Agenda Item

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Falkirk Community Trust - Options Appraisal

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Falkirk Council

Subject: **Falkirk Community Trust – Options Appraisal**
Meeting: **Falkirk Council**
Date: **19 September 2018**
Author: **Chief Executive**

1. Purpose of Report

1.1 The purpose of this report is to provide members with the outcomes of an options appraisal by Council officers considering the advantages and disadvantages of (1) the current arrangements for Falkirk Community Trust (the Trust), (2) an arrangement allowing greater autonomy and (3) bringing the services provided back in house. The appraisal covers financial, workforce and governance implications as well as benefits and disbenefits in relation to achieving savings, efficiencies and service redesign across the Council. The report also considers the broader issue of how to ensure strong and effective partnership working with the Trust.

2. Recommendations

2.1 It is recommended that Council agrees that:

1. **the current arrangements with the Trust be maintained at the present time;**

2. **the Policy Development Panel recommendations set out at Appendix 1 (the PDP recommendations) be used as a basis for developing a stronger and more effective partnership with the Trust;**

3. **the Chief Executive write to the Chief Executive of the Trust requesting that the Trust work jointly with the Council to take this work forward;**

4. **the Chief Executive or his nominee, in consultation with group leaders and the Portfolio Holder for Culture, Leisure and Tourism, establish the Council's representatives (both members and officers) to work jointly with the Trust on these issues; and**

5. **Council is updated on the progress of this work to improve partnership working with the Trust at its meeting in June 2019.**

3. Background

3.1 The Trust was established by the Council in 2011 to provide cultural, recreation, sports and library services for the Falkirk Council area. The work carried out by the Trust is summarised at Appendix 2.

3.2 The Trust is a company limited by guarantee with charitable status. The Local Government and Planning (Scotland) Act 1982 states that a local authority is to ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities. The Local Government (Scotland)

Act 1973 obliges a local authority to secure the provision of adequate library facilities for all persons resident in the area.

3.3 The Trust is what is commonly referred to as an arm's length external organisation (an ALEO). The Accounts Commission describes an ALEO as "an organisation that is formally separate from the Council but is subject to its control or influence. The level of control or influence can vary".

3.4 As noted above, the Trust is also a charity registered with the Scottish Charity Regulator (OSCR) under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). Charitable status has an impact on the governance of an ALEO with OSCR commenting that "Bodies that set up or forge strong links with a charity should be aware that this does not necessarily give them control over all the charity's activity." Charities require to meet the charities test (a charity must only have charitable purposes and must provide public benefit through its activities) and charity trustees (the directors on the Board of the Trust) should be allowed to act in the interests of the charity. Charities are non profit distributing and require to reinvest surpluses to further their activities or advance their charitable purposes.

3.5 Achieving charitable status for the Trust was a key consideration when it was being set up by the Council. This was primarily because charitable bodies can secure tax benefits such as relief on non domestic rates.

3.6 Appendix 3 sets out a summary of the contractual relationship between the Council and the Trust. It also provides information on the constitution and objects of the Trust as well as key aspects of the linkage between the Council and the Trust.

3.7 The Trust reports on a six monthly basis to the Council's Scrutiny Committee (External). This allows the Council to monitor performance by the Trust and exercise a scrutiny function. On an annual basis, the Trust also provides its Business Plan for the upcoming year to the Council. This sets out what services the Trust will be providing for the Council and what the cost of providing the services will be. It is available for the Council to agree the Plan or request that the Trust adjusts either the funding, the services to be provided or both and present a revised Business Plan.

3.8 Local authorities across Scotland are subject to financial deficits and are seeking to make savings in their annual budgets. The Council is the major funder of the Trust and reductions have required to be applied by the Council to the funding made available by it to the Trust each year since its inception. In the financial year 2014/15, the funding for that year was £13,085,000. That has reduced on a year on year basis to the current funding level of £10,791,000 for 2018/19. The Medium Term Financial Plan report presented to Executive in May 2018 made reference to the Trust being requested to look at options to reconfigure service delivery on the basis of a saving figure of £3.5m over, say, 2 financial years.

3.9 The Trust was subject to a review by Audit Scotland in 2014. The outcome of this review was positive. Executive subsequently established a Policy Development Panel to review the Trust over 2015/16. Executive agreed a number of recommendations as set out at Appendix 1. While some of these recommendations were implemented (Trust Board Meetings are held in public and the Trust's Chief Executive attends Corporate Management Team meetings), sufficient progress was not made on the other recommendations in advance of this options appraisal process. This was due to the local government elections of 2017 which resulted in a significant change to the membership of the Council, a similar change in the make up of the board of the Trust with a large number of directors reaching the end of their maximum 6 year term in summer 2017 and then a degree of uncertainty over the implications of the Barclay Review.

3.10 Over the last five years, the Trust has:-

- increased attendances across all its venues by 37%
- increased attendances by young people and concessions by 20%
- seen growth in income generated from customers of 25%
- seen growth in volunteering of 340%
- reduced the level of public subsidy it requires from 72% to 61% of expenditure
- secured over £1m per year in external grants and awards

3.11 A trading subsidiary of the Trust was set up at the same time as the Trust itself. This was to accommodate specific activities, such as retail, that fall outwith the scope of the Trust as a charity. Profit generated by the trading subsidiary is passed to the Trust via gift aid. The trading subsidiary has managed to convert an annual loss which was reported at £164k in 2010/11 to a positive charitable donation of £361k in 17/18. Over the life of the Trust, the trading subsidiary has donated £836k to the Trust.

4. Process and Key Challenges Identified

4.1 In conducting the appraisal and preparing this report, consultation has taken place with the Trust. Presentations and meetings have taken place involving members, the Portfolio Holder, the Chief Executive of the Trust, a number of board members from the Trust and group leaders and their nominees. These meetings have been conducted in a positive and forward looking way. A number of consistent themes or challenges have been identified. They are, in summary:-

1. Treatment of the Trust facilities and properties
2. The approach to budget setting and financial planning
3. Workforce planning
4. Achieving savings
5. Achieving the best service possible for the people of Falkirk
6. Clarity of expectations
7. Relationships, communication and trust
8. Member engagement and involvement with the Trust
9. Commercial activity and reducing the level of reliance on Council funding

4.2 Each of the three options can potentially have a different impact on the items listed above. It is, however, relevant to bear in mind that structural governance arrangements are often not the best route to positive outcomes. In many cases, positive outcomes may be achieved under the umbrella of any one of the options with a strong shared vision and the right approach and commitment to effective partnership and joint working.

4.3 Appendix 4 is a table that sets out a summary of what are considered by officers to be the advantages and disadvantages of each of the three options. It also details, in the final column, matters that are relevant to consideration of the options. These will be discussed in more detail below. A further summary is then provided immediately prior to the conclusions section.

4.4 In their recent report entitled “Councils’ use of arm’s length organsiations”, Audit Scotland comment that in taking decisions to establish, alter or cease an ALEO, Councils should consider how the approach will help the Council meet its objectives and improve outcomes for its communities. Members will accordingly wish to have regard to their priorities for cultural, recreation, sports and library services and how the options under appraisal could enhance these priorities and outcomes.

5. Option 1 - Current Arrangements for the Trust

5.1 The broad structure of the current arrangements and, importantly, the key principles of the relationship between the Council and the Trust are set out above and in Appendix 3.

5.2 It can be seen that the Council and the Trust have a relatively close relationship and would be expected to be working together towards agreed goals and outcomes. The original Business Case agreed by Council in 2011 noted that:-

“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 achievements of its objectives and outcomes and to amend future targets accordingly. 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.”

5.3 A key advantage of this option is that it maintains the tax benefits generated by the Trust as a registered charity. Non domestic rates savings which currently sit at circa £1.2m per annum would be retained. This saving is partially negated as a result of a VAT cost to the Council of circa £200k per annum which is a result of the Trust being unable to recover the same level of input VAT as the Council. Overall, the net tax savings generated by the Trust for the Council are circa £1m per annum.

5.4 Despite the irrecoverable VAT of circa £200k mentioned in the preceding paragraph, from a VAT perspective the current arrangements are favourable to the Council. The expenditure on exempt VATable activities managed by the Trust does not impact on the Council’s partial exemption calculation for VAT. This calculation is important as it enables the Council to recover all of the VAT on purchases irrespective of the VAT classification, so long as expenditure on exempt activities is within a 5% partial exemption threshold.

5.5 Members will be aware of the 2017 Barclay Review of the non domestic rates system in Scotland. One of the recommendations was to remove charitable rates relief from ALEOs. The Scottish Government has, however, decided that a non domestic rates relief “baseline figure” (with annual inflationary uplifts) be established for existing ALEOs as at 28 November 2017. Within that baseline figure, the Trust would receive rates relief and the Council would not be expected to meet the cost of the relief. Accordingly, for instance, a new sports facility to replace an existing one would benefit from relief provided the total rateable value of the Trust facilities remained within the baseline figure. If the total rateable value were to go above the baseline for some reason, the Council would be expected to meet the cost of the additional relief.

5.6 The ability to seek external funding sources not available to the Council would be maintained. Over the life of the Trust, it has brought in around £300k of funds that would only have been available to a charitable organisation. The Trust has advised that it has, on occasion, been unable to pursue such funds due to its close relationship with the Council and the requirements for it to accredit the Council on all materials.

5.7 This option maintains an advantage often quoted in relation to ALEOs which is the ALEO model allows for a smaller more independent organisation under the direction of a dedicated board with a focus on community facing developments. By introducing independent directors onto the board, there is an ability to bring wider experience, skills and innovation to the organisation than would potentially be available within the Council.

5.8 Existing beneficial relationships with the community, community groups and partners would be maintained. The brand/independent identity that the Trust has worked to develop would also be maintained.

5.9 The existence of the Trust provides an arm's length organisation which, with agreement and compliance with charity law, could potentially be involved in structural arrangements where a non Council body is of benefit.

5.10 This option would also not result in what could prove to be a significant level of cost and officer time, albeit on a non recurring basis, in developing and implementing an alternative option.

5.11 A disadvantage of the current model is that the cycle of financial planning, agreement of the Trust Annual Business Plan and treatment of Trust properties can be challenging for both the Trust and the Council as matters currently operate. This emphasises the need for a stronger and more effective partnership able to consider strategic and financial issues on a medium term basis.

5.12 Another disadvantage of the current model is that there are areas of additional work that require to be undertaken by the Council and the Trust as a result of the arm's length and charitable nature of the Trust. Examples of these areas of additional work are performance monitoring, liaison and, on occasion, the need to involve more than one Council officer to act in matters between the Council and the Trust to avoid conflict of interest. Likewise, there are areas of work undertaken by Trust staff such as company secretarial tasks that are solely driven by the arm's length nature of the Trust.

5.13 As noted at para 4.1, some key issues and challenges have been identified during the course of this appraisal process. A number of these were considered at the time of the Policy Development Panel (PDP) work referred to above. If members are minded to follow this option, they may wish to have regard to the outcomes from the previous PDP work as a basis for developing a stronger partnership. These outcomes included:-

- The Trust and the Council working together to develop the overarching strategy for culture and leisure to ensure everyone is pulling in the same direction and to increase joint working
- Establishing joint working arrangements to develop strategies for challenging areas of work such as income generation by the Trust, community engagement and treatment of facilities
- Reviewing the agreements with the Trust with a focus on the service specification, change control mechanism, the annual funding adjustment process and the monitoring and reporting mechanisms.

5.14 If effectively and consistently implemented by both the Council and the Trust, these joint working approaches could help to increase the level and quality of communication and engagement. Effective two way communication is a key element in any relationship. Establishment of properly constituted joint working arrangements involving regular dialogue could enhance clarity of expectation on both sides, communication and confidence and achieve a closer alignment of the Council and the Trust without the need to make significant adjustments to the current model for corporate governance. Properly targeted, such groups may also help in jointly exploring ways to generate income, reduce costs and best tap into the potential of the facility portfolios of the Council and the Trust.

5.15 It would be hoped that enhanced joint working and communication could be of benefit in achieving a position where an agreed and understood overarching strategy for culture, leisure, recreation and sport – vision, priorities, objectives and outcomes – is in place. That should enhance clarity and confidence that the Trust can be allowed to deliver on the agreed outcomes and objectives.

5.16 The last bullet point at paragraph 5.13 may also be relevant in the context of issues raised in meetings about the documented governance arrangements generally. As an example, a challenge identified is the process around agreeing the Trust Business Plan. In terms of the Funding Agreement, the Trust is obliged to provide its draft annual Business Plan to the Council by 15 November each year. It is now practice to bring this draft Business Plan to Council in December for consideration prior to final consideration during the February Budget meeting. While it is acknowledged that the Trust seeks early engagement on its proposals, adjustment of the terms of the Funding Agreement to enhance the process for pre-submission discussion may be beneficial for both the Council and the Trust.

5.17 Members will also note from Appendix 1 some other areas that were recommended by the PDP for further consideration. These included (1) exploring the Chair of the Trust being an elected member (there are some examples of this in other Trusts – it may be the case that OSCR would tolerate this approach if approached for approval to a change to the Articles albeit they do have some reservations with regard to the potential impact it might have on the ability of the directors to exercise independent decision making), (2) the Portfolio Holder for Culture, Leisure and Tourism being a standing director of the Trust and (3) Councillor Directors being encouraged to act as a channel of communication from the Trust to other elected members.

6. Option 2 - Greater autonomy

6.1 This option would involve maintaining the Trust as a charitable ALEO but looking at ways in which it could be allowed greater self-determination than it has currently under the model discussed in section 5. This is potentially very broad in nature. There is a spectrum of approaches that would need to be explored in detail should members wish to pursue the option. There are also clear links to the discussion above in relation to the PDP recommendations.

6.2 In advance of providing some examples of greater autonomy, it is necessary to stress that alterations of this nature could be of interest to OSCR given their concerns regarding the ability of charity trustees on the board of an ALEO with charitable status to exercise independent judgement and fulfil their other duties as charity trustees. It would be important, therefore, that any proposals of that kind should be explored informally with OSCR prior to being implemented. In addition, the prior consent of OSCR is specifically required under the 2005 Act, in cases where any amendment to charitable purposes is to be proposed. Careful analysis would also need to be undertaken to ensure that the overall arrangement would not fall foul of procurement law requirements. That can rest on considerations around both the degree of control the authority exercises over the separate entity and whether the entity carries out the essential part of its activities for the authority. State Aid (i.e. any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union) might also require to be considered. It would also be recommended that approaches to autonomy would be discussed with the Trust rather than simply being imposed on it.

6.3 Some examples of enhanced autonomy could include:-

1. Relaxing restrictions on the level of borrowing that the Trust can have at any given time (at present there is a limit of £1m which reflects an agreed increase to the original limit of £200k). This could allow greater investment by the Trust which would be expected to increase user satisfaction and generate greater income. That in turn could reduce the level of funding the Trust requires to receive from the Council. Care would need to be taken over how this would relate to procurement law requirements mentioned above.

2. The Trust has leases of its facilities from the Council. At present, in line with OSCR recommendations in relation to spend of charitable monies on property not owned by a charity, the Trust has a very limited role in the maintenance and repair of the facilities operated by it. The vast bulk of maintenance and repair sits with the Council as landlord. With greater autonomy and borrowing ability, it might be the case that OSCR would be agreeable to softening their requirements to allow the Trust greater opportunity to invest monies in the properties. OSCR would no doubt have regard to whether the Trust would be deriving sufficient benefit itself, as a charity, from the expenditure it would be making on the properties.

3. On a more radical basis, consideration could be given to transferring the properties to the Trust free of lease arrangements. There is an inherent limit to autonomy relative to the properties where another party i.e. the Council is the ultimate owner of them. That said, regard would need to be had to the Local Government (Scotland) Act 1973 and the Disposal of Land by Local Authorities (Scotland) Regulations 2010 which have implications for the Council's obligations to obtain best value on disposal of property. Also, once an asset is owned by a charity it becomes a charitable asset that can only be used as such. Accordingly, a caveat to the transfer of ownership is that the Council would likely wish to retain ownership to ensure the properties would come back to it free of charitable status upon any Trust withdrawal from a facility or cessation of the Trust. Of course, the Council could decide that it is able to accommodate the principle that properties – or the net proceeds from disposal of properties – would require to continue to be applied in furtherance of the Trust's charitable purposes after a winding up of the Trust.

4. The Trust could be delegated a wider range of specific decision making powers that would not involve the need for referral to the Council for agreement. For instance, greater delegation could be provided in relation to treatment of Trust facilities in terms of use, purpose, maintenance and investment without requiring the agreement of the Council. This could enhance speed of decision making meaning the Trust could be more fleet of foot and innovative. A caveat on this particular example is that the Council is the ultimate owner of the properties and if the Trust was to cease operation of a property, it would revert to the Council.

5. At present the Trust is required to have an alignment of terms and conditions with the Council for its employees. There are significant challenges around equal pay and the issue of differences in terms and conditions as between associated

employers which would require to be explored in detail. Likewise, there are issues around procurement law that would require to be fully understood and resolved. That said, if these issues could be resolved and the position was very carefully structured, there might be some potential to allow the Trust a greater level of discretion over terms and conditions. This might both allow the Trust to reflect the organisation's needs in a more precise manner and potentially allow for efficiencies and savings. Members would be reminded, however, that the Council was supportive of ensuring an alignment of terms and conditions across the Council and the Trust when the Trust was set up in 2011 and it was also a matter of significant interest to the Trade Unions.

6. In order to allow the Trust to focus on areas where innovation and a more commercial approach may bring most benefit, there could be discussion with the Trust over whether there are areas of its remit that it might benefit from transferring back to the Council - for instance, areas of work where there is no or little scope for income generation. Of course, such an approach could simply transfer the cost of maintaining such services to the Council.

7. As noted at paragraph 5.6, the Trust has advised that it has, on occasion, not been successful in pursuing external funding due to what funders see as its close relationship with the Council and the requirements for it to accredit the Council on all materials. By allowing the Trust greater freedom to develop its brand without spotlighting the link to the Council, there could be an enhanced ability for the Trust to secure funding and develop partnership opportunities.

8. The composition of the Board of the Trust could be altered to create a greater balance in favour of the independent Directors. Procurement law principles would, however, need to be carefully assessed if there was a reduction in the number of Directors nominated by the Council.

6.4 As with maintaining option 1, the net savings of circa £1m per annum principally due to non domestic rates would be retained. This option is, again, favourable in terms of the Council managing its partial exemption calculation for VAT (see para. 5.4).

6.5 This option would maintain, and potentially enhance, the ability to seek external funding not available to the Council. Comment has been made at paragraph 5.6 above about challenges that can exist with funders where there is a close relationship between the charity and its parent organisation. Likewise, this option would maintain and potentially enhance the ability of the Trust to focus on community facing developments and harness skills, experience and innovation through the involvement of independent directors and partnering arrangements.

6.6 In addition to the advantages also inherent in the current model, there could potentially be greater potential for the Trust to reduce its reliance on Council funding. This could be driven by the Trust being able to take a more commercial, fleet footed and innovative approach, decoupling from the Council's terms and conditions (subject to being able to resolve issues around associated employers and procurement law and being mindful of the benefits of alignment which were considered and agreed in 2011) and investing in assets to improve quality and drive demand. The latter approach is challenging in light of the condition of the Trust's ageing property portfolio and the level of investment required to bring the properties into a condition that will attract more service users. The level of back-log maintenance is currently estimated to sit at around £10m. The figure could be higher to bring the facilities up to a standard that would attract additional users.

6.7 In terms of disadvantages, there is, as noted at paragraph 6.2 a degree of uncertainty over the ability to implement a package of approaches to greater autonomy until there would be clarity on OSCR approval, procurement and State Aid implications.

6.8 Fairly significant non recurring work would require to be undertaken to determine and agree the amendments needed to the current arrangements and capture them in the constitution of the Trust and the agreements. OSCR consent would be advisable for amendments to the constitution of the Trust.

6.9 It is likely that if the Trust was in a position to seek greater levels of borrowing, issues of guarantees and "lender of last resort" may emerge for the Council. This could have implications for issues of state aid if loosening of Council influence was considered to make it harder to present the Trust as being a vehicle within the public sector for delivering public services.

6.10 With greater autonomy, the Trust may decide it is a point to consider whether it wishes to continue with the Service Level Agreements it has with Council functions (for instance for provision of services such as technology, human resources, financial, legal, facilities management and ground maintenance). The implications and cost of that would require to be determined.

6.11 Depending on the approaches taken to enhancing autonomy, it could prove more challenging to bring the Trust back in house at a later date – for instance on the expiry of the 25 year duration of the Funding Agreement. The example of disposing of properties to the Trust has already been discussed above. Likewise, changes to terms and conditions for staff could make a transfer back to the Council a more involved process.

6.12 Members generally need to consider the issue of control and influence and if they are happy with the degree of autonomy the Council would be allowing the Trust. If the Council grants enhanced autonomy, it would need to accept that greater decision making lay with the Trust.

7. Option 3 – Bring the Trust services in house

7.1 This option would involve the Council in requiring the Trust to wind itself up in advance of the 25 year Funding Agreement term. The Council would then require to essentially reverse the process that was involved in creating the Trust to bring the staff, services, properties, assets and liabilities back in-house. The areas of work involved in doing so are summarised at paragraph 7.9 below.

7.2 The main advantage of this option is that, subject to statutory requirements, decisions on service provision, planning, alignment and utilisation would be taken by one decision maker. For instance, the Council, as sole decision maker, could look at the treatment and use of facilities in alignment with the Council's wider property portfolio and objectives and on matters such as service redesign. This might have the potential for savings to be achieved through considering whether there is a more efficient way of undertaking some functions in the context of a larger single organisation. Examples could include addressing areas of duplication of posts/ work and identifying work currently provided within the Trust which could fall within the scope of the Customer & Business Support team or, for instance, Children's Services.

7.3 Bringing the services back in house would remove additional areas of work that have resulted from the arm's length nature of the Trust. Examples of these areas of additional work are performance monitoring, liaison and, on occasion, the need to involve more than one Council officer to act in matters between the Council and the Trust to avoid conflict of interest. Likewise, there are areas of work undertaken by Trust staff such as company secretarial tasks that are solely driven by the arm's length nature of the Trust.

7.4 Bringing the Trust back in-house would bring with it the potential for skills to be transferred from the Trust which could be beneficial to the wider Council.

7.5 In terms of disadvantages of bringing the Trust back in-house, perhaps the key disadvantage would be the loss of taxation benefits available to the Trust as a charity. In particular, there would be a loss of savings of £1m per annum. Since the establishment of the Trust in 2011, the savings to the Council from non domestic rates relief have amounted to circa £8m.

7.6 Bringing the Trust services in house would be very challenging from a VAT perspective. Following a recent VAT ruling, income from sporting activities for the Council is now exempt bringing it into line with the Trust. This would have a negative impact on the Council's partial exemption calculation for VAT. Initial calculations suggest the Council would still be within the partial exemption threshold of 5% referred to in paragraph 5.4 but only marginally. Going forward, there would be a greater risk of breaching the threshold, requiring tighter financial planning and monitoring particularly with regard to capital expenditure, i.e. refurbishing a sports centre. Based on the current partial exemption calculation, any breach could cost the Council a minimum of £1.4m plus the percentage amount actually over the threshold (i.e. every 1% would cost an additional £285k).

7.7 The Scottish Government's response to the recommendation of the Barclay Review on charitable rates relief for ALEOs has been set out at paragraph 5.5. It should be noted that if the Council brought the Trust back in-house, the Council would not be able to benefit from non domestic rates relief in the future if it decided to set up another similar ALEO.

7.8 The Accounts Commission in their recent report on use of ALEOs cite consistent reasons for Councils using ALEOs to be:- "

- "an ability to generate income from additional services, and attract new income from funding, donations, sponsorships or loans"
- "strong service or commercial focus as a smaller more independent organisation under the direction of a dedicated board".
- "taxation benefits of a charitable organisation including relief on non-domestic rates"
- "ability to involve public stakeholders in the management and direction of their services"
- "ability to foster a positive working relationship with an ALEO as a "trusted partner""

The potential benefits of these reasons would be foregone by bringing the Trust back in-house. Paragraph 5.6 above has set out information on the external funding attained by the Trust.

7.9 There would be significant non recurring time and resource involved in the work to bring the Trust back in-house. The process would involve and include the following:-

1. Engaging specialist advice and assistance in relation to the corporate process of winding up and dissolution.
2. Seeking the approval of OSCR to a winding up of the Trust as a charity. OSCR would need to be satisfied that the powers to wind up the charity are available and that charitable assets would be appropriately dealt with on dissolution.
3. Compliance with the requirements of the TUPE Regulations which would involve both the Council and the Trust consulting with trade unions on how the transfer would impact on employees within each organisation. There would also be an expectation that each employer would maintain effective communication (both verbal and written) with affected employees to inform them of matters connected with the transfer and to address any concerns they may have.
4. Termination of the leases and property licence under which the Trust holds its facilities as tenant.
5. Transfer of Trust equipment and assets.
6. Assignation or novation of contracts to which the Trust is a party.
7. Transfer of data, records, licences and approvals held by the Trust.
8. Extensive due diligence to ensure that any risk incurred as a result of winding up the Trust is fully understood by the Council. For instance, it would need to be established whether or not any grant funding obtained by the Trust would be transferrable to the Council without any penalty resultant from a change in the identity of the grantee.
9. Workforce planning and service restructuring to integrate the Trust back into the Council.
10. Senior Trust management requiring to focus efforts on the transfer process. This may take attention away from service delivery during the transfer period.

7.10 There would be the loss of an arm’s length organisation which, with agreement and compliance with charity law, could potentially be involved in structural arrangements where a non Council body is of benefit.

7.11 Care would need to be taken to ensure that existing beneficial relationships the Trust has with the community and community groups would be maintained and not prejudiced by a process of functions being brought back into the Council. The Council would also need to be mindful of the risk of reputational damage which might result from such a change seven years after the establishment of the Trust.

7.12 Without being an advantage or disadvantage, if this option was to be pursued, workforce and service design issues would be very significant matters to be carefully considered. Consideration would need to be given to how the organisational structure currently in place within the Trust would be transferred to the Council. It could, for example, be transferred as a whole to sit in one service area, or there could be consideration given to splitting it across different service areas based on the functions carried out. It is noted that the TUPE Regulations provide employees with certain protections in connection with changes which may be made to their employment as a consequence of a transfer. Consideration would need to be given to the impact of these protections in such a situation.

7.13 It was noted at paragraph 7.2, that there could be potential for support services to be undertaken by the Customer & Business Support team and that there may, more generally, be areas of duplication of work. Human Resources have assessed this and consider that, initially, there may not be any savings achieved by transferring employees to the Customer & Business Support function. Based on estimated staff turnover, however, they anticipate that there could be an approximate saving of 10% of costs in the longer term. That 10% would translate to circa £50,000 per annum. There could be some scope for savings in management posts depending on what organisational arrangements were implemented upon services transferring to the Council. In line with employment law requirements, this would need to be considered across the relevant pool of current Trust and Council management roles. The roles of Trust Chief Executive and General Manager would require to be reviewed to take account of reporting arrangements within the Council. Again, the relevant pool of chief officers in the Council and the Trust and the impact on individual employees would need to be carefully considered. If any severance or redundancy situations were to arise, there would be costs associated with that and there would be a loss of skills and knowledge. Other than that, Human Resources consider that, as the majority of posts within the Trust are customer facing, there would be limited duplication of task and post.

8. Consultations

8.1 Consultation has taken place with the Chief Executive of the Trust and representatives from the Trust Board. A Sounding Board involving the Portfolio Holder, group leaders or their nominees, the Chief Executive of the Trust and representatives from the Trust Board was established to discuss the appraisal.

9. Implications

9.1 Depending on the decision taken by members there could be a range of implications covering areas such as legal, finance, human resources and policy. In particular, if option 2 is followed, there would be legal considerations around procurement, charity law, state aid and employment law. Human resource issues may also arise if there was to be consideration of terms and conditions of employment.

9.2 Option 3 would involve significant legal work in terms of transfer of staff, assets and liabilities of the Trust to the Council. Budgetary implications would require to be carefully considered in the finance context, particularly from a tax perspective given non domestic rates and VAT issues. From a human resources perspective, there would be very significant work involved in workforce planning and transfer of staff under the TUPE Regulations.

10. Summary

10.1 Three options for the Trust have been discussed. The background to the Trust, its establishment, structure and relationship with the Council have been set out. Advantages and disadvantages of each of the options have been explored with regard being had to issues around finance, workforce, governance, savings, efficiencies and service redesign.

10.2 A summary of the appraisal of the three options is below:-

Option 1 - The current arrangements for the Trust.

10.3 The key advantage of this option is that it maintains the tax benefits of the Trust amounting to circa £1m per annum. It also maintains the important VAT advantage of the Trust as a buffer against the Council breaching its partial exemption threshold.

10.4 The current model provides the opportunity for external funding to be sought that may only be available to a charitable body. It provides a vehicle with a singular focus on community facing developments and that harnesses additional skills, innovation and experience through a board involving independent directors.

10.5 There are disadvantages such as the irrecoverable VAT of circa £200k per annum (although this has to be taken alongside the significant benefits of the Trust from a VAT perspective) and areas of additional work involved for Council officers and Trust staff around, for example, liaison and monitoring and company secretarial tasks. It is recognised that challenges currently exist particularly around communication, relationships and trust. Efforts could be made through consideration of the recommendations of the Policy Development Panel at Appendix 1 to address these challenges and issues and build a stronger and more effective relationship with the Trust.

Option 2 – Greater Autonomy

10.6 This option involves a spectrum of approaches that could be adopted to increase the arm's length of the Trust to varying degrees. The advantages of this option are similar to those explained for Option 1, with some advantages potentially being enhanced around commercialisation, innovation and working to reduce the Trust's reliance on Council funding.

10.7 Disadvantages relate to issues such as greater autonomy potentially making it more challenging to bring the Trust back into the Council at a later date such as on expiry of the Funding Agreement, challenges around treatment of assets and property if they become charitable assets, the Council potentially becoming the "lender of last resort" and the non recurring cost and time of developing and implementing amendments to the current arrangements.

10.8 Members would need to have regard to issues of control and influence. If greater autonomy was agreed with the Trust, members would need to accept that greater decision making lay with the Trust. It would most likely take 6 months or longer to work through the possible approaches, ensure that OSCR approval was available and ensure there were no procurement law or state aid issues. The Trust may see greater autonomy as an appropriate trigger point to bring the Service Level Agreements it has with Council functions to an end and seek their own providers.

Option 3 – Bring the Trust services in house

10.9 This option would involve winding up the Trust and bringing it back within the Council. There would require to be a TUPE transfer of staff, careful workforce planning and a transfer of all assets and liabilities of the Trust back to the Council. The main advantage would be that decisions could be taken by the Council as a single decision maker in alignment with its wider objectives and priorities. There would be potential for savings and efficiencies through an assessment of duplication of posts and work and removing additional areas of work such as monitoring of and liaison between the Council and the Trust and company secretarial tasks.

10.10 A significant disadvantage is the loss of the tax savings of £1m per annum. If the Trust was wound up, that saving would not be available to the Council in the future. The potential advantages around a smaller, focused and innovative organisation would be lost along with the ability to seek funding only available to charitable bodies.

10.11 Despite being able to recover VAT of circa £200k that is irrecoverable by the Trust, from a VAT perspective there would be significant disadvantages to bringing the services in house given the benefits of the Trust in relation to the Council's partial exemption threshold.

10.12 A considerable amount of work would require to be undertaken to wind up the Trust and bring it back within the Council with care being taken to house it and then manage it in the most effective manner. As with the greater autonomy option, it is likely that process could take 6 months or longer.

11. Conclusions

11.1 As noted at paragraph 4.4, members will wish to consider how the options under appraisal will help the Council meet its objectives and improve outcomes for its communities. Regard should be had to the Council's priorities for the services provided by the Trust on its behalf and how the options could enhance these priorities and outcomes. Paragraph 4.2 also notes that each of the options can potentially bring positive outcomes with the right approach and commitment. Structural governance arrangements and amendments are often not the best route to positive outcomes.

11.2 In the context of the Council's current financial position, it is difficult to recommend that it gives up tax benefits that allow it to save £1m per annum. Clear evidence would be needed that this would enhance performance and outcomes as well as generating offsetting savings and efficiencies in the short and medium terms. There is potential for savings and efficiencies to be generated if the Trust was to be brought back in house that would not be directly available to the Council under the other two options. However, these savings are not likely to be of a scale that would sufficiently balance the loss of tax benefits and may only be able to be achieved over time. Compounding this, there would be significant cost, time and work involved in bringing the Trust back into the Council. Relinquishing a significant proportion of the tax savings that are generated by reason of the Trust being a charitable body would be a significant decision to make to gain the main potential benefit of the in house option which is to allow decisions to be taken by one single decision maker.

11.3 It is also important to stress that maintaining the Trust is significantly favourable from a VAT perspective given issues around the Council's partial exemption threshold as explained in paragraph 7.6.

11.4 It is acknowledged that areas of frustration have developed on the part of both the Council and the Trust around matters such as clarity of expectations, communication, process, treatment of properties and budget process. The Trust has, however, operated within a reducing budget since its establishment and has maintained provision of services in accordance with the service specification and the annual agreed Business Plans. As noted above, the Trust has regularly reported to the Council on service provision. While scrutiny by the Council can, quite correctly so, be robust given the scale of funding being provided to an ALEO, the Scrutiny Committee (External) has been broadly supportive of the work of the Trust. In such a scenario, it would be challenging to make a case that performance of the Trust would provide a reason to bring it back into the Council.

11.5 The preceding point about performance as well as forgoing tax savings/advantages are matters that OSCR, Audit Scotland and other bodies may question the Council about if the Trust was to be wound up. As already noted at paragraph 7.11, the Council would need to be mindful of the risk of reputational damage which might result from such a change seven years after the establishment of the Trust.

11.6 Option 2 has been noted to provide a range or menu of approaches that might provide greater autonomy to the Trust. The approaches available would need to be carefully analysed and also assessed in the context of procurement law requirements, the requirements of OSCR, state aid and the outcomes sought. This would take time to develop and agree among the stakeholders. The benefits potentially available under greater autonomy may not be realised quickly and there is no clear evidence at this stage to demonstrate what the results may be.

11.7 There is insufficient evidence at this time to support either option 2 or option 3. Therefore, combining option 1, which is the current arrangements, with a joint commitment to develop a strong and effective strategic partnership with the Trust is the recommended way forward. The work of the cross party Policy Development Panel would provide a basis for this work.

11.8 The PDP recommendations provide a platform for joint working to develop the shared future vision for the services, address challenging issues and explore and review matters such as monitoring and reporting arrangements, the funding process, the role of elected members on the board of the Trust and engaging elected members from across the Council, along with some more detailed considerations.

11.9 Taking forward the current arrangements in combination with actions to strengthen partnership working based on the PDP recommendations need not preclude additional matters that may be of benefit being discussed and agreed with the Trust on an ongoing basis. An example of this has already taken place when Executive agreed to relax the borrowing restriction on the Trust from £200,000 to £1m. That decision released borrowing to fund works at the Mariner Centre to create a soft play facility.

11.10 It would be suggested that the Council's Chief Executive would work closely with group leaders and the Portfolio Holder for Culture, Leisure and Tourism to establish the Council's approach to its work with the Trust. Ideally, the group leaders and Portfolio Holder would also be involved in discussions with the Trust.

11.11 The recommendation at paragraph 2.1 would maintain the existing tax saving to the Council of £1m per annum. It would maintain the important VAT advantage of the Trust as a buffer against the Council potentially breaching its partial exemption threshold. Other advantages to having a charitable ALEO would also be maintained such as an ability to generate income from additional services, attract new external income from sources only available to charities and provide a vehicle with a singular focus on community facing developments and that harnesses additional experience through a board involving independent directors. At the same time, by ensuring a strong and effective partnership with the Trust based on the PDP recommendations, it would establish an important joint working framework with the Trust to develop a shared future vision for the services and address challenging issues around communication, relationships, trust, business planning, treatment of properties and income generation. The real prize would be developing a clear alignment and joint ownership of the overarching strategy and vision for the work of the Trust and how that supports the outcomes and priorities sought by the Council and the Trust for the people they serve.

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Chief Executive

Author: Iain Henderson, Legal Services Manager
Tel: 01324 506103
Email: iain.henderson@falkirk.gov.uk

Date: 6 September 2018

Appendices:
Appendix 1 – Policy Development Panel Recommendations
Appendix 2 – Summary of work carried out by the Trust on behalf of the Council
Appendix 3 – Summary of the contractual relationship between the Council and the Trust
Appendix 4 – Summary Table

List of Background Papers:
No papers were relied on in the preparation of this report in terms of the Local Government (Scotland) Act 1973.

Appendix 1

Policy Development Panel Recommendations

(1) that, in order to develop a clear sense of joint ownership, Falkirk Community Trust is requested to work with the Council to prepare and implement a procedure for development of the overarching strategy for culture and leisure allowing for increased joint working and maximising opportunities for officers and elected members of the Council to contribute;

(2) to request that the Trust works with the Council to establish joint working groups involving Council officers, members of the Trust's Senior Management Team, Trust board members and Council elected members to develop agreed strategies in response to challenging areas of work including:-

(a) approaches to income generation;

(b) community engagement; and

(c) treatment of Trust facilities;

(3) to request that the Trust works with the Council to jointly review the existing Funding Agreement between the Council and the Trust with a focus on:-

(a) introducing a more detailed specification of the Trust's services;

(b) agreeing a procedure for annual adjustment of the specification and services fee which allows for appropriate engagement through a defined process;

(c) agreeing a more detailed change control mechanism which reflects the principle of collaboration between the Council and the Trust in response to unforeseen changes in circumstances during a given financial year; and

(d) reviewing the monitoring and reporting mechanisms to ensure that there is full clarity with the Council's requirements;

(4) to request that the Trust holds its Board meetings in public and publishes minutes of such meetings on its website, having regard to the need for appropriate redaction of material and private sessions where matters would be of a confidential or sensitive nature; (Note: already being implemented)

(5) to request that the Chief Executive of the Trust attends the Council's regular Corporate Management Team; (Note: already being implemented)

(6) that the Directors of the Trust and the policy development panel members should jointly explore the following proposals:

(a) that the Chair of the Trust be an elected member

(b) that the Portfolio Holder for Culture, Leisure and Tourism be a standing director of the Trust

(c) that efforts are made to engage elected members from across the Council with elected members being encouraged to attend Trust events and learn more about the activities of the Trust

(d) that elected members on the board of the Trust are encouraged to act as a channel of communication from the Trust to other elected members

(e) that appreciation of the achievements of both the Trust and the Council since the inception of the Trust are fostered; and

(f) that the most appropriate channels of communication and response are identified in the context of ad hoc representations from individual elected members

Appendix 2

Summary of work carried out by the Trust on behalf of the Council

Cultural

- Callendar House and Kinneil Museum: management and programming
- Museum and archives collections
- Archaeological services
- Heritage engagement
- Exhibitions and events
- Falkirk Town Hall management and programming
- Hippodrome management and programming
- Grangemouth and Bo'ness Town Halls: management and operation

Libraries

- Services across eight public libraries
- Home Library service
- Reference and local history services
- Community information services

Sports and Recreation

- Sports centres and swimming pools management
- Community Access to six High Schools
- Sports development classes and courses
- Active Schools programme
- Gyms and fitness classes
- GP referral and physical activity programmes
- Sports pitches, pavilions, tennis courts and outdoor amenities
- Outdoor activities and Polmonthill Snowsports Centre

Parks

- Strategic parks: the Helix, Callendar Park, Kinneil Estate, Muiravonside Country Park
- Countryside ranger services
- Golf course management

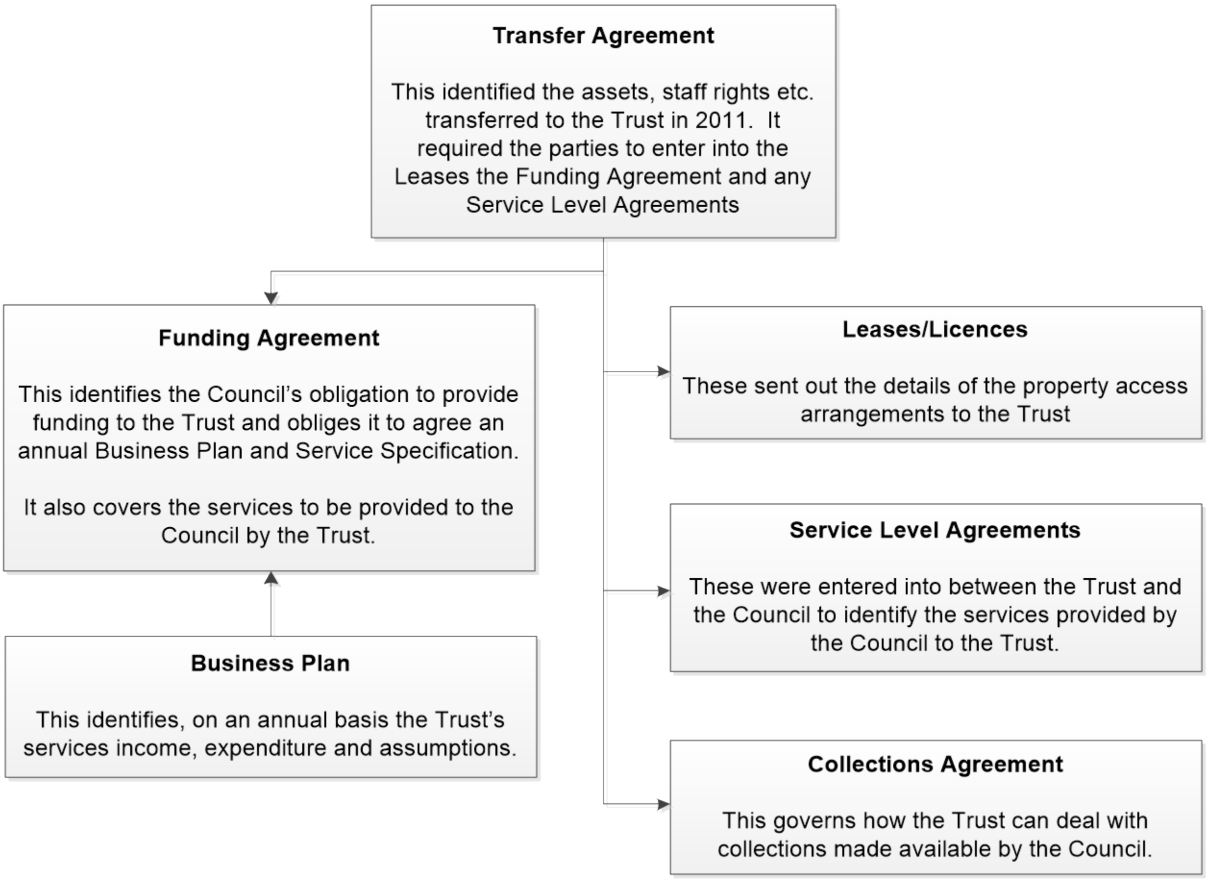
Trading

- Catering and retail services across all venues

Appendix 3

Contractual relationship between the Council and the Trust

The contractual relationship between the Council and the Trust is set out primarily in a Funding Agreement that describes what work is to be done by the Trust in exchange for funding from the Council. The Funding Agreement provides that each year the Trust is to submit its Business Plan to the Council for approval and funding will be allocated accordingly.



Constitution and objects of the Trust

The Trust has a constitution known as its Articles of Association. The Articles set out the objects or purpose of the Trust. They also set out the composition of the Board of Directors and arrangements around membership of the Trust. The Council is the sole member of the Trust with the Board of Directors stated to comprise 5 Councillor directors nominated by the Council, 5 independent directors, an employee director and the potential for 2 co-opted directors. The Chair is stated to be an independent director which is line with the recommendations of OSCR. The objects of the Trust are as follows:-

"to work in collaborative partnerships to deliver inspiring culture and recreation services and experiences that support Falkirk communities' aspirations and meet visitor expectations, by (Firstly) encouraging the population of the Falkirk area to be more active and promoting health and fitness opportunities that are accessible for

everyone; (Secondly) supporting people to be more creative and nurturing potential for personal success and wellbeing through the provision of cultural and sporting facilities and resources; (Thirdly) helping individuals and community groups to benefit from lifelong learning opportunities and make a social and economic contribution; and (Fourthly) involving local people in caring for the areas' environment and heritage and encouraging others to visit the area."

<u>Key aspects of the linkage between the Council and the Trust</u>

(a) The Council is the sole member of the Trust. As such, the Council, subject to notification to OSCR (and, in the case of any amendment to the charitable purposes, OSCR's prior consent), is able to change the governing rules of the Trust.

(b) The Funding Agreement has a duration of 25 years. This presumes either that the Trust will come back within the Council at the end of the 25 year period or an extension will be agreed.

(c) In accordance with OSCR recommendations, a majority of the charity trustees (i.e. directors) on the board of the Trust are independent of the Council. These directors have duties under the 2005 Act and the Companies Act 2006 to:-

- Seek to ensure the Trust acts consistently with its purposes
- Act with care and diligence
- Act in the interests of the Trust
- Manage conflicts of interest

(d) The Chair of the Trust board is to be an Independent Director.

(e) Significant variations to the existing level of services provided by the Trust require the agreement of the Council prior to implementation.

(f) The Trust is not to make major modifications or extensions to the properties leased to it by the Council without the agreement of the Council as landlord.

(g) The Trust is to perform the services at all times in accordance with the agreed Business Plan and the service specification in the Funding Agreement. If the Trust is not complying, the Council can require compliance or require a revised Business Plan reflecting the actual services being provided.

(h) In exchange, the Council is to make payment of the funding commitment in accordance with the agreed Business Plan.

(i) Under the property leases, the Trust accepted the properties in their then condition in 2011. The Council undertook to carry out the majority of the maintenance and repair required to keep the properties in good tenantable condition. The capital programme remains with the Council

(j) The Trust is responsible for setting the charges for the use of services and may retain the income. The Council is to be advised of the proposed charges annually through the Business Plan.

(k) In line with the requirements of the Public Libraries Consolidation (Scotland) Act 1887, the Council shall be entitled to manage, regulate and control the library service. Any adjustment requires the prior written approval of the Council.

(l) The Trust is obliged to provide reports on its operations as the Council may reasonably require.

(m) Terms and conditions of Trust staff are not to be less favourable than those of Council staff.

(n) There is a limit of borrowing by the Trust of £1m in aggregate at any given time.

(o) The Trust is to actively lead on the development of policies and strategies for the Council in respect of culture, recreation, sports, strategic parks and library services.

(p) The Trust, where appropriate, is to indicate its involvement with the Council in advertising, publicity and promotional material except where the Council agrees otherwise.

Appendix 4

Summary Table

Option	**Advantages**	**Disadvantages**	**Relevant Considerations**
Current Arrangements	Taxation benefits of a charitable organisation - primarily relief on non domestic rates which is currently £1.2m per annum Provides a buffer against the risk of the Council breaching the partial exemption threshold for VAT thus avoiding the risk of very significant additional VAT related costs to the Council. Ability to attract new income from funding, donations and loans including the potential to seek those only available to third sector or charitable organisations A smaller more independent organisation under the direction of a dedicated board with a focus on community facing developments Ability to bring wider experience, skills and innovation to the organisation through the involvement of independent directors No requirement to expend non	As against the in-house option, there is a VAT disbenefit of circa £200k per annum due to a recent change in VAT treatment that brings Councils into line with the Trust's exemptions for income from sports activities but allows Councils greater recoverability of VAT. Please note, however, the comments in the Advantages column about the Council's partial exemption threshold. The cycle of financial planning, agreement of the Trust Annual Business Plan and treatment of Trust properties can be challenging for both the Trust and the Council as matters currently operate There are areas of additional work that require to be undertaken by both the Council and the Trust as a result of the arm's length and charitable nature of the Trust such as performance monitoring, liaison, company secretarial tasks and involvement of more than one officer to act in some matters between the	Following the Barclay Review, the Scottish Government has decided that a non domestic rates relief "baseline figure" (with annual inflationary uplifts) be established for existing ALEOs as at 28 November 2017. Within that baseline figure, the Trust would receive rates relief and the Council would not be expected to meet the cost of the relief. Accordingly, a new sports facility to replace an existing one would benefit from relief provided the total rateable value of the Trust facilities remained within the baseline figure. If the total rateable value goes above the baseline, the Council would be expected to meet the cost of the additional relief. If the services were brought back in-house and then put out to a new ALEO, the full cost of any rates relief would then require to be met by the Council. Outcomes from the Policy Development Panel Review of the

	recurring resources on significant alteration to the existing arrangements Provides an arm's length vehicle for potential involvement in structural arrangements where a non Council body is of benefit Existing beneficial relationships with the community and community groups would be maintained The Trust would maintain the brand/independent identity it has worked to develop.	Council and the Trust to avoid conflict of interest. There are challenges to be worked on in the current arrangements around communication, relationships and trust.	Trust could be taken forward which may assist in improving communication, relationships and trust. As a formally separate organisation with charitable status, a local authority doesn't have full control over an ALEO of this nature. The Trust's terms and conditions of employment mirror those of the Council under the current arrangements.
Greater Autonomy	Maintains the taxation benefits of an arm's length charitable organisation - primarily relief on non domestic rates which is currently £1.2m per annum Provides a buffer against the risk of the Council breaching the partial exemption threshold for VAT thus avoiding the risk of very significant additional VAT related costs to the Council. Maintains and potentially enhances the ability of the Trust to attract funding from donations and loans including the potential to seek those only available to third sector or charitable organisations	As against the in-house option, there is a VAT disbenefit of circa £200k per annum due to a recent change in VAT treatment that brings Councils into line with the Trust's exemptions for income from sports activities but allows Councils greater recoverability of VAT. Please note, however, the comments in the Advantages column about the Council's partial exemption threshold. Fairly significant work would require to be undertaken to determine and agree the amendments needed to the current arrangements and capture them in the constitution of	The comments above in relation to the Barclay Review and the Scottish Government's approach to that would apply. The Council would have less control and influence. The Council would need to accept that greater decision making lay with the Trust. Any approach towards greater autonomy would require to be carefully assessed to ensure compliance with procurement law and state aid requirements. OSCR consent may be needed

	Maintains and potentially enhances the ability of the Trust to focus on community facing developments and harness skills, experience and innovation through the involvement of independent directors Potential to allow reduction in the public subsidy and funding to the Trust through a more commercial approach, less onerous and time consuming decision making processes and investment in assets through borrowing The Trust may find it easier to enter into arrangements with external partners and existing beneficial relationships with the community and community bodies would be maintained Provides an arm's length vehicle for potential involvement in structural arrangements where a non Council body is of benefit The Trust would maintain the brand/independent identity it has worked to develop.	the Trust and the agreements. Issues of guarantees and "lender of last resort" may emerge Depending on the approaches taken it could prove more challenging to bring the Trust back in house at a later date.	for amendments to the constitution of the Trust The Council may want to ensure that it retains ownership of the assets utilised by the Trust such as the properties and the collections to ensure assets would come back to the Council free of charitable status upon Trust withdrawal from a facility/service or on dissolution The Trust may decide that greater autonomy is a trigger to terminate some or all Service Level Agreements it has with Council functions (for instance for provision of services such as technology, human resources, financial, legal, facilities management and ground maintenance). The implications and cost of that would require to be determined. The Trust, depending on how the greater autonomy granted to it is structured, may have greater flexibility to consider the terms and conditions for its staff should it consider it would better reflect the needs of the organisation. This could involve the potential to make itself more attractive to

			some groups of employees but to also make savings. Regard should, of course, be had to the benefits considered and agreed by the Council in 2011 in relation to alignment. Alignment of terms and conditions was an area that the Trade Unions had a significant interest in at establishment of the Trust.
Bring Back In-house	Subject to statutory requirements, treatment of facilities and service provision including planning, alignment and utilisation would be the responsibility of a single decision maker. Removes areas of work undertaken by the Council and the Trust as a result of the arm's length and charitable nature of the Trust such as performance monitoring, liaison, company secretarial tasks and involvement of more than one officer to act in some matters between the Council and the Trust to avoid conflict of interest. There would be a VAT benefit of circa £200k per annum due to a recent change in VAT treatment that brings Councils into line with the Trust's exemptions for income from sports activities but allows Councils	Loss of taxation benefits of a charitable organisation – primarily relief on non domestic rates of £1.2m per annum. There would be the risk of the Council breaching its partial exemption threshold for VAT which would result in very significant additional VAT related costs to the Council. If the Council decided to establish a similar charitable ALEO in the future, the Council would not benefit from rates relief. Loss of ability to attract income from funding, donations and loans only available to third sector and charitable organisations There would be significant, non recurring, costs in the work to bring	Consent of OSCR would be required for any winding up of the Trust. OSCR would need to be satisfied that the powers to wind up the charity are available and that the charitable assets would be appropriately dealt with on dissolution Care would need to be taken not to prejudice existing relationships with the community and community groups Extensive due diligence would be required to ensure any risk incurred as a result of winding up the Trust is fully understood by the Council e.g. to ensure grant funding would be transferrable to the Council without penalty

	greater recoverability of VAT. Please note, however, the comments in the Disadvantages column about the Council's partial exemption threshold. Potential for savings in employee costs in the longer term - depending on organisational arrangements implemented and support services requirements going forward Potential for skills to be transferred from the Trust which could be beneficial to the wider Council	the Trust back into the Council both in terms of staff time and outlays for specialist corporate advice and assistance. This would include:- • the requirement to transfer assets back to the Council (including property, facilities, contracts, data, records, licences and approvals) • undertaking the work involved in relation to TUPE transfer of staff including information provision and consultation. Some staff may never have worked with the Council and may, as a result, choose to leave and not to transfer so their skills and experience would be lost to the organisation • workforce planning to integrate Trust functions into the Council Loss of ability for the Trust to provide an arm's length vehicle for potential involvement in structural arrangements where a non Council body is of benefit There is the potential for an impact on the morale / a culture clash of employees who do transfer and those in the receiving service areas within the Council	

		There could be reputational issues in bringing the Trust back in-house after seven years of operation	