

FALKIRK COUNCIL

Subject: FALKIRK COMMUNITY TRUST UPDATE
Meeting: FALKIRK COUNCIL
Date: 22 JUNE 2011
Author: CHIEF EXECUTIVE

1. INTRODUCTION

- 1.1 This report provides a further progress update on the development of Falkirk Community Trust and seeks Members' approval to enter into a number of agreements in respect of the relationships to be established between the Council and the Trust, to enable the Trust to deliver services on behalf of the Council, as previously approved by Council on 8 December 2010.
- 1.2 Members are asked to agree that the transfer of services takes effect from 1 July 2011.

2. BACKGROUND

- 2.1 Members have previously agreed to the formation of a project management group to drive forward the creation of the Community Trust and have considered a number of reports in respect of its development. The Office of the Scottish Charity Regulator (OSCR) has recently given in principle approval to the formation of the organisation as a recognised charity subject to detail being provided on the additional trustees. An update on the independent director recruitment is provided later in the report.
- 2.2 Significant work has also been ongoing within the Council to make all of the necessary governance and organisational adjustments. These are required to redefine the relationships between the Council and the Trust in respect of Service Level Agreements and to ensure that the organisation has all of the key components in place to comply with relevant legislation from its first operational day. The current phase has also seen the formal establishment of the Falkirk Community Trust Ltd and its trading subsidiary, Falkirk Community Trading Ltd. The first meeting of the full Board of Trustees took place on Friday 10 June and the next meeting is planned for Thursday 23 June to enable the Trust to formally respond to the Council's deliberations at this meeting.

3. GOVERNANCE DEVELOPMENT

- 3.1 The Council has previously agreed to establish the Trust and the entering into of the documents referred to in this report will activate that decision. Copies of the key documents are and have been available for inspection by Members since 14 June 2011 when document packs were placed in the Members' Lounge ("the pack").

- 3.2 The overarching documents are the Transfer Agreement, the Funding Agreement and the Collections Agreement and they are summarised in the following paragraphs.
- 3.2.1 The Transfer Agreement requires the Council and the Trust to enter into the Funding Agreement, the Collections Agreement, the Pensions Admissions Agreement and the property leases and licence (expanded upon at paragraph 6 below). It also identifies the process required to transfer the properties, assets, business and personnel.
- 3.2.2 The Funding Agreement sets out the process for establishing and making payment of the funding commitment by the Council to the Trust. In doing so, it requires the Trust to produce an annual Business Plan that requires to be submitted to the Council in November of each year. The Funding Agreement also sets out the range of services required to be provided by the Trust, the reporting mechanism in relation to these services and performance standards as well as requiring the Service Level Agreements in respect of Council services to the Trust to be entered into. The service elements are also reflected in and expanded upon by the Business Plan in which the Trust must confirm that it has identified the expected expenditure needed to perform the services as outlined within the services specification and required to enable the Trust to comply with its obligations.
- 3.2.3 The Collections Agreement sets down arrangements in relation to the transfer of the Council's archives, collections of art and artefacts and books of historical significance to the Trust. In terms of the Agreement the Council will grant the Trust a licence to use the Collections in accordance with defined rights set out in the Agreement. No right of ownership in the Collections will pass to the Trust and the licence granted will be subject to any previous licence, deed, bequest or other instrument in relation to the Collections. At the time of writing, the Collections Agreement is with the Keeper of the Records of Scotland for approval.
- 3.3 Members are asked to agree to enter into the various documents and agreements required to establish the Trust and to authorise the Chief Executive to make appropriate adjustments as necessary following their consideration by the Trust Board on 23 June 2011.
- 3.4 Members are asked to note that the agreements provide for a term of 25 years during which time the Council will lease its properties to the Trust and commit to requiring the Trust to deliver services on its behalf for the same period. This gives the Council confidence in the long term planning and development of services, avoids any potential re-procurement issues relative to the Trust services for a prolonged period and enables the Trust to take a longer term perspective on funding applications, service development initiatives and facility management. This is likely to be of particular relevance to external funders considering investment in the Trust who will want to see that it has a longer term capability and capacity.

- 3.5 As noted at paragraph 3.2.2 above, the Funding Agreement requires that the Trust submit, by November each year, an updated Business Plan for the following financial year beginning in April. This will be subject to Council approval and will form part of the Council's budget setting programme. The Business Plan for 2011/12 has been developed by Council officers for the Trust Board and is included in the pack. This reflects the services as previously described and set out in the annual service plan. It is recommended that Council approve the Trust Business Plan for 2011/12.
- 3.6 A monitoring regime will be agreed with the Trust that will enable appropriate information to be provided to the Council at regular intervals to enable reports to be submitted to Members for consideration and review. The outline arrangements are contained within the pack.

4. FINANCE

- 4.1 As noted above, the Funding Agreement requires the Council to agree and make payment of an annual funding commitment in return for the services as outlined by the service specification. The current cost to the Council of the services is £12.070m for 2011/12. This will be shared apportioned proportionately for year 2011/12. Part of this sum has been used in the delivery of the services within the Council between 1 April to 30 June and the balance will be allocated to the Trust for the remainder of this financial year. A budget for 2012/13 will be agreed by the Council, with the Trust, as part of the next budget process.

5. EMPLOYEE UPDATE

- 5.1 As previously advised to Members approximately 500 employees will transfer to the Trust. The transfer list has been prepared by the Council. As previously agreed by Members the Trust is required to ensure that its terms and conditions are aligned with those of the Council and that it seeks membership of the Falkirk Pension Fund. The application to join the fund will be considered by the Investment Committee on 16 June and if successful then the Council, the Trust and the Pension Fund are required to enter into a Pension Agreement to ensure that the Council acts as guarantor to the fund on the Trust's behalf and that there is alignment in the contribution rate going forward. Council is asked to agree to enter into the Pensions Agreement.
- 5.2 Members may wish to note that employees and trade unions have received regular updates on the Trust development. Four newsletters have been issued, four trade union briefing and consultation meetings were held as well as two road shows which took place at the beginning of June to provide an opportunity for employees to hear about the Trust development and seek clarification on any points. The mail box has continued to be available and employees have used this route for more specific questions or points.

6. PROPERTY UPDATE

- 6.1 The properties transferring to the Trust will be governed by a range of types of leases and a property licence depending on the practical logistics relevant to the particular building.
- 6.2 Each building will be covered by one of the following:
- Self contained facilities leases
 - Strategic properties leases
 - Non operational property leases
 - Sub-leases
 - The property licence
- 6.3 The maintenance provisions for the properties transferring to the Trust have been drafted in accordance with OSCR recommendations and approved by them. The maintenance provisions do differ slightly according to the type of property being transferred either by Lease or by Licence.
- 6.4 In the main, the leases for the main operational properties such as sports centres, libraries and public buildings will be for a period of 25 years, at a peppercorn rent and will oblige the Trust to take on the upkeep of the internal non structural parts of the properties up to a cost limit of £10,000 for any one repair, at which point the Council will assume the responsibility. The Council will also be responsible for maintaining the external elements of the properties including the landscaping and car parks etc.
- 6.5 There are two subleases for the Hippodrome and the first floor offices at Falkirk Stadium which will mirror these maintenance provisions but they will last for the unexpired terms of the Council's existing leases, being 17 and 19 years respectively. Again, these leases are at a peppercorn rent.
- 6.6 For the strategic properties i.e. the strategic parks, the golf course, Birkhill Clay mine and Grangemouth Stadium, the rent will be peppercorn and the duration 25 years. Maintenance responsibilities in respect of any buildings will be the same as above but the Trust will be responsible for all exterior landscaping and grounds maintenance.
- 6.7 Four properties from the non operational portfolio, namely 19A Winchester Avenue, the Museum store and workshop 5 and 7/11 Abbotsinch Industrial Estate and the archive store at Bankside are currently occupied by Community Services on commercial terms. These properties will be leased to the Trust on full commercial terms for a period of ten years and on the basis of the existing maintenance provisions which attach to those properties in line with the remainder of the units in the Estates. There will however be a £10,000 limit on the Trust's liability as per the main leases.

- 6.8 A number of the properties transferring will be pitches and pavilions. The Council will grant a licence for 25 years to the Trust to use these properties. Responsibility for maintenance of both the pitches and the pavilions will pass to the Trust subject to a limit on pavilion maintenance of £10,000 for any one item of repair.
- 6.9 Examples of the various styles of lease and property licence are included within the pack.
- 6.10 Members are asked to agree that appropriate officers complete the property transfer requirements with the Trust within a reasonable timeframe and ideally by the end of August for all properties.

7. TRUST ORGANISATIONAL DEVELOPMENT

- 7.1 As noted earlier Falkirk Community Trust Ltd has been incorporated and the Independent Directors and existing Council appointed Directors have been notified to Companies House. Charity Trustee Declaration Forms for the Directors have also been sent to OSCR to finalise their requirements. Following a very successful recruitment exercise five independent directors were appointed and Ian Scott, local historian, has been appointed as the first chairperson. The Independent Directors' appointments will be for an initial period of 2 years and they can serve up to 3 terms. The current Independent Directors are:
- Ian Scott (Chairman)
 - Ann Cowan
 - Alex McQuade
 - Bob Tait
 - George Craig
- 7.2 The Provost, Councillor Mahoney and Councillor Nicol are also Directors and there are vacancies for 2 further Council appointed Directors and an employee director.
- 7.3 The trading subsidiary, Falkirk Community Trading Ltd, has also been set up and the Memorandum and Articles of Association are included within the pack. Members will recall that the trading subsidiary is required to accommodate the charity regulation requirements to account for trading activities such as catering and retail distinctly from the charitable purposes. Members are asked to note the Memorandum and Articles of Association of Falkirk Community Trading Ltd. The Articles provide that the Directors of the Trading Subsidiary comprise the Chief Executive of the Trust and two Directors of the Trust. There is no stated requirement that there must be Member representation on the Board of the Trading Subsidiary given its overtly commercial role and an issue identified in relation to Directorship of the Board of an entity licensed to sell alcohol affecting membership of the Licensing Board.

- 7.4 The organisational development of the Trust requires that it has financial regulations, contract standing orders and a scheme of delegation to enable its employees to carry out the tasks set out in the Business Plan. These documents have been modelled on the Council's current arrangements and will be reviewed and developed by the Trust as it becomes established. In addition to these key policies the Board is also to consider and agree the various policies and plans that govern day to day operations including the wide range of HR policies, health and safety plans, normal operating plans, business continuity arrangements and emergency plans. These are all founded on the current good practice within the Council and will be available for the Board to review and revise in the course of its development.
- 7.5 The Trust Board is satisfied that the work is being done to enable the organisation to begin operating safely and effectively on the 1 July and seeks Council agreement to progress with the transfer of services from the Council to the Trust.

8. CONCLUSION

- 8.1 Members established a very challenging timescale for the Trust's formation. A huge amount of work has gone into creating the companies, securing external approval from OSCR and reaching the current position where Members can consider and approve the various documents outlined above to enable the Trust to take on the role of delivering a range of culture and recreation services on the Council's behalf.

9. RECOMMENDATION

9.1 Members are asked to:

- a) **note that Falkirk Community Trust Ltd and Falkirk Community Trading Ltd are both properly incorporated and established and able to deliver the services as outlined in the Transfer Agreement and Trust Business Plan 2011/12;**
- b) **agree to the Council entering into the full suite of documents required to enable the transfer of services, business assets and personnel to take effect from 1 July 2011, including the:**
 - **Transfer Agreement**
 - **Funding Agreement**
 - **Collections Agreement**
 - **Pensions Agreement;**
- c) **approve the Trust Business Plan for 2011/12 and agree to provide funding proportionately from the relevant Council budget;**
- d) **agree to the Council granting to the Trust the leases and property licence as detailed at paragraph 6; and**

- e) authorise the Chief Executive or her nominee to negotiate, agree to and make any amendments to the suite of documentation referred to herein as may be reasonably required by the Board of the Trust in advance of the Trust and its trading subsidiary becoming operative and generally to take all decisions and actions required to take forward the establishment of the Trust on 1 July 2011 or such other date as near as possible to 1 July 2011 as she may determine in the unlikely event of an unexpected reason delaying establishment.

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CHIEF EXECUTIVE

Date: 8 June 2011

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LIST OF BACKGROUND PAPERS

1. Transfer Agreement between Falkirk Council and Falkirk Community Trust
2. Funding Agreement between Falkirk Council and Falkirk Community Trust
3. Collections Agreement between Falkirk Council and Falkirk Community Trust
4. Pensions Agreement between Falkirk Council, Falkirk Community Trust and Falkirk Pension Fund
5. Trust Business Plan for 2011/12
6. Falkirk Community Trust Ltd Memorandum and Articles of Association
7. Falkirk Community Trading Ltd Memorandum and Articles of Association
8. Style of Leases for Properties and Property Licence
9. Monitoring Arrangements Guidelines
10. Falkirk Council Report (8 December 2010) – Community Services Trust
11. Falkirk Council Report (2 March 2011) – Community Services Trust Update: Appointment of Board Directors
12. Falkirk Council Report (27 April 2011) - Falkirk Community Trust: Implementation Update