does not consider the future impact on the budgets of the Rates Revaluation which was announced in 2010. Specifically, it is assumed that any increase in the unrelieved rates bill would require to be met from Council budgets. Equally,

no account has been taken in the analysis of the potential additional recurring savings to the Council should the rates bill increase following the revaluation.

Application for Rates Relief

- 5.11 The Task Group have met with the Rates Section and the Assessor to discuss eligibility for relief and the process for obtaining relief. To be eligible for relief, more than 50% of the area must be allocated for charitable services. The initial indication from the Rates Section is that a substantial number of the properties should attract relief; however, further due diligence on the properties will be completed during the implementation phase. The formal applications for relief can only be made to the Council's Revenues division once the Trust has been established.

Additional Costs of Set Up and Running the New Entity

- 5.12 As an independent company, the Trust would incur additional annual running costs for which there is no corresponding saving to the Council. In calculating the net recurring saving the financial analysis includes the Council's current best estimate of these costs. There would also be the initial start up costs to set up the trust vehicle which are anticipated to be in the region of £90,000.

Liability Insurance	£50,000
Audit, Legal and other Professional Fees	£45,000
Additional Costs	£95,000

VAT Implications

- 5.13 The VAT savings identified rely on two points:
1. The ability of the Trust to exempt a proportion of its income, and
 2. The monies received by the Trust from the Council being consideration for a supply of services (Service Charge).
- 5.14 A spreadsheet model has been created containing the 2010 budget figures. The model has then been coded to calculate VAT incurred from the various cost lines. Similarly the income lines have been coded both to calculate the output VAT due and to use the income values in calculating the amount of recoverable VAT. The recently announced VAT rate of 20% has been used as this is the rate that would be in force when the Trust is operating.
- 5.15 This section summarises the key VAT implications and estimated financial impact. Further detail on the key VAT issues, potential risks associated with the structure and suggested solutions to mitigate those risks are included in Section 9. It is recommended that this section is read in conjunction with Appendix 8.

Sporting Exemption

- 5.16 In simple terms, the VAT savings identified in the transfer arise from the VAT status of the Trust (its supplies have a different VAT liability to those of the Council). As some of the supplies made by the Trust are exempt from VAT, it is able to retain more of any admission fee. However, it is consequently unable to recover all of the VAT which it incurs on costs.

- 5.17 The irrecoverable percentage is based on the element of its income which is exempt from VAT as a proportion of its income.
- 5.18 This means that the structure is advantageous from a VAT perspective when income exceeds VATable costs. It is also therefore disadvantageous when VATable costs exceed income.
- 5.19 VAT exemption applies to the supply of services closely linked with, and essential to, sport or physical recreation supplied to individuals taking part in the activity where the supplies are made by an 'eligible body' which does not run a membership scheme. The Trust would not operate a membership scheme. Therefore, in order for the Trust's sporting services to be exempt, it must qualify as an eligible body.

An "eligible body" is one which:

- Cannot distribute any profit it makes otherwise than to another non-profit making body or its own members on winding up or dissolution;
 - (Except on winding up) applies any profit it makes from exempt sporting supplies either to maintain or improve the facilities made available in connection with those supplies or for the purposes of a non-profit making body; and
 - Is not subject to 'commercial influence'.
- 5.20 All three of the above requirements must be met in any new structure. The first two are fairly self-explanatory. However, commercial influence requires to be further defined.
- 5.21 A body is considered to be subject to commercial influence in relation to any sports supply which would otherwise be exempt if a person 'associated with the body' made a 'relevant supply' to it or received an emolument from it determined at least in part by reference to the body's profits or gross income.
- 5.22 A relevant supply is not made for these purposes if it is made by a local authority, and none of the Directors of the Trust should be paid. As such, the Trust should not be subject to commercial influence.
- 5.23 The VAT saving identified as a result of the Sporting Exemption is estimated at £398,000. The exempt Sports Income also creates irrecoverable VAT within the structure. At this stage of the analysis, the irrecoverable VAT associated with the structure is estimated at £270,000. This creates an estimated annual net VAT saving of £128,000 based on the stated assumptions as a result of the transfer.

Service Charge

- 5.24 It is assumed that financial support given by the Council to the Trust would be in the form of a payment for services; a Service Charge.
- 5.25 A Service Charge has the advantage that it is payment in return for the Trust providing the Council with the service of operating the Community Services. This is a taxable supply for VAT purposes so provides the Trust with taxable income which helps to reduce the lower VAT recovery caused by the exempt sports income referred to above.

- 5.26 The analysis in Appendix 8 sets out the HMRC view of this treatment as well as the required contract terms between the Trust and the Council.

Transfer of Property

- 5.27 It is currently envisaged that title in all properties will continue to vest in the Council, and a lease will be granted by the Council to the Trust at a peppercorn rent. Provided the lease is at a peppercorn (£1), the supply by the Council should be seen as a non-business transaction.
- 5.28 The peppercorn lease should be exactly that as any further charges for additional aspects (for instance, insurance) could be seen for VAT purposes as being further consideration for a supply of land and, therefore, make the supply a "business" one. This could create potentially adverse VAT implications for either (or both) the Council and the Trust.
- 5.29 During the implementation phase the Council require to consider the structure of the peppercorn lease to ensure that the supply is a non-business transaction.

Capital Works Repairs and Maintenance

- 5.30 If the Trust carries out capital works or major repairs and maintenance, there will be a restriction of VAT on associated costs. This is because the Trust will be a partially exempt body.
- 5.31 If the Council carries out these works, the VAT incurred should relate to the non-business supply of the peppercorn lease, and the VAT should be recoverable by the Council.

Recharges

- 5.32 It is anticipated that certain support services will be provided by the Council. If a charge is not made for these services, there is a risk HMRC would deem this to be a barter transaction, and assign a value to it.
- 5.33 It is recommended that a robust pricing policy is entered into. This is a risk where the two entities (Council and the Trust) are connected as HMRC can impute an "open market value" charge on supplies between connected parties where the recipient is unable to recover all the VAT.

Corporation Tax

- 5.34 Charities benefit from a UK tax exemption on trading profits generated from trades carried on within, or outside, the United Kingdom. The conditions for the exemption in relation to the proposed Trust are set out in Appendix 8.
- 5.35 In relation to the Trust, an examination of the primary and non-primary activities of the Trust will be required to assess the potential "taxable" trading activities that will be carried out.
- 5.36 HMRC defines a 'primary purpose trade' as one that forms part of the primary purposes or charitable objectives of the charity. An example of a primary trading activity would be the provision of swimming facilities that relate to the Trust's aims. One of the Trust's core objectives is the advancement of sport. The objective cannot be achieved without public access and therefore admission

income is exempt. If the Trust carries on a non-primary trade, such as sale of ice cream in a canteen, then the profit requires to be assessed to tax.

Trading Subsidiary

- 5.37 A review of the Trust's activities should be undertaken to identify operations which do not benefit from the exemption and a trading company established as a subsidiary to carry out such activities. In order to obtain full tax relief the trading company is required to donate its profits by way of gift aid. The cashflow implications of gift aid will require to be fully considered as part of the business case financial projections during the implementation phase.
- 5.38 It is important to note that the Charity should in no circumstances subsidise the operations of the trading subsidiary. The company will therefore be required to pay the Charity, on an arms length basis, for the premises it occupies and any services it receives and at never less than cost.

Stamp Duty Land Tax

- 5.39 Stamp Duty Land Tax (SDLT) is a tax on "land transactions" where there is a "chargeable interest". Land transactions include all sales of land, and of relevance to this project the granting of leases. The Council will maintain ownership of all properties that will be occupied by the Trust. A lease will be granted from the Council to the Trust at an annual rent of £1.
- 5.40 Assuming that the Trust uses the properties which are leased to it for charitable purposes and does not dispose of its interest in the leases within three years after the leases are granted, there should be no SDLT due on the leases that are granted by the Council.

Falkirk Council VAT Position

- 5.41 As a "Section 33 body"¹, the Council operates under a special VAT recovery regime whereby it can subject to certain conditions, fully recover input VAT which is directly attributable to its exempt business activities where that input VAT is an 'insignificant' proportion of the total VAT incurred². The result of this is that a Council is able to recover VAT on costs which would be irrecoverable by a normal tax-payer.
- 5.42 Where a special partial exemption method for specified bodies within Section 33 is used, 'insignificant' means:
- not more than £625 per month on average (i.e. not more than £7,500pa.); OR
 - less than 5% of the total VAT incurred on all goods and services purchased in a year. This total includes goods and services for business and non-business activities but excludes those on which input tax cannot be reclaimed.
- 5.43 Falkirk Council is below the 5% limit so is able to fully recover VAT charged to it. The transfer of the proposed Services out of the Council should not prejudice this position since the Service Charge paid by the Council will provide a higher level

¹ VAT Act 1994, s 33

² VAT Act 1994, s33(2)

of input VAT on to the denominator line in the partial exemption calculation. This should move the Council further away from the 5% threshold.

Funding and Service Level Charge

- 5.44 Based on the current budget information provided, an indicative service charge has been calculated for 2010/11 based on the deficit of the organisation. The table below sets out the estimated annual expenditure and funding requirement.

	£'000 2010/11
Expenditure	£25,529
Funding Requirement/Service Charge	£17,453

- 5.45 The Service Charge calculation is required at this outline stage to support the analysis of the VAT implications; however, only on approval to proceed will the Council be in a position to refine and update the financial model and agree the Service Charge level.
- 5.46 The key areas of the financial model which would require to be developed at the implementation stage to support the calculation of a robust budgeting model and Service Charge are as follows:
- Confirmation on the transfer of personnel and their current and forecast salary, pension and other costs;
 - Agreement of income and expenditure budgets from the date of implementation including forecasts for the next 2-3 years;
 - Consideration and inclusion as appropriate of income generation opportunities;
 - Review and agreement of the Council departmental recharges;
 - Review and agreement of savings targets;
 - Inclusion of indexation and cost growth assumptions;
 - Inclusion of cashflow timing assumptions;
 - Separation of trading and non-trading activities to support the calculation of the Service Charge and associated tax position.

Balance Sheet Items

- 5.47 The financial model does not incorporate a balance sheet and no cash-flow impact is anticipated from potential balance sheet items.
- 5.48 It is not anticipated that there will be material values of assets transferring to the Trust. This reflects common practice in the market.

It is assumed that the cost of capital charges (described as "Capital Charge Depreciation") will remain with the Council. These are notional charges in the current budgets and therefore will not transfer to the Trust.

- 5.49 Property will remain with the Council and will be leased to the Charity at a peppercorn rent. Therefore no market value rents have been included in the financial analysis.
- 5.50 It is anticipated that the major repairs and maintenance of these assets will remain the responsibility of the Council and that the current 'day-to-day' maintenance budgets will continue to be managed by the Community Services Trust. The categorisation of major repairs and day-to-day maintenance (including the cost of malicious damage which may occur in the PFI and NPDO High Schools during community use times) will require to be considered in the service level agreement between the Council and the Trust.

6 EMPLOYMENT STRATEGY

- 6.1 Given the nature of the Trust and the focus on service delivery, one of its key assets will be its employees. The ethos of the Trust will not only be commensurate with that of Community Services at present, it will also require its employees to develop skills which promote the Trust in a more enterprising way. It is essential that the employment strategy used by the Trust is one which reflects this, represents best practice in Human Resources and meets the standards which an employer of choice would deliver. It is also essential that the Trust takes account of relevant employment legislation, delivering on such requirements as would be the case within the Council.
- 6.2 This section of the Business Case considers the employment implications of establishing a Trust.

Workforce Planning

- 6.3 As of the beginning of September 2010, Community Services has 885 permanent, temporary and casual posts which operate from 148 different locations. This currently equates to 675 people (526 FTE). The seasonal nature of many of the services provided combined with the current constraints around recruitment mean that the Service is carrying a high number of vacancies. If the findings of the Business Case were to be implemented and based on current employee numbers this would result in 700 employees (Community Services employees, less those working in local parks / play, Bereavement Services, plus those working in Active Schools and Outdoor Learning and the Cultural Co-ordinator all from Education Services and a cohort of Grounds Maintenance staff from Corporate & Neighbourhood Services) potentially transferring to the Trust. These figures include all permanent and temporary employees working in those areas recommended for transfer as detailed in Appendix 5. It will be important to ensure that vacancies are considered in the transfer arrangements.
- 6.4 On agreement that a Trust be created, the structure for the Trust will require to be designed. It should be noted that the structure of Community Services has not been reviewed as a whole in recent months on the understanding that this would be done once a decision was made in relation to the future of the Service and whether it would become part of a Trust. This approach allows added flexibility in ensuring the structure design is fit for the future purpose and meets the need of the overall framework of the Service. Such a review should follow the normal principles of good organisational development which will take into account the vision and purpose of the organisation, how the functions within it link together, examples of good practice elsewhere and stakeholder views. As would be the case within the Council, the most cost effective and efficient method of delivering such services will also be a key factor in the design of the structure.

TUPE Implications

- 6.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies to situations where an undertaking, e.g. a function of service delivery, transfers to a new provider. Those individuals working wholly or mainly in the area of work being transferred will be entitled to transfer with the work and their employer will change to the new provider. Under TUPE, these individuals will receive TUPE protection which, in general terms, protects an employee's continuity of employment, their pay and their contractual conditions. Pension

arrangements are not afforded the same protection under TUPE. This is covered in more detail below in the para 6.25 entitled 'Pensions'.

- 6.6 In the case of a Trust being created, an assessment will require to be made of the work carried out by employees to confirm whether they work wholly or mainly within the functions being transferred to the Trust. Where this is the case, the employees will transfer to the Trust and become employed directly by the Trust. In this scenario, TUPE will apply and the employees will receive the protection provided by TUPE. It should be noted that temporary employees will only have a right to transfer where their contract remains in existence at the point of transfer to the Trust.
- 6.7 It is also worth highlighting that there is no time limit on the period over which this protection applies. Equally, there is no minimum period over which the protection must remain in place although a change to contracts must meet legal requirements which allow TUPE protection to be removed.
- 6.8 Assuming the recommended approach to support services is agreed which is based upon the Council continuing to provide such services to the Trust, then these arrangements will not apply as these employees will continue to be employed by the Council.
- 6.9 In respect of the casual workforce, the nature of their relationship with the Council is such that individuals work on an 'as and when required' basis. The Council has no obligation to provide work for casuals and equally, if offered work, casuals are under no obligation to accept it. Given the nature of this relationship and the absence of a formal contract of employment, TUPE does not apply. However, an assessment will require to be made to assess the period of continuous employment worked by casuals. Where at the point of transfer this is over eight weeks on a continuous basis, they are entitled to receive a temporary contract. In turn, this may provide them with the right to transfer with TUPE protection, provided their contract is still in existence at the point of transfer.
- 6.10 Given the nature of the services the Trust will deliver, it is likely to continue to require a casual workforce. An assessment of the requirements of the Trust will require to be undertaken in more detail as part of any structure design process for the Trust.
- 6.11 In the event that employees working within the areas identified for transfer to the Trust, do not meet the test of working wholly or mainly in these areas, they will not have an automatic right to transfer to the Trust nor will the Council be in a position to insist that they transfer. Consideration will require to be given to whether such individuals can be redeployed elsewhere across the Council or if other actions require to be taken about the future of their employment.

TUPE Consultation

- 6.12 As is required by legislation, consultation on the transfer will require to take place in accordance with the TUPE Regulations (Regulation 13). This will involve representatives from both the Council as the current employer and (if created prior to transfer) the Shadow Board of the Trust. The date of transfer for those transferring in accordance with TUPE legislation will be the date of inception of the Trust.

- 6.13 As part of the consultation, discussions will require to cover a number of areas including the following:
- When and why the transfer is taking place;
 - The legal, economic and social impacts of the transfer on employees (if any);
 - Whether there will be any changes made in connection with the transfer, e.g. a re-organisation of employees, and what specific action is envisaged;
 - Whether the Trust is likely to make any changes that will impact on the employees;
 - Any impact on employee terms and conditions;
 - Any other matter affecting employees, who will be transferring, not covered in the above.
- 6.14 Consultation on such issues will require to commence as soon as possible on confirmation of the Trust being created and will continue during the implementation phase leading to the inception of the Trust.
- 6.15 To ensure good practice, it is also recommended that a wider consultation and communication strategy beyond that required by legislation is adopted including:
- Meetings with Trade Union representatives at relevant intervals to address not only the statutory TUPE issues but also any more general operational or relevant non-employment related matters;
 - Roadshows and individual meetings with employees as appropriate;
 - Individual letters to employees and their representatives as appropriate;
 - Newsletters at regular intervals to keep employees advised of progress.
- 6.16 If any of the employees within the current workforce do not meet the test of being 'wholly or mainly' employed within an area transferring to the Trust, specific consultation will be required including a discussion in respect of what this means for them.

Transfer Options for Employees

- 6.17 As detailed above, an employee working wholly or mainly in an area transferring to the Trust, will also automatically be transferred to the Trust, covered by TUPE protection. The list of employees in this situation will be discussed with Trade Union representatives who will also be provided with justification for this decision. However, open to the employee to dispute that they are working wholly or mainly in such an area. In such circumstances, a process will be agreed with the Trade Unions to ensure careful open and transparent consideration is given to any such challenges and that all decisions on employees due to transfer can be justified.
- 6.18 Even where there is no doubt that an employee is due to transfer, the employee may still request to continue working with the Council. The Council is under no obligation to find these employees alternative employment as legislation supports the position that they would transfer to the Trust. However, in the interests of best practice, it is recommended that a redeployment search process be put in place for any employee who would wish to remain employed by the Council.

Such employees will have access to vacancies across the Council at the same point as other employees seeking redeployment. If they are successful in obtaining such a vacancy, they will be appointed to this and will not transfer to the Trust. Their substantive vacant post, will however, continue to transfer to the Trust providing the Trust with added flexibility over how they fill this post which will facilitate any structure re-design process. However, it is recommended that within this process of redeployment and to ensure fairness, employees due to transfer to the Trust will not have precedent over any other employees seeking redeployment for other reasons and who are not subject to the transfer.

- 6.19 If an employee who is due to transfer has requested redeployment but is unsuccessful in gaining this by the date of transfer, they should continue to transfer to the Trust on the same date as all other transferees. To do otherwise would result in the Council having supernummary employees at an additional cost to the Council. There is equally no legal obligation for the Council to find alternative employment for such individuals.

Pay, Terms & Conditions

- 6.20 As detailed above, the pay, terms and conditions of employees transferring to the Trust are protected by TUPE legislation. There is however, no time limit on the period over which protection applies or minimum period during which it must remain in place. If the Trust wished to change the pay, terms or conditions of employees following creation of the Trust, it would be open for it to do so provided it met the requirements of having a justifiable reason under TUPE legislation.
- 6.21 With this in mind, it may be considered appropriate to provide added protection to employees over and above that provided by TUPE. There are two main options available in doing this which includes:
- Defining a minimum period during which the Trust will be unable to change the employee terms and conditions. This arrangement was put in place during the Falkirk Schools Project and ensured that conditions were not changed for a period of five years;
 - Requiring the Trust to align its pay structure, terms and conditions to those of the Council, ensuring that both current and new employees enjoy a similar employment package to that which they would have obtained had they remained employees of the Council.
- 6.22 Whilst the first option worked well within the Falkirk Schools Project, it did not provide any guarantees for employees beyond the five year period. In addition and to some extent, it allowed the new employers to create a two-tier workforce as new employees were not covered by such protection. This is a matter of concern to the Trade Unions.
- 6.23 The second option ensures continued linkages with Council arrangements. It also recognises that the pay structure, terms and conditions within the Council could change over time and, if the Trust aligns to these, will ensure the same arrangements for all employees. Equally, new employees would require to be employed on the same arrangements and avoids the issue of a two-tier workforce.

- 6.24 With this in mind, it is proposed that the Trust be required to align with the Council's pay structure, terms and conditions. This also avoids the Trust being required to conduct annual pay negotiations as within this arrangement, these will be aligned to the Council and in turn the national pay negotiations for local government employees

Pensions

- 6.25 Consideration must also be given to the issue of employee pensions within the Trust. It should be noted that pension arrangements are not protected by TUPE to the same level as pay, terms and conditions.
- 6.26 The Trust will require to be a different organisation and employer from Falkirk Council if it is to satisfy OSCR requirements. As such, the Trust does not automatically become a member of the Falkirk Local Government Pension Scheme (LGPS). Instead, subject to the Trust Board's agreement, the Trust must apply for admission. The Council could, however, require the Trust to apply for admission as part of the agreement to create a Trust, with a view to protecting the pension benefits of employees transferring to the Trust. Indeed it is recommended that the Council consider to provide such protection and continuity to employees in respect of pension arrangements.
- 6.27 On the assumption that this is agreed, the Trust will be required to apply to Falkirk Council to be admitted to the scheme; this should be done as soon as practicable. It should be noted that it is possible for an application to be submitted prior to the Trust becoming a legal entity. The application and any subsequent admission agreement can be prepared on the basis of it applying from the date on which employees are transferred, thereby ensuring seamless membership of the pension scheme.
- 6.28 The Investment Committee of the Council will require to consider the application. In order to protect the pension fund, it is likely that they will require the Council to act as a "guarantor" for the Trust. This will result in the Council being liable for any financial commitments of the Trust in respect of pensions should the Trust be unable to meet such commitments. The Committee also has the option to ask the Trust to put in place a 'Bond' to indemnify the Council against future pension liabilities, although this is unlikely given the nature of the Trust's relationship with the Council. Additionally, there would be a cost in terms of an insurance premium in putting such a Bond in place.
- 6.29 Member approval for the Council to act as guarantors (and potentially expose the Council to future pension costs) will be required. To ensure Members are properly advised in taking such a decision, an actuarial calculation of the potential liability will be required. It should be noted however, that this is likely to equate to a similar level of liability to that which the Council currently has for those individuals who may transfer to the Trust.
- 6.30 It should be noted that in applying for membership, there will be a fee to the Trust of £250.
- 6.31 Although the Trust is being created from within the existing Diaspora of the Falkirk Council pension scheme membership, there will still be a requirement for the pension fund actuary to set an employer contribution rate for the Trust.

- 6.32 The rate will be determined in accordance with the pension fund's Funding Strategy Statement and could potentially be different to the rate currently being paid by Falkirk Council. The most significant factor affecting the rate is likely to be the share of the pension fund deficit attributable to employees transferring to the Trust. The Council may elect to retain this deficit and pay for it through its own contribution rate, or it may elect to pass the deficit on to the Trust. If the Trust assumes its share of the deficit then its employer contribution rate will be correspondingly higher. This in turn would require to be offset by an increase in grant from the Council to the Trust. To inform the Council's decisions on such matters, the actuary will be asked to determine the employer contribution rates for both scenarios. The costs for such actuarial work will require to be paid by either the Council or the Shadow Trust.
- 6.33 If granted admission to the Pension Scheme, the Trust will be required to abide by Scheme regulations and associated tax and national insurance legislation. In addition, there are a number of discretionary features within the Scheme for which each employer must consider its approach.
- 6.34 Much of this will require to be done through the development, consultation and agreement on the following for the Trust in its own right as an employer:
- A scheme / policy for dealing with severance arrangements;
 - An agreed approach in respect of the discretionary features of the LGPS;
 - A policy on the other specific requirements of the LGPS.
- 6.35 Assuming the Trust becomes a member of the Falkirk LGPS; employees of the Trust will still be able to access their pension at retirement in the same way as they would within the Council. It is worth clarifying that any payments to the pension fund in respect of release of pension will be the liability of the Trust for Trust employees.
- 6.36 Finally, it should be noted that in applying to act as an employing body within a pension scheme, the decision to do so should be taken in the full knowledge that once admitted, the organisation seeking admission will be subject to the full regulatory regime which applies to UK pension arrangements and their participating employers. This brings certain responsibilities in terms of scheme administration (e.g. ensuring the pension section is notified of new scheme members, ensuring contributions are collected accurately and remitted timeously, putting discretionary policies in place). Failure to meet some administrative obligations can result in punitive action being taken by the Pensions Regulator.

Trade Union Recognition

- 6.37 At present, approximately 43% of employees within Community Services are members of a Trade Union. In the main, those members are represented by Unison, although some other Unions have members too.
- 6.38 In terms of Trade Union recognition, the Council currently recognises the following Trade Unions:
- EIS
 - GMB

- SSTA
- UCATT
- UNISON
- UNITE (including former T&G and AMICUS sections)

6.39 It is considered appropriate for the Trust to recognise the same Trade Unions, as relevant, to ensure continuity in respect of recognition and consultation/negotiation arrangements. To support this, it is also suggested that the Shadow Board of the Trust be asked to develop a consultation mechanism similar to the Joint Consultative Committee, but with a format and membership which recognises the size, make-up and overall purpose of the Trust.

Employee Development

- 6.40 In delivering excellent services, it is essential that employees are competent and capable at their jobs, understand the standards expected of them and have the necessary skills to deliver these.
- 6.41 Employees within Falkirk Council currently have access to a wide range of learning and development opportunities. Within the Trust, there may be an added dimension which requires them to develop new skills to operate in a third sector environment, ensuring all income generating and marketing opportunities are used to best advantage.
- 6.42 In such a context, it is essential that employees continue to receive access to both job based training as well as skill development opportunities. This will help the Trust deal with the changing demands on services as well as the need for such services to be first class to ensure success. It is important that this is recognised and that the necessary budget remains in place to allow such training and development to continue.

Disclosure Checks

- 6.43 There are a number of posts within Community Services for which Disclosure Checks are undertaken to ensure all necessary steps to protect vulnerable children and adults are in place. If a Trust is established, it will need to decide which posts continue to be checked in accordance with such arrangements. The Council may wish to consider placing a requirement on the Trust that it meets the Council's policies on such matters and checks continue to be carried out in accordance with these arrangements. Similarly, the Council may wish to make the same requirements of the Trust in respect of retrospective disclosure checks, as appropriate.
- 6.44 Should such a requirement be made, the Trust will be obliged to register with Disclosure Scotland (or as amended by the incoming Protection of Vulnerable Adults legislation) as an employer who will be undertaking such checks. All employees transferring to the Trust who are in posts which necessitate the need for these checks will already have been checked through this process. There will however be a requirement to carry out checks for new employees as relevant to their post as well as retrospective checks at agreed intervals. It should be noted that this will have cost implications for the Trust in the same way as it does for the Council at present.

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7 CONSULTATION

Employees

- 7.1 A key component of developing the Business Case has been to provide ongoing information to staff and to consult on the proposal with key stakeholders, including Community Education Associations/Community Centre Management Committees, affected employees and Trade Unions.
- 7.2 The Task Group issued four project newsletters during the preparation of the Business Case to provide employees with progress updates and issue No 4 included an outline of proposals. The Head of Human Resources and the Director of Community Services met regularly with representatives of the Trade Unions throughout the period of developing the Business Case, and the Trade Unions were also represented on the Steering Board. A Trust e-mail box was also established to make it simpler for staff to raise questions about the option of the Trust and how work was developing. Staff who used this option received direct replies to their questions.
- 7.3 During the meetings with the Trade Unions, they were provided with briefings on progress of the work on the option of a Trust. They also had the opportunity to ask various questions. In addition, they provided a wide variety of written questions on a range of employment and non-employment matters which were all answered and in the main have been addressed within the Business Case.
- 7.4 To ensure full consultation, the Task Group developed a presentation to explain the findings of the Business Case. This was presented to Elected Members, following which all staff potentially affected by any decision concerning the Trust were invited to a series of consultation meetings. Three employee events were held for Community Services staff in early September. These took place at different times of the day to maximise opportunities for staff to attend. They were attended by 172 staff. Separate meetings were also held with Bereavement Services staff, Corporate & Neighbourhood Grounds Maintenance Staff, relevant Education Services staff and staff within key support services.
- 7.5 The consultation events were designed to be participative and to give employees the opportunity to comment on any issues relating to the Business Case. The e-mail box was also utilised as another mechanism for comment following the consultation events to ensure employees had time to reflect on any of the information they had received and giving a further opportunity to raise issues.
- 7.6 During the employee consultation events there were positive comments made about the proposal for a Falkirk Community Trust and also a number of concerns were raised.
- 7.7 In particular, views were expressed by staff who attended the events that they could see the financial benefits for the establishment of a Community Services Trust, including potential savings and securing investment from external sources, ensuring Best Value. Comments were also made in support of the need to maintain a Community Services identity within the Trust as this would promote efficiency in terms of cohesion between the various Services within the Trust. There was also an indication from staff that the proposal for an employee representative on the Trust Board would be a positive development.

- 7.8 Staff also raised a number of concerns about the Trust proposal. In particular, views of concern were expressed in relation to the level of protection for their terms, conditions and pension and whether TUPE would provide sufficient protection given there is no defined period over which this applies. Staff also raised concerns that if commerciality was the main driver for the Trust, the social inclusion agenda may be lost and emphasised that it was important to retain this aspect of delivery. The potentially tight timescale for the implementation of the proposed Trust also caused some staff concern although they were keen to know whether the option of a Trust would be agreed or not.
- 7.9 The main points raised during the consultation exercise are similar to issues considered by the Task Group and have been addressed within the Business Case.

Stakeholders

- 7.10 Whilst not specifically requested at this stage the Task Group felt that some early consultation with key stakeholders would be beneficial. A consultation event was held with Community Education Associations/Community Centre Management Committees. At this event representatives from Community Education Associations/Community Centre Management Committees made positive comments about the proposal for a Falkirk Community Services Trust. Representatives recognised the need for the Council to make savings and were in the main supportive of the proposed Trust as a means to achieving savings through rates relief. Representatives were also positive about the proposal to have a significant number of community members on the Trust Board.
- 7.11 Representatives raised a number of concerns that related to the potential for the proposed Trust to increase charges for lets. It was felt that this would prohibit vulnerable individuals and groups from accessing community centres. There were also concerns raised regarding how the proposed Trust would ensure adequate community representation within the Trust Board.
- 7.12 At both the employee and Community Education Associations/Community Centre Management Committees consultation events a number of questions were raised that related to the operation of the proposed Trust. It was felt that these questions would be better answered when and if the Trust proposal is agreed by Council.
- 7.13 Additional information and briefings have been provided to organisations such as Forth Valley College, Falkirk and District Arts and Civic Council and **sportscotland**

8 FUTURE ACTION

- 8.1 The Business Case has concluded that a Trust formed of the services as outlined in Appendix 5 could derive significant savings to the Council at the same time as offering potential benefits for wider community ownership and engagement. Should approval be given to proceed there are then a number of steps to be taken to establish the Trust. These are summarised in a high level implementation programme set out below.
- 8.2 This six month programme has been scoped on the basis of establishing the Trust from 1st April 2011, which is a very challenging timescale and the programme requires to be further worked up to fully assess feasibility. However any delays beyond 1st April would have an effect on the level of savings accruing to the Council in 2011/12.

Provisional Implementation Programme

	Activity	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Feb 2011	Mar 2011
1	Governance						
1.1	Shadow Board established & Operational						
1.2	Procurement – Advertise Contract						
1.3	Recruit to & establish Trust Board						
1.4	OSCR Registration						
1.5	Risk Analysis & Management						
2	Employees						
2.1	Design Trust Organisational Structure						
2.2	Set-up employee transfer arrangements						
2.3	Ongoing employee consultation & information						
3	Trust Development						
3.1	Create initial Business Plan, incl Trust Vision & Values						
3.2	Create Service/ Funding Agreement						
3.3	Approve Business Plan & Service/ Funding Agreement						
3.4	Develop SLA's						
3.5	Financial Workstreams						
3.6	Explore & set-up Trading Subsidiary						
3.7	Due Diligence re Property Titles / Contracts / Licences						
3.8	Develop Collections Agreement						
4	External Communications						
4.1	Regular communication with Stakeholders						

Considerable detail sits behind the activities outlined on the programme and some of the main areas of work are summarised below.

8.3 ***Governance***

- Identify members for Shadow Board;
- Establish Shadow Board;
- Develop Business Plan for the Trust;
- Develop management structure for the Trust;
- Establish monitoring arrangements between the Council and the Trust;
- Council approval of Business Plan;
- Recruit and appoint independent Board Members;
- Recruit and appoint employee Board Member;
- Training for Charity's Board of Directors;

8.4 ***Legal***

- Application for Charitable Status to be made by the Council and processed by OSCR;
- Completion of State Aid approval process with State Aid Unit;
- Advertisement issued in terms of procurement process;
- Due diligence on:-
 - ❖ Property Titles
 - ❖ Existing Contracts
 - ❖ Any Trusts and Bequests
 - ❖ Employment
 - ❖ Pensions
 - ❖ Archives
 - ❖ Data Protection
 - ❖ Intellectual Property Rights
- Seek any externally required consents to transfers of properties such as the Hippodrome Lease which requires consent of the Scottish Ministers and Scottish Historic Buildings Trust;
- Carry out process for transfer of properties under lease for less than market value in accordance with The Disposal of Land by Local Authorities (Scotland) Regulations 2010;
- Develop and establish corporate structure and documentation for Trust and Subsidiary Trading Company;
- Development of contractual framework between the Council and the Charity including:-
 - ❖ Transfer Agreement
 - ❖ Service Agreement
 - ❖ Service Level Agreements
 - ❖ Collections Agreements
 - ❖ Leases/Licences

- Any required applications for consent to transfer major contracts, intellectual property rights, etc.;
- Applications for licences relating to public entertainment, etc.

8.5 *Financial*

- Establish final budgets and cost centre structures and the balances that will transfer on implementation date;
- Establish budgeting model including estimates for next 2-3 years;
- Approach HMRC seeking confirmation of the proposed treatment of the entity;
- VAT registration of the new entity;
- Make application for rates relief;
- Amend the existing insurance arrangements to take account of the changes to the organisation;
- Set up new financial reporting arrangements and provide appropriate training for staff;
- Set up new banking arrangements.

8.6 *ICT*

- Assess hardware and software implications of the move to a Trust;
- Assess license and other related implications linked to the Trust becoming a separate organisation;
- Determine the legal, contractual and financial issues associated with the change;
- Review the IT network to ensure it meets the future needs of the Trust;
- Review the business continuity plan issues and implications associated with the move to the Trust.

8.7 *Human Resources*

- Develop and implement a consultation programme complying with TUPE legislation and including matters relating to terms, conditions, pension and the pool of employees and posts transferring to the Trust;
- Make appropriate arrangements for employees not transferring to the Trust, e.g. those within Bereavement Services;
- Develop an employee structure for the Trust;
- Identify and develop appropriate employment policies which will be required in the run up to implementation of the Trust and on the day of establishment of the Trust when it becomes an employer;
- Collate the baseline employee information and any employer liability information which must be provided to the Trust in accordance with TUPE legislation;
- Consider and consult on options for employees who may not wish to transfer to the Trust, recognising that none of these options can be guaranteed;

- Agree the relevant Trade Union recognition within the Trust and develop processes for the Trust to meet and consult with its recognised Trade Unions;
- Take the necessary steps for the Trust to become a member of the Local Government Pension Scheme and develop the relevant employer arrangements and policies to facilitate this, making an assessment of employer contribution fees for the Trust;
- Review of those posts requiring disclosure checks within the Trust and ensure appropriate practices are in place.

8.8 ***Consultation & External Information***

- Build on the statutory TUPE consultation to ensure all issues relevant to employees are addressed;
- Develop and implement a communications strategy including roadshows with employees and newsletters at relevant stages in the run up to the implementation of the Trust;
- Facilitation of a wider consultation and information sharing exercise involving a broader range of stakeholders;
- Identification and exploration with partners of key issues required for the Business Plan and implementation stage;
- Staff group visits to learn from peers in other Trusts.

8.9 ***Approvals Process***

This Business Case will be subject to approval by the Council. If approved, work will commence to deliver the implementation plan. Key Council approvals with the plan are in respect of the Service / Funding Agreement. It is anticipated that this approval would be sought as part of the 2011 / 12 budget process.

9 RISK MANAGEMENT

- 9.1 As part of preparing the Business Case, the following key risks have been identified. During the implementation stage, a full risk register will be prepared and updated as the project progresses.

This is a high level list of risks that may have a major impact on the progression of the Trust.

9.2 *HMRC ruling on VAT Approach*

The assumptions in the business case are predominantly based on precedent, however there is a small risk that HMRC may rule less favourably than has been assumed in the business case. In the unlikely event that any significant issues should arise, these will be reported to Council.

9.3 *Unable to Secure NNDR Relief*

(i) The Council's Revenue Division's decision on relief will only be made once the new vehicle is in place and applications have been made. The project team has engaged with the rates section and Assessor at an early stage of the process. Based on the project team's review of the properties, no issues are currently anticipated. In the unlikely event that any significant issues should arise, these will be reported to Council.

(ii) There is a risk that given the public sector budget constraints and requirements for significant cuts that NNDR relief may be rescinded. This is, however, extremely unlikely given the importance of this relief to a vast diversity of charitable organisations.

9.4 *Challenge in Relation to State Aid / Procurement*

As noted, it is impossible to entirely rule out the risk of third party challenge on the grounds of alleged infringement of procurement or EU State Aid principles.

9.5 *Due Diligence Uncovers Property Issues*

There is a risk that the full diligence process uncovers issues in relation to title or the ability to enter into an appropriate lease structure. In the event that any significant issues are encountered that would affect operational or financial outcomes, these will be reported to Council.

9.6 *OSCR Approval*

There is a risk that the company structure and governance arrangements do not meet requirements of OSCR. Requirement for early engagement with the OSCR and development of full business plan for implementation including corporate governance structure as well as development of the appropriate Memorandum and Articles of Association. In the event that any significant issues should arise in the discussions with OSCR, these will be reported to Council.

9.7 *Timescale*

There is a risk that the Trust is approved by Members but there is insufficient time to complete the workstreams before the proposed implementation date of 1 April 2011. The key tasks which would impact on reaching the implementation date are expected to be:

- Council approval process;

- Staff/Union consultation process;
- Property due diligence;
- Lease documentation;
- OSCR approval;
- Service Level Agreements (including Collections Agreement).

9.8 ***Stakeholder Risk***

There is a risk that the wider stakeholder group for the service proposed including staff, customers and the Council members do not support the move to a Community Services Trust. The Council will carry out a consultation process to inform the stakeholders on the proposed transfer and its implications.

10 CONCLUSION

- 10.1 The work undertaken in preparing the Business Case has involved extensive external research and internal dialogue. It has sought to develop a model that would be in keeping with the Members' original expectations, the remit approved by the Steering Board and the practicalities associated with an evolving proposal. It has been a robust exercise carried out from a neutral perspective with no assumption that it would either support or challenge the proposal.
- 10.2 The Business Case confirms that the estimated savings of £1m identified in the February Council report that lead to the decision to explore creating a Trust are achievable. In addition, a number of additional benefits are outlined most notably the opportunity to create a people-centred, community-focused organisation in times of severe financial constraint that has the potential to attract additional new resources from other third sector organisations.
- 10.3 The scope of the Trust is vital in this regard and it is suggested from the analysis undertaken that the optimal benefits are to be derived from retaining the synergy between existing services and augmenting these with other related and complementary services currently delivery by the Council.
- 10.4 In taking a decision to progress to establish a Trust, there is a considerable amount of work to be done to properly establish a new Falkirk owned and operated charitable organisation as well as to prepare the governance arrangements between the Council and the Trust. The employee strategy including further consultation on TUPE requirements will be a significant piece of work as will any commitment to continue to engage stakeholders in the process.

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APPENDICES

- Appendix 1 - Terms of Reference
- Appendix 2 - International Futures Forum
- Appendix 3 - Community Services - Current Unit Functions & Main Facilities
- Appendix 4 - Matrix Scorecard
- Appendix 5 - Services Covered
- Appendix 6 - Scope of Services Rationale
- Appendix 7 - External Funding Sources
- Appendix 8 - Tax Implications

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Appendix 1 - Terms of Reference

Community Services Trust Project Team

INTRODUCTION

At its meeting on 10th February, Falkirk Council agreed, in principle, to the creation of a Trust made up of the leisure and culture and lifelong learning divisions of the Council's Community Services. The Council directed Officers to develop a business case in relation to a Trust, to carry out consultation on the proposal with employees and trade unions and to report back to Council.

The Project Team detailed below has been established to prepare a Business Case in relation to the creation of a Community Services Trust.

The purpose of this document is to establish the key objectives of the Project Team in the preparation of the Business Case, detail the composition and reporting structure of the Project Team, set out the targeted timescales involved and explain the rationale behind the project's communication strategy.

OBJECTIVES

The key objectives of the Project Team are to:-

1. Prepare an objective Business Case on the proposal for a Trust for consideration by members.
2. To carry out an options appraisal on how best to create a Falkirk based and focused Trust. Options being considered do not include an external partner.
3. Consider carefully the scope of services and support functions that may be appropriate for inclusion in a trust. All functions of Community Services other than the Economic Development Division will be assumed to be included in a Trust unless a strong case is determined otherwise.
4. To ensure the maximization of the tax efficiency of the delivery model and protect the Council's tax position.
5. To produce and evaluate all relevant financial models for the Trust and the project.
6. To explore and recommend to members whether financial savings to the Council potentially released by the move to a Trust and other benefits of the Trust model are sufficient to justify creation of a Trust.
7. To ensure appropriate consultation with employees and Trade Unions takes place as well as ensure that the interests of employees, both those that would transfer to the Trust and those that would be retained within the employment of the Council, are taken into account and, where appropriate, protected by TUPE.
8. To determine the most appropriate structural and governance arrangements relative to the proposed Trust.
9. To determine the optimal method of dealing with property of the Council that would require to transfer to the Trust – for instance, by disposal or by lease.
10. To explore and recommend the most effective solution to issues surrounding responsibility for ongoing maintenance and repair of assets transferred to the Trust.

11. To ensure the Council properly complies with responsibilities in terms of procurement and state aid and acts *intra vires* at all times.

COMPOSITION AND REPORTING STRUCTURE

The Project Team comprises the following officers:-

Maureen Campbell (Lead Officer)	Community Services
Sue Selwyn	Community Services
Karen Algie	Corporate & Neighbourhood Services
Bryan Smail	Finance Services
Iain Henderson	Law & Administration Services
Jane Clark	Community Services
Mark Meechan	Community Services

The Project Team will call on the assistance and involvement of other Council officers as and when required. It will also be supported by specialist legal and financial advisors.

The Project Team will report to Corporate Management Team (CMT) with the addition of Trade Union representatives. CMT attended by the Trade Union representatives will constitute the Project Steering Board.

The Project Team will report to Council on the Business Case prepared by it.

TIMESCALE

The timescale being targeted is extremely challenging and may be subject to change depending on the nature of and progress on key areas of work. The Project Team is aiming to complete the writing of the Business Case by the end of June 2010 and present it to members thereafter. If members then determine that they wish to pursue the implementation of a Trust, the Project Team will enter a further phase of work and would target implementation of a Trust in April 2011.

COMMUNICATION STRATEGY

A communication plan will be developed to complement the development of the Business Case and to ensure that staff and stakeholders are engaged appropriately in the process.

Appendix 2 - International Futures Forum

International Futures Forum



Falkirk Community Trust

Falkirk Council wishes to set up a Community Trust. It won't be the first Council in Scotland to do so. Over the years many have already chosen this way to deliver specific local services, notably leisure services. There are sound tax incentives to do so.

But Falkirk's Community Trust will be one of the most ambitious to date. The plan is for it to embrace a range of services from sport and leisure facilities to arts and culture, libraries, strategic parks, community learning and community centres.

Because Falkirk doesn't only want the financial benefits which come with Trust status. The more important goal is to secure an over-arching framework for the many community services that together contribute to improving life chances and quality of life in Falkirk. This is not just about doing more with less - it is about doing better.

That seems like a distant dream in the financial climate Scotland's public sector faces today and will face, so the predictions suggest, for years to come. Audit Scotland's best case scenario asks for 7% spending cuts per annum for the next three years. The worst case scenario suggests cuts nearly double that level.

Never mind 'doing more with less': Councils will have to be highly innovative just to go on delivering the same.

So how will savings be found? One way is simply to cut every budget and every service equally – 'salami slicing' across the board. That's a pretty crude approach, and could fall foul of the need to maintain some services on a statutory basis (eg we must maintain enough school places for the local population).

Alternatively, we could get into a popularity contest with individual services competing against each other for limited resource. The danger then is that the loudest voices or the most politically sensitive services 'win' and the perennial 'Cinderella services' fall into further neglect.

Or we could put existing services out to tender, inviting bids from lower cost providers whilst insisting on rigorous quality control. But that requires a great deal of faith that others can deliver value the Council has found elusive. It might also increase net unemployment in the area - incurring hidden costs elsewhere.

All of these approaches are familiar and are still very much in play. But none is universally attractive. And all of them involve what our politicians have been warning us about for many months now: tough and unpalatable choices.

Hence the attraction of the Community Trust model. It certainly saves money. Just by virtue of its charitable status it will achieve considerable tax benefits not otherwise available for Council services. That's why the model has been adopted increasingly across Scotland and further afield.

But it also offers a way of addressing the tough spending decisions ahead in a more strategic fashion: maintaining a balanced portfolio of services that will promote quality of life and better life chances for people in Falkirk rather than have each service element bid against each other, and against all other Council services, for survival.

So why doesn't every Council do this? With one bound, it appears, we could be free. Part of the challenge is that underpinning the shift in form is a parallel shift in the way the Council and its elected representatives exercise responsibility for public money; and in how the Council relates to other agencies. For most Councils these shifts appear to be a very significant innovation over current practice. So they have been willing to experiment with community trusts running leisure centres, but not much more than that.

Falkirk however is different. Falkirk has form in this area that offers the confidence to go much further. For a number of years now My Future's in Falkirk has provided an umbrella for action to help boost the local economy, attract new jobs and investment, redevelop local town centres and improve the infrastructure and the overall environment for local business.

The Council has been the leading partner in MFiF. But it has not assumed control. Hence the partnership has provided a relatively open context in which others have been able to play a more prominent part. The phenomenal growth in local business engagement with wider community issues owes much to the striking success of the Falkirk Business Panel, for example, which grew out of the My Future's in Falkirk programme.

My Future's in Falkirk is a loose arrangement amongst agencies and individuals determined to work together to realise Falkirk's potential. It is not an organisation governed by rules, contracts and job descriptions. It is more of a spirit, a way of working. It has delivered notable successes over the years and attracted the attentions of other Councils, in Scotland and much further afield. They have been impressed by its capacity to draw in resources and players put off by the more formal processes of, for example, community planning.

But there comes a point where legal structures are required - in order to take action, to provide transparent accountability and to encourage more direct involvement from community members. That is why the partners in the Helix project - Falkirk Council, British Waterways Scotland and Central Scotland Forest Trust - have established the Helix Trust.

Growing out of My Future's in Falkirk, the Helix Trust's remit is to safeguard the Helix ethos, deliver all phase one objectives and establish and build the capacity of Helix Futures - the community-led organisation which will assume responsibility for the management, maintenance and ongoing development of the Helix site from 2013 onwards.

So Falkirk already has an ambitious Community Trust - established not as a way of evading local control and accountability but as a way of enhancing it, and engaging the energy of the community directly in developing the full potential of a project they care about.

So can Falkirk now embrace the learning from this experience to establish an even more ambitious Community Trust, not to deliver a transformational development opportunity, but to maintain, sustain and develop over time an integrated range of community facing services?

That's the proposal now on the table. The Trust will effectively take on the remit of the existing Community Services Department of the Council. The Council will still vote the budget for the Trust and determine what has to be delivered for the money. Local elected representatives will still have a critical say. Existing staff will transfer from Council employment into employment by the Trust, with no loss of pension or other rights. Ostensibly little will change.

But beyond the outward appearance, a considerable shift is possible. There will be greater freedom for the Trust, under its own Board, to determine how best to achieve what the Council desires. As an independent charity it will be able to raise money from other

sources for specific projects and initiatives (as both the Helix project and My Future's in Falkirk have done).

The Trust will have a responsibility to deliver outcomes for community health, wellbeing and resilience, rather than specific targets for individual services. That will allow considerable ingenuity and creativity in the way that services work together so that the whole is greater than the sum of the parts. It should also encourage a longer term perspective, slowly improving living conditions over time rather than reacting to the latest political demand and the pressure of events.

The Trust will be a member of the Community Planning Partnership alongside the Council - giving it the opportunity to influence other partners with its novel ways of working. The Trust will always be a member of the Council 'family', delivering on its statutory obligations - but with a more radical and exploratory edge as befits the next generation.

But perhaps the most interesting potential lies in the scope for more direct community involvement. The Helix project was founded on the principle that it would develop people, place and enterprise at the same time. It won the largest Big Lottery grant in Scotland's history for that reason. Community involvement and engagement has been more than an optional add-on. It has been the lifeblood of the project.

Imagine what would be possible if we could say the same of today's Community Services? That is the vision for Falkirk's proposed Community Trust. And it is a vision that grows from Falkirk's unique experience and DNA. Establishing the Trust is not a cynical evasion of responsibility; or an ideologically driven purchaser/provider split; or a caving in to the modernist mantra of market-led provision and the small state. Nor is it risk free. But it is born of a genuine commitment to thinking differently about how we deliver services and a rare ambition not just to preserve quality in this age of austerity but, patiently and over time, to improve it. Where Falkirk leads, others - we can be sure - will follow.

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Appendix 3 - Community Services - Current Unit Functions & Main Facilities

<u>Cultural Services</u>	<u>Library Services</u>	<u>Community Learning & Development</u>
<ul style="list-style-type: none"> ▪ Museums & Collections Management ▪ Archives Services ▪ Archaeological Services ▪ Education & Learning Assistants ▪ Arts Development ▪ Venues' Management & Programming ▪ Exhibitions ▪ Conferences & Catering <p><u>Main Facilities</u></p> <ul style="list-style-type: none"> ▪ Falkirk Town Hall ▪ The Hippodrome, Bo'ness ▪ Callendar House ▪ Kinneil Museum ▪ Birkhill Clay Mine 	<ul style="list-style-type: none"> ▪ Public Library Services – Lifelong Learning information and the encouragement of reading ▪ Support Services – Services to special communities and groups ▪ Reference & Local History ▪ Electronic access to information ▪ Community Information ▪ Support for Schools <p><u>Main Facilities</u></p> <ul style="list-style-type: none"> ▪ 8 Public Libraries ▪ 1 Mobile Library 	<ul style="list-style-type: none"> ▪ Adult Learning ▪ Youth Learning ▪ Community Capacity Building ▪ Training & Staff Development ▪ Local Community Planning <p><u>Main Facilities</u></p> <ul style="list-style-type: none"> ▪ 16 Community Centres ▪ Community Wings to Schools

<u>Parks & Recreation</u>	<u>Sport & Leisure</u>
<ul style="list-style-type: none"> ▪ Strategic Play & Parks Development ▪ Cemeteries & Crematorium Management ▪ Sports Development ▪ Community Recreation including Outdoor Adventure Activities ▪ Major Events ▪ Country Park & Countryside Rangers ▪ Golf Course Management & Maintenance <p><u>Main Facilities</u></p> <ul style="list-style-type: none"> ▪ 23 Community Halls ▪ Bo'ness & Grangemouth Town Halls ▪ Muiravonside Visitor Centre & Farm ▪ Polmonthill Golf Course ▪ Falkirk Crematorium ▪ 11 Operational Cemeteries 	<ul style="list-style-type: none"> ▪ Management & Operation of Sports Centres ▪ NPDO Schools Community Access ▪ Circuit Clubs ▪ Healthy Lifestyle Promotion ▪ Sports Event Management ▪ Outdoor Leisure Amenities in Parks <p><u>Main Facilities</u></p> <ul style="list-style-type: none"> ▪ Mariner Centre ▪ Grangemouth Sports Complex ▪ Bo'ness Recreation Centre ▪ 5 Neighbourhood Sports Centres ▪ Sports Stadium & Athletics Centre ▪ Ski Slope ▪ Par 3 Golf course

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Appendix 5 - Services Covered

Functions proposed for inclusion as a package of trust services.

1. Mariner Centre
2. Grangemouth Sports Complex
3. Bo'ness Recreation Centre
4. Grangemouth Stadium
5. Neighbourhood Sports Centres
6. Leisure Services provided in NPDO and FSP schools
7. Circuit Clubs
8. Healthy Lifestyle Programmes
9. Parks Amenities
10. Strategic Parks Management & Maintenance (Callendar, Dollar, Zetland, Kinneil, Muiravonside)
11. Muiravonside Country Ranger Service
12. Golf Course
13. Sports Development
14. Recreation
15. Community Halls
16. Town Halls
17. Events (incl Gala Days)
18. Public Libraries
19. Library Support Services
20. Library Services to Young People
21. Callendar House
22. Local Museums
23. Heritage Learning Services
24. Collections Management
25. Archive Services
26. Archaeology Services
27. Arts Development
28. FTH
29. Hippodrome
30. Other Heritage incl. Birkhill Clay Mine
31. Adult Learning
32. Youth Learning
33. Capacity Building
34. Local Community Planning
35. Community Centres
36. Community Learning & Development Services in School Wings
37. Elements from Education Services (Outdoor Learning, Active Schools, Cultural Co-ordinator)

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Appendix 6 - Scope of Services Rationale

Sport & Leisure Proposal	Pros	Cons	Key Benefits / Rationale
<p>All of Sport & Leisure Services to transfer from Community Services to the Trust</p> <ul style="list-style-type: none"> ▪ Mariner Centre ▪ Grangemouth Complex ▪ Bo'ness Recreation Centre ▪ Grangemouth Stadium ▪ Community Use of schools ▪ Circuit Clubs ▪ Healthy Lifestyles Programmes ▪ Discounted Access Schemes ▪ Parks Amenities (Strategic Parks) 	<p>Financial & Legal:</p> <p>There are significant NNDR savings accruing to sports centre buildings. High levels of sport income will deliver VAT savings.</p> <p>No legal impediments to transfer of the Sport & Leisure function identified.</p> <p>Service Delivery:</p> <p>A full range of services will continue to be delivered including the management of out of school hours access to schools. The proposed scope of the Trust offers the opportunity to grow collaborative services with Community Learning & Development such as Youth Only Zones and to capitalise on the facility management expertise that exists within sport and leisure to continue to utilise in other areas of service. An example of where this approach has been successful is at the Dawson Centre.</p> <p>The Trust would continue to take the policy role on behalf of the Council for developing and implementing the Physical Activity Strategy</p> <p>Community:</p> <p>The Trust will require to develop an enhanced marketing capacity and will create a greater range of 'offers' for participating than is currently available to maximise income generation opportunities. People would be able to choose from a wider range of memberships for example and discounted access schemes would continue for target groups. There would be greater flexibility to offer 'rewards' to customers through marketing promotions.</p>	<p>Financial & Legal:</p> <p>None.</p> <p>Service Delivery:</p> <p>There are no known disadvantages to service delivery through a Trust. However if the proposed scope of services included in the Trust does not include complementary services particularly Strategic Parks, Recreation and Community Learning & Development, the capacity of Sport & Leisure to contribute fully to area wide objectives would be reduced. There could be a risk of the service becoming more commercial and /or being exposed to other more commercial leisure operator interests and capacity to resource the social inclusion agenda across the service could be reduced.</p> <p>Community:</p> <p>There are no constraints to community participation particularly if the risks to service delivery outlined above are minimised.</p>	<p>The rationale for Sport & Leisure Services as part of a package of Trust services is:</p> <ul style="list-style-type: none"> ▪ Significant savings in NNDR to the Council. ▪ As a key sports income generator there are significant savings in VAT to the Council. ▪ The Trust offers opportunities for alternative income generation and sport and leisure services provide key income generating potential for the Trust. ▪ Inclusion of income generating services provides greater potential for offsetting participation costs to be able to continue and grow discounted access and social inclusion programmes in all services within the Trust. ▪ Income generation would be supported with enhanced marketing and new ways of attracting new participants, working collaboratively across the Trust this will include a focus on those who do not currently participate. ▪ There is good evidence of sport and leisure services being delivered through trusts elsewhere. Many authorities now see the potential for widening the scope of these trusts to be able to deliver more integrated services.

Cemeteries & Crematorium Proposal	Pros	Cons	Key Benefits / Rationale
<p>All of Cemeteries & Crematorium Services to remain within the Council</p> <ul style="list-style-type: none"> ▪ Falkirk Crematorium ▪ Crematorium Management & Administration ▪ Cemeteries Management & Administration 	<p>Financial & Legal:</p> <p>No NNDR or VAT advantages would accrue to the Council if these services were to transfer to the Trust. Burial and cremation services delivered by private entities (including charitable trusts etc) are exempt from VAT. There is potential for the Trust as a whole to be disadvantaged through a less favourable VAT status than the Council for these services.</p> <p>Service Delivery:</p> <p>A full range of services would continue to be delivered within the Council. There is an opportunity for greater integration between cemeteries management and maintenance services by retaining the service in the Council within Corporate & Neighbourhood Services. Corporate & Neighbourhood Services currently provide cemeteries maintenance and grave digging services and are fully supportive of this proposal.</p> <p>Community:</p> <p>There will be no change to the services provided to the community and the working relationship between the Council and the Funeral Directors would continue. The unitary service would be communicated to all stakeholders. Bringing the services together would provide potentially clearer communication channels for members of the public.</p>	<p>Financial & Legal:</p> <p>Whilst the income generating potential offered by this service would be attractive to the Trust this is offset by VAT disadvantages.</p> <p>Service Delivery:</p> <p>There are no service disadvantages to this proposal.</p> <p>Community:</p> <p>There are no constraints to stakeholders.</p>	<p>The rationale for Cemeteries and Crematorium Services remaining within the Council is:</p> <ul style="list-style-type: none"> ▪ The VAT position is more favourable if these services remain within the Council. ▪ There are no NNDR savings available through the Trust. ▪ There is little synergy with the other service areas proposed for the Trust. ▪ The proposal provides for more integrated service delivery between management and maintenance services. ▪ There is very little evidence of these services being delivered through a Trust and none in Scotland.

Parks Development Services Proposal	Pros	Cons	Key Benefits / Rationale
<p>The following services to transfer from Community Services and Corporate & Neighbourhood Services to the Trust</p> <p>Maintenance and management of strategic parks:</p> <ul style="list-style-type: none"> Callendar Park Dollar Park Zetland Park Kinneil Estate Muiravonside Country Park and Polmonthill Golf Course and Maintenance of Grangemouth Stadium grounds. <p>The following services to remain within the Council in Corporate & Neighbourhood Services:</p> <ul style="list-style-type: none"> All other parks maintenance and management, including playing fields. 	<p>Financial & Legal:</p> <p>There are some NNDR savings.</p> <p>No legal impediments to transfer of this function identified.</p> <p>Service Delivery:</p> <p>A full range of services would continue to be delivered. Instead of maintenance and management responsibilities being split between two services for all parks as at present the split proposed is strategic allowing the most appropriate and holistic approach to management and maintenance of each park type. Continuity of maintenance and management of the Golf Course as a main recreational venue would continue. The synergy between local parks and surrounding estates maintenance and management is currently high and there is no obvious benefit in dismantling this. The proposal to draw the management of these together is supported by Corporate & Neighbourhood Services. There is potential for new partnership and funding opportunities to be explored through the Trust.</p> <p>Community:</p> <p>The Trust will require to develop an enhanced marketing capacity that will enable a more co-ordinated approach to visitor marketing. Clarity of responsibilities for local and strategic parks will assist external communications. Working closely with Community Learning & Development the Trust will continue to encourage people to support strategic park activity, through Friends Groups. The good working partnership established with the golf club would be sustained.</p>	<p>Financial & Legal:</p> <p>None.</p> <p>Service Delivery:</p> <p>There are no known constraints to service delivery. However if the proposed scope of services included in the Trust does not include complementary services, particularly, Sport & Leisure, Community Learning & Development, and Cultural Services, the capacity of strategic parks to contribute fully to attracting and retaining visitors and gaining Green Flag status could be reduced.</p> <p>An SLA would be developed to continue to receive large scale grass cutting services (a level of maintenance not provided within the Trust) from the Council. This is not considered to be a constraint.</p> <p>Community:</p> <p>There are no constraints to community access and participation if the scope of services envisaged all transfer.</p>	<p>The rationale for transferring strategic parks as part of a package of Trust services and retaining all other parks within the Council is:</p> <ul style="list-style-type: none"> Strategic Parks are visitor attractions and will continue to be different to local parks; there is a high level of synergy with other services proposed for the Trust. The Green Flag quality target for these parks depends on such an integrated approach for success. Strategic parks provide a venue and backdrop for a host of activities and events delivered by services proposed for the Trust. The Trust would enable more targeted and effective marketing of strategic parks along with other cultural and leisure attractions. Dedicated maintenance staff in strategic parks could potentially engage more proactively with visitors as well as provide a point of contact with equivalent staff in other venues. There is evidence of strategic parks and golf courses being managed and maintained by Trusts elsewhere.

Play Development Proposal	Pros	Cons	Key Benefits / Rationale
<p>All of local play area development services (excluding those to strategic parks) to remain within the Council</p> <ul style="list-style-type: none"> Planning play area improvement Capital programme play area project development Technical advice to support local groups develop play area improvement 	<p>Financial & Legal:</p> <p>No NNDR or VAT advantages would accrue to the Council if this service were to transfer to a Trust.</p> <p>Service Delivery:</p> <p>A full range of services would continue to be delivered within the Council. The development, management & maintenance of the Council's 130 play areas currently rests across 3 services of the Council which is a complicated arrangement with diverse responsibilities and poor integration. There is an opportunity to address this by retaining most play services within the Council. The specialist play area equipment maintenance and inspections for <u>all</u> play areas would rest within a single entity - the Council.</p> <p>A few major play areas sit within 4 of the 5 strategic parks and there are management advantages in capital play development and site cleaning for these transferring to the Trust along with the responsibility for strategic parks. There will be a requirement to begin to upgrade these play areas in the near future. A number of charitable funding bodies exist with a focus on young people and community welfare that the Trust could take advantage of. For this reason it is also recommended that the extent of the Trust's portfolio of play services is reviewed on a regular basis.</p> <p>Community:</p> <p>The Trust through its Community functions would continue to be able to support Community groups develop local play areas, although the technical expertise would rest within the Council. Responsibilities would be clearer between the Trust and the Council, being aligned to park rather than type of service provided.</p>	<p>Financial & Legal:</p> <p>The external funding advantages of the Trust would not initially be directed to local play areas; however local groups would continue to have the potential to bid for charitable funding.</p> <p>Service Delivery:</p> <p>The Trust would need to develop its own expertise in developing its strategic park play areas [or it could receive services from the Council via an SLA]. This is not considered to be a significant constraint.</p> <p>Community:</p> <p>There are no constraints to community participation particularly if the play services remaining within the Council were more integrated than at present.</p>	<p>The rationale for local play development services remaining within the Council is:</p> <ul style="list-style-type: none"> Responsibilities are clearly defined and the main focus of play services which are delivered in local parks and surrounding areas is retained in the Council with potential for greater integration. Retains responsibility for specialist play equipment maintenance services across all equipment within the Council, an SLA would be developed for services to the Trust. Play development responsibilities for strategic parks within the Trust offers opportunities to access alternative sources of external funding, particularly around young people and social enterprise. No NNDR savings to the Council. There is evidence of play development in strategic parks being delivered through Trusts elsewhere but most local park play services are currently delivered within Councils.

Sports Development & Community Recreation Proposal	Pros	Cons	Key Benefits / Rationale
<p>All of Sports Development & Community Recreation Services to transfer from Community Services to the Trust</p> <ul style="list-style-type: none"> ▪ Sports Development ▪ Outdoor Activities ▪ Recreation Programmes ▪ Grangemouth & Bo'ness Town Halls ▪ Community Halls ▪ Event Management 	<p>Financial & Legal:</p> <p>There are NNDR savings accruing on some significant buildings. Sports income generated will deliver VAT savings</p> <p>No legal impediments to transfer of sports development & community recreation function identified.</p> <p>Service Delivery:</p> <p>A full range of services will continue to be delivered. The proposed scope of the Trust offers opportunities for efficiencies particularly through an integrated approach to delivering outdoor activities with outdoor learning currently located in Education Services. Recreation programmes are often a vehicle for engaging young people in Community Learning & Development, for example sport4youth, and existing synergies with that area of service would be retained and could continue to be strengthened. Sports Development services utilise leisure facilities and integration with that area of service is important, similarly most of the service events programme takes place in strategic parks. The Council would maintain the strategic direction for services and for example if Halls, Community Halls and Community Centres are collectively managed through the Trust this will provide a coherent focus.</p> <p>Community:</p> <p>There will be no adverse impact on the relationship with community stakeholders such as Hall Management Committees and Falkirk Sports Council. Indeed there may be greater potential for developing stronger partnerships through joint funding bids for example.</p>	<p>Financial & Legal:</p> <p>Whilst not perceived as a significant constraint around 80% of Community Halls would not accrue new NNDR savings as their management committees already have charitable status. This could be offset by the potential for partnering more effectively in charitable funding bids.</p> <p>Service Delivery:</p> <p>There are no known disadvantages to service delivery through the Trust. The main risk would arise if other complementary services from within the existing Community Services did not also transfer to the Trust and the integrated service delivery that exists was compromised.</p> <p>Community:</p> <p>There are no constraints to community participation and an increased marketing capacity through the Trust could benefit community awareness.</p>	<p>The rationale for Sports Development and Community Recreation Services as part of a package of trust services is:</p> <ul style="list-style-type: none"> ▪ Savings in NNDR to the Council. ▪ As sports income generating service there are VAT savings to the Council. ▪ The Trust offers opportunities for partnering with other charitable bodies or community organisations to secure alternative sources of external funding, particularly around young people and tackling disadvantage. ▪ Enhanced and focused marketing will encourage new participation in sport and recreation programmes. ▪ Collaborative working, particularly in partnership with Community Learning & Development will continue to target vulnerable and disaffected young people. ▪ There is evidence of these services being delivered through trusts elsewhere.

Functions from Education Services Proposal	Pros	Cons	Key Benefits / Rationale
<p>The following functions to transfer from Education Services to the Trust</p> <ul style="list-style-type: none"> ▪ Active Schools programme ▪ Outdoor Learning Services ▪ Cultural Co-ordinator programme 	<p>Financial & Legal:</p> <p>No legal impediments to transfer of these functions identified.</p> <p>Service Delivery:</p> <p>A full range of services would continue to be delivered. Integrating Active Schools with Sports Development and Community Recreation within the Trust could provide a more effective transition from school to community club participation, which is an area that has significant scope for future development. There are 3 groups delivering outdoor actives to young people including the partnership body Action Outdoors, the agreement for which is due for review. There is scope for efficiencies in the future management and operation of all outdoor education services. The Cultural Co-ordinator has a key role in linking schools with out-of-school arts opportunities; however, this is likely to be under pressure in current financial constraints. All these services are likely to be attractive to external funders and they may be able to have a greater impact in the long run in a Trust environment.</p> <p>Community:</p> <p>Active Schools being aligned more closely to other community facing activities as proposed for transfer could bring additional support for volunteers and better connections to existing clubs.</p> <p>Schools would be able to draw on the expanded outdoor learning service giving access to new locations, experiences and opportunities.</p>	<p>Financial & Legal:</p> <p>None</p> <p>Service Delivery:</p> <p>There are no known disadvantages to service delivery through the Trust.</p> <p>The work currently sits alongside that of the sports development, arts development and community recreation team also proposed for transfer and so an opportunity is presented for greater integration.</p> <p>Community:</p> <p>There are no constraints to community access and participation and stakeholders such as sports clubs and cultural organisations could benefit.</p>	<p>The rationale for functions from Education Services being included as part of a package of Trust services is:</p> <ul style="list-style-type: none"> ▪ The Active Schools programme is funded by sportscotland who are keen that it sits wherever is most appropriate to deliver an integrated sports development and physical activity pathway, which the Trust offers. ▪ Both Education and Community Services hold a license to operate outdoor activities and the proposal reduces a level of duplication and overlap. ▪ It presents the opportunity for a wider review of outdoor education services that could deliver an enhanced service to schools and community groups. ▪ Incorporation with the Trust offers a level of protection that may not be available within the Council, through closer operational alignment with collaborative services. ▪ The Trust offers opportunities for securing alternative sources of external funding particularly around young people and tackling disadvantage.

Community Learning & Development Proposal	Pros	Cons	Key Benefits / Rationale
<p>All of Community Learning and Development (CLD) to transfer from Community Services to the Trust</p> <ul style="list-style-type: none"> ▪ Adult Learning ▪ Youth Learning ▪ Community Capacity Building and Development ▪ Local Community Planning ▪ Community Education facilities 	<p>Financial & Legal:</p> <p>There are some NNDR savings from community education facilities.</p> <p>No legal impediments to transfer of CLD function identified.</p> <p>Service Delivery:</p> <p>A full range of services will continue, including support to Community Education Associations and Community Education Centre Management Committees. The relationship between each of these community organisations and the Trust will be negotiated through Service Level Agreements. The range of internal and external partnerships will continue and the service will continue to take a policy lead in the development of the Community Learning and Development Partnership for the Falkirk Council area.</p> <p>The proposed scope of the Trust will provide opportunities to build on existing collaborative work across services.</p> <p>Community Learning and Development will continue to work with HMle as part of the latter's inspection processes.</p> <p>Community Learning and Development will continue to work with HMle as part of the latter's inspection process.</p> <p>Community:</p> <p>The inclusion of Community Learning and Development in the Trust will facilitate the development of pathways between disadvantaged communities and mainstream services.</p>	<p>Financial & Legal:</p> <p>None</p> <p>Service Delivery:</p> <p>There are no known disadvantages to service delivery through a Trust, but there may be a perceived disadvantage by some community groups, based around notions of commercialisation and privatisation. It will be important to dispel these concerns through the continued provision of social inclusion programmes and learning and development opportunities that tackle disadvantage in communities.</p> <p>Community:</p> <p>There are no constraints to community participation, as long as the principles described above are adhered to.</p>	<p>The rationale for Community Learning and Development Services as part of a package of Trust services is:</p> <ul style="list-style-type: none"> ▪ Savings in NNDR to the Council. ▪ The Trust offers considerable opportunities to attract external funding for the development of programmes that target social exclusion and the disadvantaged. Some of these grant opportunities are not available to local government. ▪ CLD works closely and collaboratively with a wide range of services. This would continue to flourish from within the Trust, supporting other services within the Trust, but also those still in the Council. The added advantage in this case being the additional external funding opportunities. ▪ The only example of CLD in a Trust to date is within Glasgow Life.

Cultural Services - ARTS Proposal	Pros	Cons	Key Benefits / Rationale
All of Cultural Services – Arts to transfer from Community Services to the Trust <ul style="list-style-type: none"> Arts Development Falkirk Town Hall Hippodrome 	<p>Financial & Legal:</p> <p>There are significant NNDR savings through property.</p> <p>No legal impediments to transfer of Cultural Services function identified.</p> <p>Service Delivery:</p> <p>A full range of services will continue to be delivered, including visual arts, dance and drama, music, film and media development. Films and a range of performances/shows will continue to be programmed in venues.</p> <p>The service would continue to take the policy role for the development and monitoring of the Strategy for the Arts and the Public Art Strategy. The service works closely with complementary services in Culture and Lifelong Learning and has successfully drawn down external funding as part of a collaborative approach. This could be further developed if these services are also in the Trust.</p> <p>Community:</p> <p>Enjoyment of and participation in all forms of arts performances and activities by the community will remain a prime objective of the Trust. There is potential for the development of new partnerships and new marketing initiatives with other third sector organisations.</p>	<p>Financial & Legal:</p> <p>None</p> <p>Service Delivery:</p> <p>There are no known disadvantages to the service being delivered through a Trust. However, in order to realise the maximum benefit for the community, the complementary services in Culture and Lifelong Learning should also transfer</p> <p>Community:</p> <p>None</p>	<p>The rationale for Cultural Services – Arts as part of the package of Trust services is :</p> <ul style="list-style-type: none"> Savings in NNDR to the Council Opportunities exist for securing external funding for arts development programmes, particularly those targeting young people and those who are economically disadvantaged. The Trust offers new opportunities for building on a track record of securing sources of external funding. Collaborative working across services, particularly in partnership with Community Learning & Development, will continue to target new audiences and, in particular, “harder to reach” members of local communities. Opportunities exist to develop more targeted marketing both to increase audiences and to raise alternative income streams. There are a number of small Arts Trusts that operate facilities / venues (such as Perth Concert Hall), but to date the only other comparable Trust in Scotland with the full range of developmental activities is Glasgow Life.

Cultural Services – Heritage Proposal	Pros	Cons	Key Benefits / Rationale
<p>All of Cultural Services – Heritage to transfer from Community Services to the Trust</p> <ul style="list-style-type: none"> Callendar House & Tea Shop Heritage and Learning Kinneil Museum Museum Workshop & Collections Archives & Archives Store Archaeology 	<p>Financial & Legal:</p> <p>There are significant NNDR savings through property. There are no legal issues per se, but all collections would be subject to a Collections Agreement between the Trust and Falkirk Council. The Keeper of the Records for Scotland would also require to be advised of and be satisfied on the arrangements for the transfer of archives.</p> <p>Service Delivery:</p> <p>A full range of services will continue to be delivered and internal and external partnership working could be further supported by the proposed scope of the Trust. The service would continue to take the policy lead in the development and monitoring of the Heritage Strategy for the Falkirk Council area. The provision of an Archaeology Service through the Trust would be subject to an SLA with the Council.</p> <p>The service works closely with complementary services in Culture and Lifelong Learning and has successfully drawn down external funding as part of this collaborative approach. This could be further developed if these services are also in the Trust.</p> <p>Community:</p> <p>The opportunity for local communities to enjoy and participate in all aspects of local heritage will remain a prime objective of the Trust. There may be opportunities for greater collaboration, particularly around the community empowerment agenda.</p>	<p>Financial & Legal:</p> <p>None</p> <p>Service Delivery:</p> <p>There are no known disadvantages to the service being delivered through a Trust. However, in order to realise the maximum benefit for the community, the complementary services in Culture and Lifelong Learning should also transfer</p> <p>Community:</p> <p>None</p>	<p>The rationale for Cultural Services – Heritage as part of the package of Trust services is:</p> <ul style="list-style-type: none"> Savings in NNDR to the Council. The Trust offers considerable opportunities for securing external funding for heritage learning and outreach, particularly around community empowerment and citizenship. There are opportunities to develop more targeted marketing to increase audiences and raise alternative income streams. The Trust offers new opportunities for building on a track record of securing sources of external funding. Collaborative working across services, particularly in partnership with Community Learning & Development, will continue to target new audiences and, in particular, “harder to reach” members of local communities. There are a number of successful independent museum trusts, but the only other Trust in Scotland that has the full range of complementary services is Glasgow Life.

Libraries Proposal	Pros	Cons	Key Benefits / Rationale
<p>All of Library Services to transfer from Community Services to the Trust</p> <ul style="list-style-type: none"> ▪ 8 Public Libraries ▪ 1 Mobile Library ▪ Homebound Library Services ▪ Library Support for Schools 	<p>Financial & Legal:</p> <p>There are significant NNDR savings accruing to public library buildings.</p> <p>The Public Libraries Consolidation (Scotland) Act (1887) governs the position in relation to libraries in Scotland. The Council would require to ensure that the leases and Service Level Agreements with the Trust are drafted to ensure that the Council maintains management, regulation and control of the library service.</p> <p>Service Delivery:</p> <p>A full range of services will continue to be delivered, including adult and junior borrowing, information, advice and reference, reader development, free internet access to library members, opportunities for digital learning and library support for schools.</p> <p>The proposed scope of the Trust will give the strongest foundation to continued partnership working across services. A good example of these is the joint approach to digital learning being developed with Community Learning and Development and other partners, under the auspices of the Community Learning and Development Partnership.</p> <p>A Service Level Agreement will be developed between the Trust and Education Services to ensure continued support to the curriculum for excellence by library support for schools.</p> <p>Community:</p> <p>The Trust will require to develop a focused and enhanced marketing capacity that will enable better targeting of non-library users and encourage more local people to use the service. This would also allow libraries to contribute to the community empowerment agenda.</p>	<p>Financial & Legal</p> <p>There are no financial constraints.</p> <p>Service Delivery:</p> <p>There are no known disadvantages to service delivery through a Trust. The main risk would arise if other complementary services from within the existing Community Services did not also transfer to the Trust and the internal synergies that have developed were not able to continue.</p> <p>There may also be a perception that the place of libraries within the fabric of their local community could be lost. These concerns should be mitigated by growing partnerships with local community groups and by targeting new activities or services at users and non-users within communities.</p> <p>Community:</p> <p>There are no constraints to community participation if the risks to service delivery outlined above are minimised.</p>	<p>The rationale for Library Services as part of a package of Trust services is :</p> <ul style="list-style-type: none"> ▪ Savings in NNDR to the Council. ▪ Contributes to the cohesion of services within the Trust, establishing a critical mass of services from which the new organisation can develop. ▪ The Trust offers the potential to secure alternative sources of external funding, particularly from other charitable bodies that provide funds (not available to local authorities) for learning and community empowerment. ▪ Enhanced and focused marketing will encourage new audiences to use their local libraries. ▪ Collaborative working across services, particularly in partnership with community education, will continue to target the “harder to reach” members of local communities. ▪ Whilst there is currently only one example of library services within a Trust in Scotland (Glasgow Life), the market generally is moving in that direction and there are several good examples where this works well in England.

Appendix 7 - External Funding Sources

**BRADY ASSOCIATES LTD
RESEARCH FOR FALKIRK COUNCIL
PART I: CHARITABLE TRUSTS**

JULY 2010

No	TRUST/FOUNDATION	POTENTIAL £	DEADLINES	FOCUS	STRATEGY FOR ENGAGEMENT
1.	The Robertson Trust Senior Assessor: Lesley Macdonald 85 Berkeley Square, Glasgow, G3 7DX Tel: 0141 221 3151 www.therobertsontrust.org.uk	Will consider grants towards major capital projects in excess of £1 million. Main grants: Revenue: up to £15,000 for 3 years Capital: up to 10% of total costs	Major capital projects considered in May, September and January – apply ahead as they have long waiting lists for major grants. Main donations considered at bi-monthly meetings: May, July, Sept, Nov, Jan, Mar. Apply 6 weeks prior.	Major Scottish Trust supporting range of Scottish causes. Priorities are: Health promoting health and rebuilding lives of people affected by addictions Care Education & training includes community based activities which increase assess/opportunity.	Written applications with a cover sheet downloadable from the Trust website. Questions that need to be covered in applications: Brief description of the organisation, including past developments and successes <ul style="list-style-type: none"> ◆ Description of the project – what do you want to do, who will be involved, where will it take place and how will it be managed? ◆ How have you identified the need for this work? ◆ What do you hope will be the outputs and outcomes of this work? What key targets have you set? ◆ How do you intend to monitor and evaluate the work so that you know whether or not you have been successful? ◆ What is the income and expenditure and overall budget for this piece of work? ◆ How do you propose to fund the work? Please include details of funds already raised or applied for. ◆ What is your proposed timetable? The Trust welcomes phone calls to discuss potential applications.
2.	Gannochy Trust Secretary: Fiona Russell Kincarrathie House Drive, Pitcullen Crescent Perth, PH2 7HX	Will consider grants for capital and revenue projects.	No deadlines, trustees meet regularly	Priorities for the Trust are the Perth/Kinross area and young people up to the age of 25.	Written applications - 3 A4 pages – with a cover sheet downloadable from the Trust website. Questions that need to be covered in applications: What is the Charitable Purpose of your

	Tel: 01738 620653 www.gannochytrust.org.uk	Larger grants in Perth area. Single year projects only.		The Trust has 4 themes. Theme 2: improving the quality of life of the disadvantaged and vulnerable – by supporting the ‘hard-to-reach’ disadvantaged and vulnerable in society.	charity? What is the Public Benefit of your project, and are there any Private or Commercial Benefits? What are the aims of your project, and how will you meet them? Which Gannochy Trust Grant-Making Strategy Sub-Theme or Themes does your project relate to, and how? What difference will your project make? How would you spend the money, and when will the project commence and end? State the criteria which will be used to assess the success or failure of the project or specific funding request, and how will you measure or evaluate its success? What would you do if the Gannochy Trust does not provide funding?
3.	Garfield Weston Foundation Fiona Hare, Administrator Weston Centre 10 Grosvenor Street London W1K 4QY Tel: 020 7399 6565	Major trust giving capital and revenue single year grants. Grants from £3,000 upwards	No deadlines. Applications take up to 4 months to consider	Education, community, welfare causes. Will consider building projects. Prefers to see majority of funding in place before an application is considered.	Written applications, guidelines and coversheet on website: www.garfieldweston.org/policy/
4.	Impetus Trust 20 Flaxman Terrace London, WC1H 9PN Tel: 0) 20 3384 3940	Strategic long term core funding to build capacity, and direct management support.	No deadlines	Venture philanthropists working with “charities and social enterprises that are helping to break the cycle of poverty by creating opportunities for the poorest 20% of the UK to gain education, skills and jobs.”	Eligibility criteria on website: www.impetus.org.uk/charities-we-work-with/selection-criteria
5.	Lankelly Chase Peter Kilgariff 1 The Court High Street Harwell Didcot, Oxon, OX11 0EY Tel: 01235 820044 www.lankellychase.org.uk	Revenue grants: up to £50,000 for 3 years Capital grants: up to £50,000 Loans in conjunction with Charity Bank.	No deadlines – bi-monthly meetings	Social enterprise: community controlled projects moving towards sustainability. Will consider both: Capital grants to adapt a building or buy equipment – but priority is for rural projects. Revenue grants for core costs/salaries.	Applications via form downloadable from website. Can include up to 2 sides A4 of additional information. Welcomes phone calls to discuss applications.
6.	P F Charitable Trust 15 Suffolk Street	Capacity to award grants above	Trustees meet monthly	Scotland is a priority, will fund building projects, interested in health, welfare,	Written application

	London SW1Y 4HG Tel: 020 7036 5685	£50,000, most larger grants are between £10 - £30,000.		community development and education.	
7.	Accenture Foundation Mary-Jane Smith 60 Queen Victoria Street London, EC4N 4TW Tel: 020 7844 5387 www.accenture.com/Countries/UK/About_Accenture/Corporate_Citizenship/Giving.htm	Donates £500,000 per annum.	No deadlines	Better skills for better futures: Employability – supports skills development through apprenticeships, literacy and numeracy, adult education, vocational training, mentoring as well as helping people to return to sustainable employment. Enterprise – supports the development in social enterprises and charities, of understanding and skills in entrepreneurship and sustainable enterprise.	Gives long term funding to be high profile national charities. Also gives ad hoc grants. They encourage employee involvement and have an office in Edinburgh (St Andrews Square). Proposals can be employee led.
8.	Fidelity Foundation Head of Foundations The Fidelity UK Foundation Oakhill House 130 Tonbridge Road Hildenborough Kent TN11 9DZ Tel: 01732 777364	Major grants for capital building improvement.	No deadlines, can take 6 months to consider applications.	Community development to enable young and disadvantaged people to achieve their potential. Organisational transformation initiatives. Prefers to fund near their offices, but will consider applications from other parts of the UK.	Detailed guidelines on applications on their website: www.fidelityukfoundation.org/priorities.html Phone to discuss application first.
9.	The Stafford Trust c/o Dickson Middleton PO Box 14 20 Barnton Street Stirling, FK8 1NE Tel: 01786 474718	Capacity for major grants, mostly up to £10,000. Has previously considered grants up to 3 years but not in 2010.	Spring and autumn meetings	Wide range of community and welfare causes in Scotland	Detailed guidelines and application form available on their website: www.staffordtrust.org.uk

10.	Henry Smith Charity 6 th Floor 65 Leadenhall Street London, EC3A 2AD Tel: 020 7264 4970	Major grants in excess of £10,000 for both capital and revenue projects. Need to have majority of funding in place before submitting an application.	No deadlines	Priorities include: projects offering rehabilitation, training and advocacy for people with disabilities.	Application forms for Scottish applications for either capital or revenue grants on website: www.henrysmithcharity.org.uk/work-in-scotland.html
11.	Trusthouse Charitable Trust Judith Leigh, Grants Officer The Trusthouse Charitable Foundation 65 Leadenhall Street London EC3A 2AD Tel: 020 7264 4990 www.trusthousecharitablefoundation.org.uk	Capital grants between £10,000 - £30,000	Meetings held Feb, May, July, Nov. Deadlines – 8 weeks prior	Life skills and employment skills for young people in need. Capital grants can be considered where most funding already in place.	Applications to include summary sheet from trust website and two A4 pages: <ul style="list-style-type: none"> • State clearly who you are, what you do and whom you seek to help, and what is your status i.e. charity • Describe clearly the project for which the grant is sought: • What is the aim of the project and why is it needed • What practical results will it produce? • How many people will benefit? • Funds already raised and other sources of funding applied for. • Detailed budget, ask for a specific amount. • Monitoring and evaluation. • On-going funding (if required) • 2 independent referees required.
12.	Fuserna Foundation 6 th Floor, 6 Chesterfield Gardens, London, W1J 5BQ Tel: 0207 409 3900 www.fusernafoundation.org/home.asp	£5,000 - £15,000	No deadlines. New applications not accepted currently – check website for updates	Support for relief in need, older people, mental and physical illness. Smaller charities and unpopular causes that are under resourced.	Written applications to include: Information about the charity Details of the project that currently requires funding including the objective of the project and full operational details of how the objective will be achieved Most recent financial statutory accounts Budget for the project Details of existing sources of finance.
13.	Clothworkers Foundation Grants Manager	Up to £15,000 for capital projects only,	No deadlines. Can take up to 6 months	Supports a range of social welfare causes, including Scottish organisations. Main	Application form on website www.clothworkers.co.uk/Grant-Making/How-

	Clothworkers' Hall Dunster Court, Mincing Lane London EC3R 7AH Tel: 020 7623 7041	including building costs.	for a decision	priorities are social inclusion, young people and disability.	to-apply.aspx Successful grant holders cannot reapply for 5 years
14.	The ACT Foundation Maralyn Gill, Grants Coordinator The Gate House 2 Park Street Windsor Berkshire SL4 1LU Tel: 01753 753900 www.theactfoundation.co.uk	Capacity to give major grants, some in excess of £50,000 for capital projects, including buildings and equipment.	Trustees meet quarterly	Supports a range of causes.	Application by letter to include: <ul style="list-style-type: none"> • Description of organisation. • Summary of work, together with a cost breakdown, plans and/or specification if available and a summary of the key milestones for the work. • Why you need to do this work and what would happen if you were unable to do it. • Details of other support received or pledged. • Results of the work and the number of beneficiaries helped. • Evaluation. • Ongoing operational funding and how you plan to meet these costs. • Cashflow projection of income and expenditure budget.
15.	Ibrahim Foundation www.ibrahimfoundation.com	£5,000 - £10,000	No deadlines. No applications to be accepted in 2010 – check website for future dates.	Makes selected grants to management support organisations that provide services to other nonprofits and build capacity within the field as a whole	3 page applications submitted by email only.
16.	Grocers Charity Miss Anne Blanchard, Charity Administrator The Grocers' Charity, Grocers' Hall, Princes Street, London EC2R 8AD Tel: 020 7606 3113 www.grocershall.co.uk/charity.html	£1,500 - £30,000 For capital and revenue projects	Deadlines for Trustee meetings are May, Sept, Nov, Feb.	Priorities are the relief of poverty, young people and education, and disability.	By form available by writing to the Charity Administrator or email anne@grocershall.co.uk
17.	Grand Lodge of Scotland Freemasons Hall 96 George Street, Edinburgh EH2 3DH	Between £500 and £25,000	Apply between Sept and Feb for April grants.	Capital and revenue grants for local and national charities	Mostly gives smaller grants with occasion larger amounts for urgent appeals.

	0131 225 5304 www.grandlodgescotland.com/				
18.	Miss Agnes H Hunter Trust Mrs Jane Paterson, Grants Administrator Pagan Osborne 55-56 Queen Street Edinburgh, EH2 3PA Tel: 0131 226 4081	Up to £8,000, mostly around £5,000. Can give up to 3 years. Revenue grants	Two meetings per year, deadline dates vary. Next deadline: Aug 2010	Scottish charities. Priorities include training and education for disadvantaged people.	Written applications to include: <ul style="list-style-type: none"> • Need for this work • How this makes a difference • Project activities • Monitoring and evaluation • Budget • Timetable
19.	North British Hotel Trust Claire Smith, Clerk Samuelston Mill House Haddington East Lothian EH41 4HG	Up to £10,000 for revenue projects	Apply at any time	Supports a range of mostly Scottish charities. One of their priorities is community development.	Contact correspondent for application form. Next deadline 31st Oct 2010
20.	Rowan Charitable Trust Mr Jonathan Tippet c/o Morley Tippet White Park Barn Loseley Park Guildford GU3 1HS Tel: 01483 575193	Up to £10,000 for revenue projects only	Apply at any time	Supports organisations working to achieve economic justice for disadvantaged people who are 'powerless'.	Applications no more than 2 pages to cover: <ul style="list-style-type: none"> • the aims and objectives of the organisation • its structure and organisational capacity • what the funds are being requested for and how much is being requested • how progress of the work will be monitored and evaluated.
21.	Drapers' Charitable Trust The Charities Administrator Drapers' Hall Throgmorton Avenue London EC2N 2DQ Tel: 020 7588 5001	Grants up to £10,000. Will consider capital projects such as buildings.	Trustees meet quarterly. Deadlines on website	Education and relief of need for disadvantaged people. One of the priorities: ease the lives of people affected by less visible disabilities such as mental health.	Applications to include summary sheet www.thedrapers.co.uk/Charities/pdf_forms/application_summary_form.pdf <ol style="list-style-type: none"> a. Details of the project/activity, including the need for the work and how this was assessed. b. The objectives of the project/activity and how they will be achieved. The outputs (quantifiable activities) that will be carried out in meeting the objectives and the desired outcomes (impact, changes or benefits) resulting from the project/activity. c. The beneficiaries of the project/activity, how many people will benefit and the geographical area which will benefit. d. Full costings and a project budget or the organisation's income and expenditure budget, as appropriate, should be provided

					<p>including specific details of the sums requested.</p> <p>e. If funding for a post is required, the job description and person specification should be included.</p> <p>f. Details of other sources of funding should be included.</p>
22.	Tulip Charitable Trust George R Russell, Secretary Anderson Strathern Solicitors 1 Rutland Court Edinburgh EH3 8EY Tel: 0131 270 7700	Grants above £5,000	Trustees meet twice a year.	Social welfare, children and young people. Training and employment schemes.	
23.	Dowager Countess Eleanor Peel Charitable Trust Mr A J Twitchett Sceptre Court 40 Tower Hill London EC3N 4DX	Capital projects, grants of £5,000+	31 May for Jul meeting 30 Sep for Dec meeting	Supports charities for people fallen on hard times.	Application form on trust website http://www.peeltrust.com/Grant_Application_Form.pdf
24.	Kathleen Hannay Memorial Charity G Fincham, Administrator 15 Suffolk Street London SW1Y 4HG Tel: 020 7036 5685	Grants between £5,000 and £50,000	Trustees usually meet in March	Health and welfare projects	Applications by letter
25.	Barcapel Foundation The Mews, Skelmorlie Castle, Skelmorlie, Ayrshire PA17 5EY Tel: 01475 521616	Revenue and capital projects. Capacity for major grants up to £50,000, and also has given loans	No deadlines	Youth welfare and development, especially those from disadvantaged backgrounds.	Application form on website http://www.barcapelfoundation.org/grant_application.doc
26.	Hugh Fraser Foundation Katrina Muir, Administrator Turcan Connell Princes Exchange 1 Earl Grey Street Edinburgh EH3 9EE Tel: 0131 228 8111	Capacity for large grants by mostly under £5,000	Quarterly meetings	Supports wide range of Scottish charities. Larger grants possible for charities known to the Trustees.	Applications by letter
27.	Albert Hunt Charitable Trust Trust Manager Trustee Department	Grants up to £10,000, most under £5,000 Has given some	Trustees meet in Mar, July, Nov.	Gives many small grants. Larger grants appear to be mostly awarded in England.	Written applications to include: <ul style="list-style-type: none"> ▪ aims and objectives of the charity ▪ nature of appeal

	Coutts & Co 440 Strand London, WC2R 0QS Tel: 020 7663 6825	larger grants from £10,000 - £50,000			<ul style="list-style-type: none"> total target if for a specific project contributions already received
28.	Hedley Foundation Pauline Barker, Appeals Secretary 1-3 College Hill London EC4R 2RA Tel: 020 7489 8076	Can give up to £20,000. Most grants are around £5,000, mainly for equipment. Not revenue or salaries.	Trustees meet alternate months	Young people – education, training, welfare	Application forms on website www.hedleyfoundation.org.uk/image/application_form.doc
29.	Truemark Trust Mrs Judy Hayward PO Box 2, Liss Hants GU33 7YP Tel: 01730 894120	Up to £5,000	Trustees meet quarterly	Welfare causes including education and training, Has funded Scottish charities	Brief written applications
30.	Sylvia Aitken Charitable Trust Mrs N Ferguson, Trust Administrator 24 Woodside Houston PA6 7DD Tel: 01505 610412	Up to £2,000	Mar/Apr and Sept/Oct meetings	Small grants to Scottish charities with a preference for health	Applications by letter
31.	The Volant Trust Christine Collingwood, Administrator PO Box 8 196 Rose Street Edinburgh, EH2 4AT	Grants above £10,000. Grant making is expected to increase in future.	Two meetings per annum	This is J K Rowling's Trust. One area of focus is research into multiple sclerosis. The other is relief of poverty and social deprivation. Any Falkirk Council approach would need to demonstrate that the most vulnerable members of society would benefit.	Download an application form from the Trust's website at: www.volanttrust.com
32.	R S Brownless Trust Mrs P M A Nicolai, Trustee Hennerton Holt Wargrave Reading RG10 8PD Tel: 0118 940 4029	Grants up to £2,000		Disabled people and disadvantaged people, job creation.	Application by letter
33.	Craignish Trust Lachlan K Fernie Messrs Geoghegan & Co CA 6 St Colme Street Edinburgh EH3 6AD Tel: 0131 225 4681	Grants between £1,000 - £3,000 for projects, not running costs	No set deadlines	Supports Scottish charities delivering education and training.	Application by letter

34.	Rozelle Trust The Rozelle Trust PO Box 11318 PAISLEY, PA1 1AQ		No deadlines. Outline enquiries will receive response within 2 weeks.	Supports Scottish charities working with the poorest in society, children and young people. Sustainable projects.	Send initial outline application via on line form: www.rozelletrust.org/ApplyOnline.asp A second stage application will be required if the trust is interested. Priorities will be reviewed Nov 2010
35.	Martin Connell Trust The Trustees Maclay Murray & Spens 151 St Vincent Street Glasgow, G2 5HJ Tel: 0141 248 5011	Grants up to £5,000	Trustees meet in June and December	Social welfare charities in Scotland	Applications by letter
36.	Beatrice Laing Trust Elizabeth Harley, Secretary c/o Laing Family Trusts 33 Bunns Lane Mill Hill London NW7 2DX	Most grants up to £5,000, larger grants considered twice a year. Core costs or small capital projects.	No deadlines	Funds a range of social welfare issues.	Applications to include: ▪ what the money is for ▪ how much is needed • how much has already been found • where the rest of the money is to come from.
37.	Talteg Ltd Mr F S Berkeley, Governor 90 Mitchell Street Glasgow G1 3NA Tel: 0141 221 3353	Mostly small grants in range of £1 -2,000	No deadlines	Jewish causes and any other charitable activity in Scotland	Application by letter. Must include sae
38.	Darroch Charitable Trust Thomas Monteith Bird Semple 21 Blythswood Square Glasgow G2 4RB	Mostly small grants up to £5,000	Trustees meet in Oct	Charitable causes, prefers West of Scotland	Application by letter
39.	Erskine Cunningham Hill Trust Mr Fred Marsh, Secretary Church of Scotland 121 George Street Edinburgh EH2 4YN	Small grants up to £1,000	No deadlines	Scottish charities, priorities include young people.	Request application form by email: fmarsh@cofscotland.org.uk
40.	Graham Trust Mrs Carol Anne Millar T C Young 7 West George Street Glasgow G2 1BA	Small grants	Annual meeting in October	Scottish charities involved in social welfare	Application form available from cam@tcyoung.co.uk
41.	Endrick Trust Mrs Carol Anne Millar	Grants from £5,000 to £25,000 for	Spring and autumn meetings	Scottish charities - health and well being of disadvantaged people.	Application form on website at www.tcyoung.co.uk/charities/the-endrick-

	T C Young 7 West George Street Glasgow G2 1BA	exception projects. Smaller grants up to £5,000			trust/
42.	Gamma Trust The Secretary Mazars CYB Services Ltd 90 Vincent Street Glasgow G2 5UB	Small grants	Quarterly meetings	Priorities include health and social welfare. Funds Scottish charities but mostly national.	Applications by letter
43.	W O Street Foundation c/o Barclays Bank Trust Company Ltd PO Box 15, Osborne Court Gadbrook Park Northwich CW9 7UR	Grants in the range of £5,000 for equipment and small capital projects.	Trustees meet Jan, Apr, Jul and Oct.	Priorities are education, social welfare, people with disabilities and people in financial difficulties.	Applications by letter
44.	Cotton Trust	Revenue grants and capital (not purchase) up to £5,000. Mostly for equipment.	Trustees meet end Jul and end Jan.	Project benefiting disadvantaged people.	Applications by letter
45.	Donald Forrester Trust Christopher Perkins Lancaster House Elmfield Road Bromley Kent BR1 1LT Tel: 020 8461 8014	Capital and revenue grants in range of £5 – 15,000	No deadlines	Range of priorities	Applications limited to 1 A4 page.
46.	Tay Charitable Trust Mrs Elizabeth A Mussen 6 Douglas Terrace Broughty Ferry Dundee, DD5 1EA	Capital and revenue grants up to £5,000	No deadlines	Supports wide range of Scottish charities	Applications by letter, include sae
47.	Lady Eda Jardine Charitable Trust Linda Pennell Anderson Strathern 1 Rutland Court Edinburgh EH3 8EY	Small grants, mostly capital, up to £5,000	April for July meeting	Supports wide range of Scottish charities	Applications by letter
48.	Cruden Foundation M R A Matthews, Trustee c/o Cruden Group Baberton House Juniper Green	Grants for capital and revenue up to £10,000	June/July meeting	Supports wide range of Scottish charities. Mostly gives small grants.	Applications by letter

	Edinburgh, EH14 3NH				
49.	Russell Trust Iona Russell, Administrator & Trustee Markinch Glenrothes Fife KY7 6PB Tel: 01592 753311	Awards 3 or 4 grants of £25,000 per annum. Mostly gives grants in range of £2,000.	Trustees meet quarterly	Scottish charities, education, health, young people and community projects. Prefers to pump prime new initiatives.	Brief written application on form requested from the correspondent.
50.	Alchemy Foundation Annabel Stilgoe Trevereux Manor Limpsfield Chart Oxted Surrey RH8 0TL Tel: 01883 730600	Grants in the range of £5,000 - £30,000		Unpopular causes, including inner city community projects.	Applications by letter
51.	Haramead Trust M J Linnett, Trustee Park House Park Hill Gaddesby Leic. LE7 4WH Tel: 01664 840908	Grants up to £10,000	Trustees meet every two months	Social welfare charities in the UK	Applications by letter
52.	29th May Charitable Trust The Secretary Messrs Macfarlanes 123 Buckingham Palace Road London SW1W 9DZ Tel: 020 7024 9034	Revenue and capital projects grants up to £50,000. Can fund for 3 years	Quarterly meetings	Range of causes including education and training	Applications by letter, 3 copies of annual accounts.
53.	Rainford Trust W H Simm, Secretary c/o Pilkington plc, Prescot Road St Helens WA10 3TT	Small grants around £2,000	No deadlines	Social welfare charities in the UK	Applications by letter
54.	T C Charitable Trust Mrs M J CcColl c/o KPMG 191 West George St. Glasgow G2 2LJ Tel: 0141 226 5511	Small grants up to £2,000	End of January deadline for March grants	Scottish charities, education and training	Applications by letter
55.	Susan H Guy Charitable Trust Mrs M J McColl, c/o KPMG	Grants between £1,000 and £5,000	March and October deadlines	Scottish charities, education and training	Applications by letter

	191 West George St. Glasgow G2 2LJ Tel: 0141 226 5511				
56.	Andrew Paton's Charitable Trust G A Maguire 190 St Vincent Street Glasgow G2 5SP Tel: 0141 204 2833	Small grants mostly £1,000	No deadlines	Scottish charities, social welfare priority	Applications by letter
57.	The Hadley Trust Carol Biggs Gransmuir Hadley Green Road Barnet EN5 5QE Tel: 020 8447 4577	Mostly larger grants to fewer charities	No deadlines	Trust engages in long term links with charities. Social investment is a priority.	Applications by letter
58.	Alexander Stone Foundation 120 Bothwell Street Glasgow G2 7JL	Small grants	No deadlines	Scottish charities	Applications by letter
59.	W A Cargill Fund Norman A Fyfe Trustee Miller Beckett & Jackson 190 St Vincent Street Glasgow G2 5SP Tel: 0141 204 2833	Grants up to £5,000		Scottish charities, social welfare causes	Applications by letter
60.	John M Archer Charitable Trust 12 Broughton Place Edinburgh, EH1 3RX	Grants up to £5,000	No deadlines	Local health and social welfare charities	Applications by letter
61.	Miss M E Swinton Patersons Charitable Trust Lindsays' Solicitors Calendonian Exchange 19a Canning Street Edinburgh EH3 8HE	Most grants in range of £2,000	July meeting	Education and training for disadvantaged young people	Applications by letter
62.	Order of St John Priory of Scotland The Chancery of the Priory of Scotland St John's House 21 St John Street Edinburgh, EH8 8DG	Grants for specific items of equipment	Annual Sept deadline for Nov meeting	Welfare of disadvantaged people.	Applications by letter
63.	Wakeham Trust Mrs Julie Austin	Up to £750 for revenue projects	No deadlines	Funds social welfare charities and social enterprise initiatives.	On line application form on website w.wakehamtrust.org.

	Wakeham Lodge Rogate Petersfield GU31 5EJ Tel: 020 7439 9061	only.			
64.	J T Borland Charitable Trust Russell & Aitken LLP Kings Court High Street Falkirk FK1 1PQ	Grants within Falkirk Council area. Total income is just less than £100,000	No known deadlines	Relief of poverty and health-related causes. Focus on the Falkirk area.	Apply by letter
65.	Thomas and Margaret Roddan Trust Kings Court High Street Falkirk FK1 1PQ	Grants within Falkirk area. Total annual income is approximately £81,000		Grants made for educational purposes and vary in size.	Apply by letter.
66.	Essentia Foundation Willowdene Glen Road Torwood Larbert FK5 4SN	Grants made within Falkirk area. Annual income is £110,000+.	No known deadlines	Grants are for the health and social welfare of children and young people in particular relation to economic and urban generation	Focus is on central Scotland. Apply by letter.
67.	The MacLennan Trust RBS plc Trust and Estate Services Eden Lakeside Chester Business Park Wrexham Road Chester CH4 9QT	Scotland is a priority	Annual meeting in April	Education, young people and homelessness are the priority	Apply by letter
68.	The Cattnach Charitable Trust Alison Campbell 15 Warriston Crescent Edinburgh EH3 5LA	All grants within Scotland and specifically for the benefit of children. Most grants range between £2,000 and £10,000.	Trustees meet quarterly in March, June, September and December. To be considered for a particular meeting, applications must be in 6 weeks before.	Children under the age of 10, their families and communities in Scotland	Download application form from the Trust's website: www.cattanach.org.uk

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BRADY ASSOCIATES LTD
RESEARCH FOR FALKIRK COUNCIL
PART II: CORPORATE SECTOR

JULY 2010

The International Festival of Live Art Scotland is fully funded by Glasgow City Council and the Scottish Arts Council.

For other arts and culture in Scotland the list of acknowledged external funders is a short one, whilst the respective lists of media partners and in-kin supporters are notably longer. The Glasgow Film Festival is a case in point.

There are no Big In Falkirk sponsors.

Companies in this list match one of the following criteria:

- Major employers in Scotland
- Company activity in the central belt of Scotland
- Sponsors or arts and cultural events in Scotland
- Proactive in supporting a mix of community and/or charity projects

No.	COMPANY	CSR FOCUS	STRATEGY FOR ENGAGEMENT
1.	Diageo	Employs c4,500 people in Scotland and spends £300 million on making spirits in Scotland. Kilmarnock job reductions were counter-balanced by a £100 million investment in production facilities elsewhere in Scotland. Diageo commits 1% of operating profit to community and social investment projects. It does this partly through the Diageo Foundation	The maximum funding for any one project through the Diageo Foundation is £50,000. The Foundation is supportive of 'Local Communities' projects where there is evidence of local economic prosperity. Applications to the Foundation are to be made on no more than two sides of A4 paper. If the Foundation is interested it will then make contact and seek more information. Applications to be sent to: The Administrator, Diageo Foundation, 7 Lakeside Drive, Park Royal, London NW10 7HQ
2.	Compass	Cancer Research UK has been the Compass Charity of the Year in 2009 and 2010. The objective is to raise £250,000 in 2010 alone. Community is one of the company's five pillars of corporate responsibility. The company has also given in-kind charitable support for events including dinners and reception	If Falkirk Council does not have an existing contact in Scotland through Compass Group catering services, Eurest, or other Compass support, the primary contact is through the head office. Rivermead, Oxford Road, Denham, Uxbridge UB9 4BF Tel: 01895 554554
3.	A G Barr	Barrs will be well known to Directors of Falkirk Council given the company's historical association with Falkirk and link with the Falkirk Wheel. In the Community, Barrs contributed £205,000 in 2008/2009, only 55% of which was actual cash. The remainder was in-kind and employees time.	Either establish a link through the strongest existing contact or go through Andrew Memmott, Operations Director is the Board sponsor for the company's CSR activity. A G Barr Plc, Westfield House, 4 Mollins Road, Westfield Cumbernauld G68 9HD

4.	John Menzies	<p>The company has a long-established Charity Committee that has supported numerous charitable causes across Scotland. This has been reduced to £50,000 in total in 2010.</p> <p>The company is not noted for arts and cultural sponsorship, but it did award £50,000 to the National Library of Scotland, given that its founder, John Menzies, once served on the National Library's Board.</p>	<p>Initial enquiries can be made by e-mail to ann.meek@johnmenziesplc.com</p> <p>or to Ann Meek at the head office address which is:</p> <p>108 Princes Street, Edinburgh EH2 3AA</p> <p>This initial query will determine whether there is scope for a dialogue regarding Falkirk Council's broad community agenda.</p>
5.	Baillie Gifford	<p>Baillie Gifford and its directors have been active in supporting a range of arts and cultural events in the central belt for some years. Currently, the firm is a major sponsor of the Edinburgh International Book Festival and a sponsor of The Times Cheltenham Literature Festival 2010.</p>	<p>The most appropriate point of contact is the Institutional Client Service and Marketing Department.</p> <p>Baillie Gifford, Calton Square, 1 Greenside Row, Edinburgh EH1 3AN</p> <p>Tel: 0131 275 2000</p>
6.	Royal Bank of Scotland	<p>RBS continues to be a prominent sponsor of major sporting events and teams including the RBS Six Nations Rugby, The Open and the Williams Formula 1 team.</p> <p>RBS is most noted for its support of enterprise and has been a long supporter of The Prince's Scottish Youth Business Trust.</p> <p>The bank's interest is focused on capturing and servicing new SME customers. A proposal that addresses this market and potential benefit for the Bank has a better chance for a positive hearing than a sponsorship for an arts or cultural event in the present climate.</p>	<p>Establish which person within Falkirk Council has the strongest contact with RBS and start with that contact. RBS offers no specific contact details for marketing, community or sponsorship proposals.</p>
7.	Standard Life	<p>Standard Life has been proactive in CSR for a number of years. In 2009 the company invested £3.21 million in communities where it operates. Its focus is on employability skills, helping people to become financially literate, and promoting healthy living. Last year it also created its own charitable trust.</p> <p>Standard Life is also supporting Edinburgh City Council's 5 year Growing Confidence project for the mental health and well-being of children. Specifically, Standard Life is sponsoring the writing, publication and writing of training materials.</p> <p>Standard Life will sponsor Arts-focused events that get the local community involved, especially young people.</p>	<p>Contact Fiona Adam in the first instance ; or if Falkirk Council have an existing contact with Standard Life start there.</p> <p>Fiona Adam – Sponsorship, Group Brand and Marketing, Standard Life, Standard Life House, 30 Lothian Road, Edinburgh EH1 2DH</p> <p>E-Mail: Fiona_a_adam@standardlife.com</p> <p>In June 2010 Standard Life appointed Ronnie Birnie as a new Senior Business Development Manager</p>
8.	Deutsche Bank	<p>Deutsche Bank's £30 million Scottish HQ in Ferry Road, Edinburgh was opened in 2001. The Bank employs over 1,000 in Scotland.</p>	<p>Kate Cavelle is the Director, Corporate Citizenship UK and can be contacted on: 020 7547 5506.</p>

		Its CSR principles focus on: enabling talent through education, creating opportunities through social investments and fostering creativity through art and music	<p>The Scottish office is on Ferry Road, Edinburgh. Only address given is for the principal UK corporate address: Deutsche Bank AG, 1 Great Winchester Street, London EC2N 2DB</p> <p>The CEO for the United Kingdom is a Scot – Colin Grassie. He is on the Board of Sir Bill Gammell’s Winning Scotland Foundation.</p>
9.	Deloitte	<p>Deloitte has 37 Partners and 700 employees in Scotland</p> <p>Major sponsors of the Edinburgh International Book Festival.</p> <p>Broadly, Deloitte’s community activities promote employability skills for young people, sporting opportunities for disabled people,</p>	<p>Angela Mitchell has recently been made a Partner of Deloitte ; and her responsibility is to lead Deloitte’s Public Sector team in Scotland. Rather than seek out a CSR representative of the firm Angela Mitchell has the potential to be more engaged for a broader partnership discussion for Falkirk Council. The head office address is: Saltire Court, 20 Castle Terrace, Edinburgh EH1 2DB Tel: 0131 221 0002</p>
10.	Scottish and Southern	Scottish and Southern has a broad CSR focus incorporating environmental benefit, energy efficiency, charitable giving and support-in-kind (e.g. printing of materials) for educational initiatives	<p>The company states that it is investing in community-related programmes in Scotland and England ; and that it welcomes dialogue on community benefit programmes with its stakeholders including local authorities. In the first instance contact:</p> <p>Lynne Prophet, Scottish and Southern Energy, Inveralmond House, Dunkeld Road, Perth PH1 3AQ Tel: 01738 456112</p>
11.	Scottish Power	<p>Owned by Spanish company, Iberdrola. CSR reduced, but focused on: Economic development Education and employability Preserving and enhancing the environment Leadership and partnership. Major sponsors of the Edinburgh International Book Festival. Principal sponsor of the 2010 Celtic Connections Festival in Glasgow. Also listed as a corporate supporter of the National Theatre of Scotland.</p> <p>The Scottish Power Learning strand of CSR is focused on youth, education and employability.</p>	<p>Again, check internally whether there are existing senior contacts between Falkirk Council and the company.</p> <p>If there are none, then Ann Loughrey is Head of Corporate Responsibility at Scottish Power and can be contacted at the head office in Glasgow: Scottish Power Plc, Corporate Office, 1 Atlantic Quay, Glasgow G2 8SP</p>
12.	First Group	<p>In the last five years First has supported leading charities such as Barnardo’s, Save The Children, Macmillan and the Outward Bound Trust. The company produced its first CSR report in 2006.</p> <p>In 2009/10 First Group’s community contributions were divided between education and youth, social welfare, health, arts and culture, health, economic development and other causes. Of the £1.85 million</p>	<p>Applications must be supported by a letter from a First Group employee or they will not be considered. There is an application form available at: www.firstgroup.com/corporate/community/charity_and_sponsorship.php</p> <p>Arlene Livingstone, First Group Plc, 395 King St, Aberdeen AB24 5RP</p>

		contributed, £1.2 million was spent on education and young people. Arts and culture accounted for £58,000 of the spend. Health was £186,000 and Social Welfare, £146,000.	
13.	Clydesdale Bank	<p>Helpfully, the Clydesdale sets out its sponsorship criteria and requirements online at:</p> <p>www.cbonline.co.uk/sponsorship/requirements</p> <p>The Bank's principal partnerships are currently with the Scottish Premier League and the Scottish Commonwealth Games Team.</p> <p>The Bank also engages in what it terms 'community investments' and 'community partnerships'.</p>	<p>Helen Everett, Sponsorships, 3rd Floor, 20 Merrion Way Leeds LS2 8NZ</p> <p>Irene Swankie, Community Affairs Manager, Level 7, Clydesdale Bank Exchange, 20 Waterloo St, Glasgow G2 6DP</p>
14.	KPMG	<p>The firm's community focus is on education and enhancing social inclusion. KPMG is also one of the best businesses for deploying staff as volunteers. KPMG has also been active with The Prince's Trust, promoting enterprise and employability.</p> <p>In addition, the KPMG Foundation focuses on education and social projects for the disadvantaged.</p>	<p>Rather than go through the head UK office it would be advisable to enquire through the Scottish office.</p> <p>Craig Anderson is the Senior Partner and is based at: 191 West George St, Glasgow G2 2LJ Tel: 0141 226 5511</p>
15.	CALA Group	<p>A major property developer across central Scotland, CALA has been active in the local community. It has, for example, a partnership with Graeme High School in Falkirk to design an education programme.</p> <p>The company has also supported a wide range of arts and community projects in central Scotland.</p>	<p>Professor Ian Percy is Interim Group Chairman and Alan Brown is Chief Executive.</p> <p>Moir Sibbald is Group Company Secretary, who may be the best person to approach unless Falkirk Council have other contacts.</p> <p>CALA Group, Cairnlee House, Callendar Business Park, Callendar Road, Falkirk FK1 1XE</p>
16.	Alexander Dennis	<p>Alexander Dennis, the designer and manufacturer of buses and other vehicles based in Falkirk describes itself as "a socially aware company" but provides no details of its activities in the community.</p>	<p>Use existing links through Falkirk Council to establish contact and scope for support:</p> <p>Colin Robertson is Chief Executive. Alexander Dennis Limited, 91 Glasgow Road, Falkirk FK1 4JB Tel: 01324 621672</p>
17.	McGrigors	<p>McGrigors CSR approach can be summarised as:</p> <p>Encouraging active employees</p> <p>Offering CSR advisory services to clients</p> <p>Identifying contributions that can be made in communities local to its offices.</p>	<p>The Senior Partner, Kirk Murdoch is the Chairman of the Horizons Committee. Cathie Higgins is the CSR Officer</p> <p>McGrigors, 141 Bothwell St, Glasgow G2 7EQ Tel: 0141 567 8400</p>

		<p>Community projects have included a Schools Law project as well as pro bono work and mentoring. In Arts sponsorship the firm has supported the work of the Glasgow Print Studio.</p> <p>Through McGrigors Horizons programme the firm also supports a range of health and youth charities.</p>	
18.	Scotmid Co-operative	<p>Scotmid has a proactive corporate responsibility policy. It promotes itself as a retailer serving Scottish communities.</p> <p>Its community initiatives have included breakfast clubs in schools, street football, youth education programmes and the prevention of racial abuse working with Lothian and Borders Police.</p> <p>In 2009 the company and staff helped to raise £70,000 for Cystic Fibrosis Trust and supported a mix of other charities.</p>	<p>The company channels all enquiries through:</p> <p>Community Team, Scotmid, 2 Harvest Drive, Edinburgh EH28 8QJ</p>
19.	BT Scotland	<p>BT employs 8,000 people in Scotland and has a long track record of community partnerships.</p> <p>The company is presently committed to a digital inclusion project for the homeless community in Glasgow; developing a Virtual Work Experience in Scotland; and supporting The Prince's Scottish Youth Business Trust.</p>	<p>Brendan Dick, the head of BT in Scotland was born in Falkirk. He is also Chairman of Scottish Business in the Community and takes personal responsibility for BT's work in Scotland on climate change and environmental programmes.</p> <p>BT Scotland, Alexander Graham Bell House, 1 Lochside View, Edinburgh EH12 9GB</p>
20.	BP Scotland	<p>In the community, BP's focus is on building business skills, supporting education and sharing technical expertise with local governments. BP is a member of the Scottish Forest Alliance.</p>	<p>Falkirk Council already has a good funding relationship with BP.</p>

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RESEARCH FOR FALKIRK COUNCIL**PART III: MAJOR DONORS**

Donations from the UK's wealthiest charitable Foundations and philanthropists have dropped only slightly in recent years in spite of the negative changes in the economic climate. In 2007/2008 189 donations of £1million or more to charitable causes were made, a total of £1.41 billion. This compares with 193 donations totalling £1.62 billion in 2006/2007. Wealthy individuals provided half of these £1 million+ contributions; approximately one third came from charitable Trusts and Foundations, and 10% from corporations. The biggest beneficiaries of donations in this bracket were universities and centres of education, followed by arts and culture. International aid was third behind these two.

In Scotland specifically, there are still comparatively few individuals who can be regarded as having significant cash wealth and, at the same time, as being generous philanthropists with established giving mechanisms. Many of the year-on-year 'major donors' are, in fact the Foundations (listed separately). The 'major donors' in Scotland are mainly the Foundations such as Hugh Fraser and Barcapel and Gannochy. For this reason the list of separate 'major donors' is relatively short.

Definitions of what constitutes a major donation varies for different organisations and charities. For all but the biggest educational and cultural institutions, gifts of £1 million are very rare (excluding gifts of legacies). In Scotland, a major gift becomes so – in the case of larger organisations - when it exceeds £10,000 or possible £50,000.

No.	NAME	CONTEXT	GIFT SOURCE
1.	Sir Gerald Elliot	Sir Gerald is retired. He is a former Chairman of Christian Salvesen who has a long track record in both supporting the arts and enterprise in Scotland	The Binks Trust is Sir Gerald and Lady Elliot's mechanism for supporting different causes. It is not a listed in Trust in the main directories but is well known in Scotland. Requests for funding should be addressed to Sir Gerald directly at: The Binks Trust, 39 Inverleith Place, Edinburgh EH3 5DQ
2.	Sir Tom Farmer	Sir Tom Farmer is one of Scotland's best known philanthropists. He has supported a wide range of charitable causes and has a particular leaning towards enterprise-related causes and also highly cost-effective organisations like Mary's Meals. Sir Tom is less likely to be motivated by strictly arts and cultural-related proposals, and more by those that boost community and enterprise among young people.	Unless Falkirk Council has a direct link to him, a principal route will be through a written application to: The Sir Tom Farmer Foundation Maidencraig House, 192 Queensferry Road, Edinburgh EH4 2BN. It has wide charitable aims.
3.	David Mouldsdale	David Mouldsdale is the founder of Optical Express. Aged 41, in the recent Sunday Times Rich List he was worth an estimated £60 million. He previously supported the Kelvingrove Appeal.	Look for a personal connection before making contact if possible.

4.	Gavin Gemmell	Former joint senior Partner at Baillie Gifford where he worked for 37 years. He is presently the Chairman of Scotland's largest group of 'angel investors' called Archangels. He has supported various arts and cultural causes including the previous Kelvingrove Appeal.	Seek a personal connection or introduction or write to him directly in the first instance at Archangel.
5.	Sir Cameron Mackintosh	Sir Cameron Mackintosh, the musical impresario, retains a strong commitment to a range of arts and cultural causes in Scotland and channels his giving through The Mackintosh Foundation	The Mackintosh Foundation. Written applications – will fund community and environmental projects. Next Trustees meeting is in October
6.	Gerald & Vera Weisfeld	The Weisfelds, who made their fortune from the 'What Everyone Wants' retail chain, have been generous in supporting a range of causes in Central Scotland	The focus of The Weisfeld Foundation is in awarding grants to causes where people have opportunities to take greater control of their lives. The Weisfelds appear to have been less active in more recent years. Unless Falkirk Council has a personal connection they may be less likely to engage.
7.	Drue Heinz	A sponsor of the Edinburgh Book Festival and a well-known Scottish funder of arts-literature-related causes	The Hawthornden Trust
8.	Sir Jack Harvie CBE	Sir Jack is the owner and chairman of Central Building Contractors. He previously gave £50,000 to the Glasgow City Council Appeal for the Asian Tsunami	His giving will be made personally and a personal connection will be needed with him to make progress.
9.	Dr Walter Nimmo	Dr Nimmo is the former CEO and Chairman of Inveresk Research. His recreations include song-writing and cabaret performance. He is a former senior lecturer in clinical pharmacology and editor of textbooks on anaesthesia.	His giving will be made personally. As shown, he has a strong personal interest in the performing arts and has been supportive of arts-related causes.
10.	Brian Souter/Ann Gloag	<p>The brother and sister founders of Stagecoach have different charitable preferences, but both have a strong philanthropic record.</p> <p>Brian Souter and his wife Betty are the Principal Trustees of The Souter Trust. They prefer to 'relieve suffering' and support the revenue rather than the capital costs of projects. The Trust awards approximately £8 million in grants a year.</p> <p>Ann Gloag is a former nurse who has been closely associated with orphanages and the work of Mercy Ships in Africa. She has also been active in the UK, especially Scotland and has given a great deal to support The Princess Royal Trust for Carers.</p>	<p>Mr Andy Macfie, Secretary The Souter Trust, PO Box 7412, Perth PH1 5YX</p> <p>Is there a link through Falkirk Council and Alexander Dennis to Brian Souter?</p>
11.	Big Lottery Fund	The Investing In Communities programme has now reopened for grant between £10,000 and £1million. BIG can fund local authorities. There are three strands: Growing Community Assets 21st Century Life Life Transitions.	Full details on grant criteria and the new two stage application process on the BIG website.



Appendix 8 - Tax Implications

Tax implications arising from the proposed Community Services Trust

Introduction

We have been asked by Falkirk Council to advise on its scoping exercise to assess the potential for operating the Council's community services through a "Community Services Trust" ("the Trust"). In performing this analysis it has been assumed that the Trust would be formed as a limited company, with charitable status. As part of our remit we have been asked to consider the VAT implications of transferring the proposed services as VAT forms a one of the key criteria in the Council's decision-making exercise.

This Report will summarise the key VAT issues as well as pointing out any risks we foresee with the structure, and suggested solutions to mitigate those risks.

We have modelled the financial position of the proposed Trust based on the current year budgets provided by the Council and based on the assumptions and arrangements set out below applying.

A spreadsheet model has been created in Excel containing the 2010 budget figures. The model has then been coded to calculate VAT incurred from the various cost lines. Similarly the income lines have been coded both to calculate the output VAT due and to use the income values in calculating the amount of recoverable VAT. We have used the recently announced VAT rate of 20% as this is the rate that will be in force when the Trust is operating.

The VAT savings identified as part of this project rely on two points:

3. The ability of the Trust to exempt a proportion of its income, and
4. The monies received by the Trust from the Council being consideration for a supply of services, rather than a grant.

These two points are dealt with in detail below.

Exemption

Sporting Exemption

In simple terms, the VAT savings identified arise from the VAT status of the Trust (its supplies have a different VAT liability to those of the Council). As some of the supplies made by the Trust are exempt from VAT, it is able to retain more of any admission fee. However, it is consequently unable to recover all of the VAT which it incurs on costs.

This means that the structure is advantageous from a VAT perspective when income exceeds VATable costs. It is also therefore disadvantageous when VATable costs exceed income

Conditions for Exemption

VAT exemption applies to the supply of services closely linked with and essential to sport or physical recreation supplied to individuals taking part in the activity where the supplies are made by an 'eligible body' which does not run a membership scheme. The Trust will not operate a membership scheme.

Therefore, in order for the Trust's sporting services to be exempt, it must qualify as an eligible body.

Eligible Body

An 'eligible body' is one which:

- Cannot distribute any profit it makes otherwise than to another non-profit making body or its own members on winding up or dissolution;

- (Except on winding up) applies any profit it makes from exempt sporting supplies *either* to maintain or improve the facilities made available in connection with those supplies *or* for the purposes of a non-profit making body; and
- Is not subject to ‘commercial influence’.

All three of the above requirements must be met in any new structure. The first two are fairly self-explanatory. However, commercial influence requires to be further defined.

Commercial Influence

A body is considered to be subject to commercial influence in relation to any sports supply which would otherwise be exempt if a person ‘associated with the body’ made a ‘relevant supply’ to it; or received an emolument from it determined at least in part by reference to the body’s profits or gross income.

A relevant supply is not made for these purposes if it is made by a local authority, and none of the trustees of the Trust should be paid. As such, the Trust should not be subject to commercial influence.

Service charge

VAT Liability of Service Charge

The financial support given by the Council to the Trust can either be in the form of a grant or a payment for services; a service charge.

A service charge has the advantage that it is payment in return for the Trust providing the Council with the service of operating the Community Services facilities. This is a taxable supply for VAT purposes so provides the Trust with taxable income which helps to reduce the lower VAT recovery caused by the exempt sports income referred to in section 1.

Supply to the Council

A supply takes place for VAT purposes when something is done in exchange for a consideration. Provided there is a direct link between the supply made and the consideration given, there is a supply for VAT purposes.

HM Revenue & Customs' (Customs) View

Customs have recognised that local authorities may wish to restructure their affairs in order to provide leisure facilities and that payments from the local authorities to leisure trusts can constitute a consideration for a supply, ie that of agreeing to take over the provision of leisure services previously supplied by the local authority.

This is also reflected in the Memorandum of Understanding between Customs and the Chartered Institute of Public Finance and Accountancy (CIPFA), which covers the various scenarios relating to the provision of leisure services and their VAT consequences.

In light of the fact that Customs accepted the Tribunal’s decision in *Edinburgh Leisure*, it follows that it would be beneficial to reflect the arrangements adopted in that case.

In the Tribunal case, the Tribunal accepted the Trust’s contention that the terms of the contract with the Council meant that the Council was receiving the direct benefit, in exchange for its funding to the Trust:

“There is no doubt that money has been paid by the Council to the [Trust] and the Council receives the benefit of the fulfilment of its statutory duty. The Councils have contracted with the Companies to operate and manage the physical facilities and to service a need and wishes of the local population...What is provided is the benefit which the Council needed because of the statutory duty.”

Required Contract Terms

Taking account of the Tribunal decision and the Memorandum of Understanding between Customs and the Chartered Institute of Public Finance Accountancy (updated March 2007), the contract should:

- Demonstrate that the Trust is providing services to the Council, in exchange for a payment;
- Make it clear that there are binding obligations, which are enforceable, on the Trust, for which the Council is paying;
- The payment must be stated. This can include a variable "contractor's deficit", normally intended to make good any overall shortfall between the takings and operating costs.
- Payment should not be referred to as a 'grant' or 'subsidy';
- Make it clear that the payment is made by the Council to the Trust so that it can operate in accordance with the Council's wish to fulfil its statutory obligations;
- Demonstrate an arms length relationship between the Trust and the Council;
- Not afford the Council control over the Trust's decision making; and
- Enable the Company to dispense with any other Council services if it so wishes.

Furthermore, the Trust's memorandum of association should reflect the purpose for which the Trust exists.

Control

Most Trusts have been established on a completely independent basis with a majority of non-Council appointed directors and members.

The importance of this is that the Edinburgh Leisure case was predicted on this structure, and it raises questions of "control" and independence.

Our recent experience in discussing Leisure Trusts with HMRC suggests that this may not be an issue. We recently discussed a case where the Council was appointing the majority of directors and members. HMRC's approach was that if OSCR were happy that the Trust qualified as a charity (by necessity independent), then this would be accepted. This would appear to us to be a sensible approach, but naturally we cannot guarantee that HMRC would take a consistent approach in all cases.

Membership Schemes

We understand that the Council (and henceforth the Trust) operates a membership scheme.

If this was deemed to be a "proper" membership scheme, any of the income relating to "members" would be exempt from VAT, and any relating to "visitors" (i.e. anyone not a member) is subject to VAT at the standard-rate.

In such a circumstance, the VAT savings hoped for would be considerably reduced.

However, this does not mean that a form of limited membership scheme could not be operated. 'Privilege cards', issued in conjunction with a monthly or three-monthly season ticket and entitling cardholders to free admission to a sports centre run by an eligible body, do not make the holders 'members' thereby resulting in the standard-rating of facilities used by other 'non-members'³ Following this decision, HMRC issued the following clarification.

"Where a body does not operate a full membership scheme (eg where members do not have voting rights or any form of control over the management of the centre), sporting and physical education services provided are exempt from VAT subject to the

³ *Basingstoke and District Sports Trust Ltd, VTD 13347*

***normal conditions. This applies irrespective of whether users are called 'members' for the purpose of obtaining discount on use of the facilities.'*⁴**

As such, the operation of golf season tickets, etc, should not prevent all sporting supplies being exempt from VAT.

Miscellaneous points

Transfer of property

It is currently envisaged that title in all properties will continue to vest in the Council, and a lease will be granted by the Council to the Trust at a peppercorn rent.

Provided the lease is at a peppercorn (£1), the supply by the Council should be seen as a non business transaction.

The peppercorn lease should be exactly that - any further charges for additional aspects (for instance insurance) could be seen for VAT purposes as being further consideration for a supply of land, and therefore make the supply a "business" one. This could create potentially adverse VAT implications for either (or both) the Council and the Trust.

The treatment of charges for insurance is not straightforward. Customs' guidance in Notice 742 does the subject rather less than justice, devoting just two sentences to recharges of both rates and insurance:

If you (the landlord) are the policyholder or rateable person, any payment for insurance or rates made by the tenants is further payment for the main supply of accommodation.

If the tenant is the policyholder or the rateable person, and you make payments on the tenant's behalf, you should treat those payments as disbursements."

As regards landlord recharges of insurance premiums, this can probably be expanded as follows:

- 1 If the landlord is the policyholder, and the policy covers his risks, there is an exempt supply by the insurer to the landlord. If the landlord passes his insurance costs on to tenants, this recharge follows the treatment of the rent.
- 2 If the tenant's risks are included in a schedule to the landlord's policy, the exempt supply by the insurer is still to the landlord. If the landlord passes the costs on to the tenant, the recharge follows the treatment of the rent. The landlord is not seen as making an exempt supply of insurance to the tenant.
- 3 If the tenant is the policyholder, but the landlord pays the insurer on the tenant's behalf, there is an exempt supply of insurance by the insurer to the tenant. If the landlord invoices the tenant for the exact amount of the premium, as a separate item from any other charges, this is a disbursement and there is no supply by the landlord.
- 4 If the landlord pays the tenants' insurance premium as under point3, but does not separately identify a recharge of the premium, or recharges a difference amount. Customs will not accept the recharge as a disbursement, and will see the recharge as following the treatment of the rent.

Our view is that even a "joint insurance policy" might not be enough to place the arrangement into the disbursement rules, unless it was very clear that there are two distinct insured parties, and that any payment via the Council is for a disbursed cost. Our advice would be therefore that insurance should not be recharged.

⁴ Business Brief 03/96

There is also a question as to why the Trust would have property insurance if it has no insurable risk (or liability to repair or maintain). Any other types of insurance, such as public liability insurance, wouldn't relate to the building, and shouldn't therefore "create" rent.

Capital Works / Major Repairs & Maintenance

If the Trust carries out capital works or major repairs and maintenance, there will be a restriction of VAT on associated costs. This is because the Trust will be a partially exempt body.

If the Council carries out these works, the VAT incurred should relate to the non-business supply of the peppercorn lease, and the VAT should be recoverable by the Council.

Recharges

It is anticipated that certain support services will be provided by the Council. If a charge is not made for these services, there is a risk HMRC would deem this to be a barter transaction, and assign a value to it.

We would therefore recommend that a robust pricing policy is entered into. This is a risk where the two entities (Council and the Trust) are connected, as HMRC can impute an "open market value" charge on supplies between connected parties where the recipient is unable to recover all the VAT.

Conclusions

The key changes arising from the move from the Council to a Trust are, as explained above, income arising from sporting activities becomes exempt from VAT and there will be a service charge paid by the Council to the Trust which will be liable to VAT.

This means that the Trust, unlike the Council, will not be able to fully recover VAT that it incurs on expenditure. However, the model indicates that there is a net VAT saving of [£128,000.] as set out in the table below.

Table of VAT savings and costs (2010/2011 base)

	£'000
Sporting Exemption	[398]
Irrecoverable VAT	[270]
	[128]

Our analysis is based on the consolidated position of the Trust. The individual cost centre analyses do not provide useful VAT information because there is a great deal of internal recharging, particularly from the Directorate. A cost is recorded in, for example, the Directorate, and a mix of VAT bearing and non VAT bearing costs is recharged to other cost centres. The effect of this is that a substantial amount of VAT correctly comes through as an overhead when calculating recoverable VAT in the consolidated position but is recorded in the cost centre which made the external purchase but not in the cost centre that used the cost through the recharge.

In addition the service charge is only calculated at the level of the Trust. This has a substantial beneficial effect on VAT recovery which is not evident at cost centre level. The service charge is partly dependent on the level of irrecoverable VAT so would be misstated in the individual cost centres because of the VAT issues referred to above.

The service charge will have a beneficial effect on the Council's VAT position because it will be input VAT used for the Council's non-business activities. As a result the service charge will assist the Council in avoiding the 5% partial exemption de minimis limit. If the

5% de minimis limit was exceeded the Council would incur a considerable cost due to irrecoverable VAT.

Corporation tax

Charity Activities and Tax Status

Charities benefit from a UK tax exemption on trading profits generated from trades carried on within, or outside, the United Kingdom. This exemption only applies to the following:

- Where the trade is exercised in the course of the actual carrying out of a primary purpose of the charity;
- Where the trade is carried out by beneficiaries of the charity; and
- Where a non-primary trade's turnover falls below £50,000 or 25% of the charity's gross income.

A further condition is that income from primary trades must be used for the charitable purposes. If the income were used for any ancillary purpose it would become liable to corporation tax. The distinction between primary and non-primary activities requires to be analysed.

HMRC define a 'primary purpose trade' as one that forms part of the primary purposes or charitable objectives of the charity. An example of a primary trading activity would be the provision of swimming facilities that relate to the Trust's aims. The Trust's core objective is the advancement of sport. The objective cannot be achieved without public access and therefore admission income is exempt. If the Trust carries on a non-primary trade, such as sale of ice cream in a canteen, then the profit requires to be assessed to tax.

Arranging for the "taxable" trading activities to be carried out by the subsidiary company will however mitigate/eliminate this risk. A review of the charities activities should be undertaken to identify the operations which do not benefit from the core exemption. A trading company should carry out such activities.

Trading Subsidiary

Trading companies which are set up as subsidiaries of the charity allow non-primary trading to be carried on without prejudicing the charitable status of the parent. However as in order to obtain full tax relief, the subsidiary is required to donate its profits to the charity by way of gift aid, the cash flow implications must be fully considered.

Gift aid donations equal to the chargeable profits results in complete exemption from tax. Although this allows the Charity to enjoy tax-free status on all income, there are a number of issues, which require detailed consideration.

All donations from the trading company must be used for charitable purposes by the charity to maintain their tax-exempt status.

The trading subsidiary is allowed a deduction for gift aid paid up to nine months after its year-end. This length of time should allow for accurate calculation of profits before they are gifted to the Charity. It is important that an overpayment is not made by the subsidiary, as this could constitute an unlawful distribution, which would have serious implications for the directors of the company in the event of it being unable to pay its creditors.

All investments of a charitable entity, including funding of its trading subsidiary, must be qualifying investments to be tax exempt.

Recommendation

We would recommend that in any combined structure, a subsidiary is created to carry out the trading activities of the entire combined trust. Our reasoning for this is that it eliminates any risk that the trading activities may not be seen as ancillary.