#### **ANGUS COUNCIL**

#### **5 NOVEMBER 2020**

# PROPOSALS RE EXTERNAL REVIEW OF DECISION TO DEMOLISH THE FORMER LOCHSIDE LEISURE CENTRE

## REPORT BY MARGO WILLIAMSON CHIEF EXECUTIVE

#### **ABSTRACT**

This report executes the decision at the Special Council meeting on 19 October 2020 to bring a report to Council with a proposed remit, timescale, cost, funding and procurement options in terms of an independent external review of all evidence and decisions taken from 2013 to present in determining the decision to demolish Lochside Leisure Centre.

#### 1. RECOMMENDATIONS

It is recommended that:

- (i) Members approve the remit at Appendix 1, and
- (ii) Determine which procurement option they want applied.

## 2. ALIGNMENT TO THE ANGUS COUNCIL PLAN AND COMMUNITY PLAN

This report contributes to the following strategic priorities in the Angus Council Plan: We want Angus Council to be efficient and effective.

## 3. BACKGROUND

Lochside Leisure Centre was built on common good land and opened in 1975. Since its construction, it was funded from the General Fund and regarded as a general fund asset. The chronology of decision making relevant to the decision to demolish Lochside Leisure Centre is as outlined in Table One forming part of Appendix 1.

## 4. REMIT

The proposed remit for the work is included in Appendix 1. There have been three reviews undertaken in relation to the decisions to demolish the former Lochside Leisure Centre, one by Internal Audit, one by the Outer House of the Court of Session and one by the Inner House of the Court of Session, ("Three Reviews"). All reviews examined aspects of the decision to demolish including a detailed investigation of source evidence. The matters considered include:-

- The process and procedure followed relating to Report 151/18 on declaring the former Lochside Leisure Centre surplus and deciding to demolish, considered at Policy & Resources Committee on 1 May 2018.
- The process and procedure followed relating to Report 48/19 on the former Lochside Leisure Centre, considered at Council on 7 February 2019
- The nature and extent of the information provided to elected members relating to the condition of the former Lochside Leisure Centre in terms of **Report 48/19**
- Whether the Council had failed to comply with the statutory duty not to dispose of land for a consideration that is less than the best that can reasonably be obtained
- Whether the Council had failed with the requirement to comply with section 104 of the Community Empowerment Act 2015
- Whether the Council had failed to give proper, adequate reasons for its decision to demolish

- Whether the decision was unreasonable so far as best value considerations were concerned
- Whether the Council had failed to take steps such as placing the leisure centre on the open market for sale - to ascertain what a purchaser might pay for it so had failed to take into account material considerations.

Appendix One, Table Two includes details of the Three Reviews, their scope, source evidence and the outcomes from the reviews. This evidence will be available for the reviewer and the remit notes that any further evidence required can be accessed through the named key contacts. The reviewer will be free to consider this evidence afresh and reach their own conclusions and recommendations on it.

# 5 PROCUREMENT OPTIONS, TIMESCALES AND COST

Procurement option	Timescale (Fieldwork and reporting dates TBC with reviewer)	Potential Cost
Audit Scotland (Subject to confirmation that AS can carry out review)	Commence work November 2020 Final report March 2021 Council	A verbal update will be available at the Council meeting
Three quotes from established Audit and Accountancy Firms experienced in Public Sector law and practice	Prepare invitation November 2020 Advertise November 2020 Time for responses November 2020 Assess responses November 2020 Commence work December 2020 Final report March 2021 Council	Est up to £15,000
Call off from a Framework (Scotland Excel?)	(Further competition is the usual award method as direct award is limited) Prepare invitation November 2020 Advertise November 2020 Time for responses November 2020 Assess responses November 2020 Commence work December 2020 Final report March 2021 Council	Est up to £15,000

In addition, all options would incur the opportunity cost for the time of senior officers who will be required to provide evidence, confirm factual accuracy of the draft report and design actions for any recommendations made.

There may also be additional costs for any specialist technical advice the reviewer deems necessary.

## **6 FINANCIAL IMPLICATIONS**

The potential costs arising from the review requested by Council are difficult to assess with certainty and will depend on whether the remit proposed is agreed by Council. and the extent to which the reviewer wishes to review the source evidence. Due to the technical nature of some such evidence, the reviewer may wish to seek further specialist advice on such and this will in turn also increase the costs.

However on the basis of the proposed remit in Appendix 1 and in the knowledge that substantial work and evidence gathering has already been undertaken as part of the previous review and court process activity outlined in this report a cost estimate for the work of between £10,000 and £15,000 is considered reasonable.

No budget provision for this work exists but in view of the subject matter it is proposed to meet the cost of the review work from the funds previously set aside in the Council's General Fund Reserve for the demolition of Lochside Leisure Centre which currently stands at £454,000.

**NOTE:** The following background papers, as detailed by Section 50D of the Local Government Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report. See Reports detailed in Appendix 1 Table 1.

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**List of Appendices**: Appendix 1 Remit for external review of decision making and evidence from 2013 to 2020 in determining the decision to demolish the former Lochside Leisure Centre

## Appendix 1

Remit for external review of decision making and evidence from 2013 to 2020 in determining the decision to demolish the former Lochside Leisure Centre

The scope of work is to

- Review the decisions made from 2013 to October 2020 to demolish the former Lochside Leisure Centre (LLC), as outlined in Table One,
- consider the Three Reviews in Table Two,
- review the source evidence outlined in Column Three of Table Two to the extent to which you determine is required, and/or other evidence in order to
  - identify lessons for the future in respect of clarity of decision making reports to council, governance and best value, and
  - o provide a written report on the findings.

In fulfilling the above scope the reviewer will be free to consider existing evidence afresh and reach their own conclusions and recommendations on it.

# Table One - The decisions to be reviewed

Committee Report	Minuted decision
18 April 2013 Education committee report 254/13 Forfar Community Campus: consultation feedback /procurement authority approval request.  Abstract "This report provides feedback from the recent consultation exercise with the Forfar community to develop the principles of the project scope and seeks procurement authority for the progression of the project using the hub Design, Build, Finance & Maintain (DBFM) model."  Observation The report highlighted assets such as LLC that would become vacant as a result of building the Forfar Community Campus and discussed potential consequences but did not conclude or propose a decision on how these assets would be dealt with.	"The Committee agreed:- (i) to note the contents of the Report; (ii) to note the Scottish Government funding conditions; (iii) to note the feedback from the recent consultation exercise with the Forfar community; (iv) to approve the proposed scope of the community campus facilities; (v) to note the current progress in relation to the initial development of the project; (vi) to authorise the Strategic Director – People to procure the project using the hub Design, Build, Finance & Maintain model; (vii) to note the next steps in relation to the development of the project and the associated risks; and (viii) to note the financial implications."
Budget Meeting of Council Report 58/17 – Provisional Revenue and Capital Budgets – background Report	the Council "Approves the individual directorate capital budgets which gave a total estimated net capital expenditure for 2017/18 of £32.610 million for Angus Council as detailed on page 4 of Report No 60/17"

Committee Benert	Minuted decision
Committee Report Report 60/17 Provisional	willuted decision
Capital Budget 2017/18	
Capital Baaget 2017/10	
Abstract 58/17 The purpose of this report is to apprise Members of the provisional revenue budget submissions of each Council directorate and the budget savings considered necessary to allow the Council to deliver a sustainable revenue budget within the resources expected to be available. The report also sets out the provisional capital budget submissions for those	
directorates with capital	
expenditure.	
Report 60/17 is the provisional capital budget - General Fund capital programme for 2017/18	
Observation The proposed budget for 2017/18 included £500k for Property Exit Strategy for Redundant Buildings - Lochside Leisure Centre. This was to cover demolition and reinstatement of the area and a replacement toilet/store.(page 22 of the budget volume in report 60/17)	
1 May 2018 Policy & Resources Committee Report 151/18  Abstract The report seeks to declare the former Lochside Leisure Centre, Craig O' Loch Road, Forfar with common good land lying underneath surplus to council requirements and demolished.	"The Committee agreed to approve that the former Lochside Leisure Centre, Craig O'Loch Road, Forfar, shown outlined on the plan attached as Appendix 1 to the Report, be declared surplus to the Council's requirements and demolished with the land reinstated."
	Article 7
7 February 2019 Council Report 48/19 and Addendum Lochside Leisure Centre, Abstract The report seeks to inform the Members regarding Lochside Leisure Centre, Craig O' Loch	Provost Ronnie Proctor, seconded by Councillor Fairweather, moved that this council:- (i) confirms that the former Lochside Leisure Centre, Craig O' Loch road, Forfar, shown outlined on the plan at appendix 1 to the report is demolished with the common good land lying beneath reinstated to extend the park; and

Committee Report	Minuted decision
Road, Forfar; and the options for consideration.	(ii) agrees that the modular building previously used as changing rooms is offered for sale, subject to removal by the prospective purchaser.
The Addendum provides an update on a CAT application received on 4 February, and its implications for the options offered for decision in report 48/19	Councillor Davy, seconded by Councillor Boyd, moved as an amendment, that the Council agrees Option 4 – to sell the property via full formal marketing.  On a vote being taken, members voted:- For the motion:- Provost Ronnie Proctor, Councillors Bell, Braes, Devine, Duff, Durno, Fairweather, Fotheringham, King, McDonald, Nicol, Wann and Whiteside (13) For the amendment:- Councillors Boyd, Cheape, Davy, Lawrie, MacMillan Douglas, McLaren, Salmond and Speed (8). No votes:- Councillors Lumgair, Stewart and Sturrock (3).  The motion was declared carried, following which, Councillor Davy, having given notice prior to the vote, moved a further amendment, the terms of which were circulated to members. The Council resolved to adjourn for 10 minutes to allow the Provost to obtain advice from the relevant officers. The meeting reconvened at 3.07pm following which the Provost ruled that the further amendment by Councillor Davy was not
	competent on the basis that the Lochside Leisure Centre was not held on the Common Good Account and therefore it was not appropriate for the matter to be referred to the Forfar members for consideration.
	Consequently, the motion having been declared carried, the Council resolved accordingly  In accordance, with the provisions of Standing Order 16 (11)(ii)
	Councillors Cheape, Boyd and Davy requested that their dissent be recorded from the forgoing decision.
February 2019 Council Report 49/19 Private Lochside Leisure Centre – Offer of Purchase	In light of the decision taken at Article 7 above, the Council resolved to note the contents of the Report.

## Table Two - The Evidence

Evidence surrounding the decision to demolish the former Lochside Leisure Centre has already been gathered and considered for an Internal Audit review in 2018 and for the Judicial Review in 2019, (both the initial consideration by the Inner House of the Court of Session). Table Two details the three reviews, their scope, source evidence for and outcome of each of the three Reviews

The Three Reviews	Scope of Consideration for each of the Three Reviews	Source Evidence for each of the Three Reviews	Outcome for each of the Three Reviews
Internal audit review reported to Scrutiny & Audit committee in November 2018, within the Internal Audit Activity Update Report 364/18. Full report CE-01 also available	The scope of the Internal Audit review was to:  Review the processes and evidence that led to the recommendation in Report 151/18  Consider the governance procedures applied in preparing the recommendation  Consider whether proper account was taken of the community's and partners' participation in assets disposal as required in the Community Empowerment (Scotland) Act 2015, and  If appropriate standards of	Roads Department Structural Survey report 09 July 1998 Roads Department Structural Survey report 26 July 2001 Roads Department Structural Survey report 2008 Roads Department File Note December 2010 Covering email from Ian Cochrane and Proposed New Priority Project for Demolition of Lochside Leisure Centre form, October 2016 bid for inclusion in financial plan 2016/21 Draft report for Communities Committee June 2017 Finance Report Register for Communities Committee June 2017 Note of meeting of the Capital projects Monitoring Group 15 March 2018 Millard Structural Inspection report 7 September 2018 Excel spreadsheet showing repair costs April 2012 to March 2017, showing 10 payments totalling £1,119.02	The evidence available was consistent with the decision making of officers in making their recommendation.  There is not strong written evidence for all of the (officers) decisions made and why they were made. Evidence for some of the areas reviewed was difficult and time-consuming for people to find. The decision making about Lochside Leisure Centre, and to some extent this review, relied on officers' knowledge of the history of the building and the events between its closure in 2017 and October 2018 rather than a definitive written record.  Report 151/18 assumes a level of knowledge and understanding of previous events and decision making. As noted in the previous section, there is not a clear written evidence trail that can be accessed easily, and there is no written record of the appraisal of the various options. This weakens the ability to fully evidence the process of reaching the recommendation (in Report 151/18). (Recommendations 1 to 3)  Evidence for the governance process in terms of consulting on the report prior to

The Three Reviews	Scope of Consideration for each of the Three Reviews	Source Evidence for each of the Three Reviews	Outcome for each of the Three Reviews
	probity and propriety in relation to best value would reasonably have been expected to be achieved.	Excel spreadsheet showing maintenance from 1998 to date, total £1,465,659 Internal inspection reports for the leisure centre from 2012 to 2016 Direct Ecology Ecological Survey Report Day bat survey and nocturnal surveys 10.08.2017 (version1)  Asset Management Plan for Lochside Leisure Centre October 2017  Timeline document from Ian Cochrane to Margo Williamson August 2018  Property memorandum dated 20/2/18 notifying departments of the leisure centre being available Lochside leisure ground lease Various emails and notes from meetings with a number of council staff, including emails with the potential purchaser, and Graeme Boyd/Ian Cochrane 22/8/18 re 5-10 year lifespan of building Various Courier articles about the Leisure Centre post Feb 2017  Education committee 18 April 2013 Report 254/13 Forfar Community Campus: consultation feedback/procurement authority approval request.	inclusion in the papers for the committee is limited, however there is nothing that suggests the correct procedures were not followed. In particular the robust process that is in place, where anyone who should have been consulted and was not would be able to note this at the pre-agenda stage, provides assurance on this issue. (Previous recommendations)  Adherence to Financial Regulations followed the required process, with the exception that the "Disposal Procedure Checklist" was not completed. It is not clear if this should have been completed or not. (Recommendation 4)  The sections of the Community Empowerment (Scotland) Act 2015 relating to change of use of Common Good assets were not in force in May 2018 when the Policy & Resources committee made their decision to declare the Leisure Centre surplus to Council requirements and to demolish it. (Recommendation 5)  Best Value is not only achieved in terms of financial considerations. A number of other circumstances were relevant and considered in this case. Strong, easily retrievable evidence was not available for all. At May 2018 it is clear that no viable option had been identified for the building and taking all of the wider circumstances into consideration the decision was not

The Three Reviews	Scope of Consideration for each of the Three Reviews	Source Evidence for each of the Three Reviews	Outcome for each of the Three Reviews
		PBSG 4 November 2016 Agenda Item 4 2016/21 Financial Plan EMT Papers 15 November 2016 and 10 January 2017 re Financial Plan and appendices A and B PBSG 26 January 2017 • Agenda item 4 paper 2 2016/2021 Financial Plan update • Minute Special Budget Meeting of Council 16 February 2017 Report 60/17 Policy & Resources committee May 2018 report 151/18 B5 bid for £500k for demolition	obviously the wrong one. (Recommendations 1 to 3)  Five recommendations were made: R1 Exit strategies should be developed as part of the decision making process to vacate a building. R2 Key discussions and decision making about potentially surplus assets should be fully recorded, including the reasons for accepting/rejecting various options. R3 Reports to committee should include a brief summary of the options considered, their pros and cons, and the reasons for rejecting options and the selection of the recommended action R4 The use of the "Disposal Procedure Checklist" referred to in the Financial Regulations at 17.1.3, and in the Guidance on Procedural Matters Relating to the Disposal of Land and Property should be clarified in terms of whether it is still in use and if so whether it should be used in cases of demolition. Thereafter the documents should be updated if required or the need for further guidance should be considered. R5 With Reference to Community Asset Transfer it can be difficult to identify when an enquiry from the community should be recorded. There is guidance about how enquiries should be dealt with but it may be that further guidance on when to record an enquiry should be considered.

The Three Reviews	Scope of Consideration for each of the Three Reviews	Source Evidence for each of the Three Reviews	Outcome for each of the Three Reviews
The judgement in the Petition by Messrs Guild and Stewart (the Petitioners) in the Judicial Review as considered in the Outer House of the Court of Session  https://www.scotcourts.gov.uk/docs/default- source/cos-general-docs/pdf-docs-for- opinions/2020csoh16.pdf?sfvrsn=0)	Below is the joint statement of the issues as agreed by both parties to the court action (1) Whether the decision was made in accordance with the procedure requirements of the respondent's own Standing Orders. If not, did the petitioners suffer any prejudice as a result. (2) Whether the decision made by the respondent required to be made under and within the statutory requirements of section 104 of the Community Empowerment (Scotland) Act 2015 ("the 2015 Act"). (Note this was on the basis that the land was Common Good. It was not disputed by the Petitioners that the building, namely the former Lochside Leisure Centre was not part of the Common Good) (3) Whether the decision	1/ Location map of Lochside Leisure Centre, Forfar 2/ Photograph of Lochside Leisure Centre, Forfar 3/ Letter from Guild Homes Limited to Angus Council dated 22 January 2019 4/ Email from Roz Brown, Member Services Supervisor (BrownR), Angus Council, to all Councillors of Angus Council dated 22 January 2019 5/ Angus Council Structural Survey Report, Lochside Leisure Centre dated 09 July 1998 6/ Angus Council Structural Survey Report, Lochside Leisure Centre dated 26 July 2001 7/ Angus Council Structural Overview, Lochside Leisure Centre dated 09 July 2008 8/ Minute of the meeting of Angus Council on 7 February 2019 9/ Offer by the Chamber Practice, Solicitors, on behalf of Donald Stewart to purchase Lochside Leisure Centre dated 30 January 2019 10/ Report 49/19 to the meeting of Angus Council on 7	The judge upheld none of the grounds of challenges and found in favour of Angus Council.
	made by the respondent	February 2019	

The Three Reviews	Scope of Consideration for each of the Three Reviews	Source Evidence for each of the Three Reviews	Outcome for each of the Three Reviews
	required to made under and was within the statutory requirements of section 15(4) of the Local Government (Scotland) Act 1994 ("the 1994 Act").  (4) Whether the decision made by the respondent required to be made under and was within the statutory requirements of sections 74 and 75 of the Local Government (Scotland) Act 1973 ("the 1973 Act").  (5) Whether the respondent took into account irrelevant considerations or failed to take into account relevant material considerations.  (6) Whether the respondent required to give proper, adequate and intelligible reasons for its decision and, if so, whether it did.  (7) Whether in all the circumstances the	11/ Letter from Burness Paull, Solicitors, on behalf of Guild Homes (Tayside) Limited to Angus Council dated 12 February 2019 12/ Letter from Angus Council to Burness Paull, Solicitors, dated 14 February 2019 13/ Excerpt from Angus Council's Facebook page on 21 February 2019 14/ Letter from Angus Council to Burness Paul, Solicitors, dated 22 February 2019 15/ Angus Council Report 48/19 16/ Agenda for Angus Council Meeting on 7 February 2020 17/ Emergency Agenda Item Addendum to Report 48/19 18/ Representations submitted to Angus Council on 7 February 2019 19/ Angus Council Report 151/18 20/ Angus Council Minutes of Meeting of Policy and Resources Committee on 1 May 2018	
	respondent's decision was unlawful	21/ Angus Council Scrutiny and Audit Committee Report 362/18	

The Three Reviews	Scope of Consideration for each of the Three Reviews	Source Evidence for each of the Three Reviews	Outcome for each of the Three Reviews
		22/ Angus Council Minutes of Meeting of Scrutiny and Audit Committee on 20 November 2018 23/ Letter from Angus Council dated 17 January 2019 24/ Report by Millard Consulting dated 7 September 2018 25/ Letter by Morgan Associates dated 19 October 2018 26/ Report by McLean Roofing dated 21 November 2018 27/ Report by Millard Consulting 17 December 2018 28/ Unattributed "Survey of Foundation Settlement" dated October 2010 29/ Newspaper and Social Media Extracts 30/ Email correspondence relating to a Freedom of Information request from 15 April	
The judgement in the Judicial Review as considered at the Inner House of the Court	There were two grounds of challenge in the written	2019 to 27 May 2019  1. Angus Council Report 48/19. 2. Report by Millard Consulting	The Court of Appeal determined that section 104 of the Community
of Session on Appeal	court documents but only one was taken forward on	dated 7 September 2018.  3. Report by Millard Consulting	Empowerment (Scotland) Act 2015 was engaged in terms of the Council's decision
https://www.scotcourts.gov.uk/docs/default- source/cos-general-docs/pdf-docs-for- opinions/2020csih50.pdf?sfvrsn=0	the day in court, namely that the statutory requirements of section	dated 17 December 2018. 4. Representation submitted to the Respondent on 7 February	of 7 February 2019 to demolish the former Lochside Leisure Centre and that accordingly the Council had an obligation to
opinions/2020csinso.pur: sivisii=0	104 of the Community Empowerment	2019. 5. Minute of Meeting of Angus Council on 7 February 2019.	consult publicly before taking such a decision. Accordingly, the decision of the

The Three Reviews	Scope of Consideration for each of the Three Reviews	Source Evidence for each of the Three Reviews	Outcome for each of the Three Reviews
	(Scotland) Act 2015 had not been followed by the Council. This was on the basis that the building, being the former Lochside Leisure Centre) as well as the land beneath it was Common Good.	6. Offer by Chamber Practice, Solicitors on behalf of Donald Stewart to purchase Lochside Leisure Centre dated 30 January 2019. 7. Report 49/19 Meeting of Angus Council on 7 February 2019. 8. Location map of Lochside Centre, Forfar. 9. Photograph of Lochside Leisure Centre, Forfar. 10. Letter from Guild Homes Limited to Angus Council dated 22.1.19. 11. Note of Argument for the Petitioner as lodged in the Outer House. 12. Note of Argument for the Respondent as lodged in the Outer House.	Council of 7 February 2019 was set aside by the court

Access to council officers, other witnesses including the Petitioners, and further evidence will be arranged as required.

## **Budget**

An estimate of £10,000 to £15,000 to discharge the proposed remit has been made.

## Timeframe

Assuming agreement of the remit at Council on 5 November 2020 and the procurement method chosen a period of 12 weeks from commissioning to a draft report being available is considered reasonable. Allowing for the impact of the festive break and budget preparation this would mean a report coming back to Council in March 2021 (meeting scheduled for 18 March 2021).

# Key contacts to provide evidence

Margo Williamson, Chief Executive
Jackie Buchanan Director of Legal and Democratic Services
lan Lorimer Director of Finance and former Head of Finance and Legal Services
lan Cochrane Director of Infrastructure

Cathie Wyllie Service Leader Internal Audit