



# External review of decision making re demolition of Lochside Leisure Centre

Angus Council

February 2021



## Contents

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|   |    |
|---|----|
| Key messages  | 1  |
| Executive Summary                                     | 2  |
| Scope   | 3  |
| Background and context                                | 4  |
| Our findings  | 6  |
| Action plan   | 13 |
| Appendix 1 – Table One from Statement of Requirements | 16 |
| Appendix 2 – Table Two from Statement of Requierments | 19 |

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## Key messages

- Based on our review of evidence and discussions with officers, the decision by the Council on 7 February 2019 to approve the demolition of Lochside Leisure Centre was not unreasonable.
- Three weaknesses were identified from our review, none of which are significant in nature.
- The main lesson to be learned is the importance of producing options appraisals to support decision making. Management should develop formal guidance for the documentation of options appraisals. Guidance should be based around recognised best practice such as HM Treasury Green Book and the Accounts Commission's "Options appraisals: are you getting it right?" publication. Documentation of options in Council and Committee papers should be proportionate to the nature of the decision being made.

## Executive summary

The issue of the future of Lochside Leisure Centre has been a complex, continuing and time consuming one. An outcome of the process to date has been a landmark decision from the Inner House of the Court of Session on Common Good assets.

This review does not revisit or challenge the decisions made in the Outer and Inner House cases of the Court of Session. We have reviewed those decisions along with the supporting evidence contained within the inventory of information that was submitted to the Court. Instead, we have focused on the adequacy of processes within the Council that led to the decision being made to recommend demolition of Lochside Leisure Centre and to identify any lessons that could be learned in supporting effective future decision making.

The primary matter to be considered by this review was the adequacy of the decisions made by the Council in relation to the future of Lochside Leisure Centre.

Based on our review of evidence and discussions with officers, we have determined that the decision made by the Council to recommend demolition of Lochside Leisure Centre in 2019 was not unreasonable, albeit the options appraisal provided in the paper (48/19) to Council on 7 February 2019 was not fully consistent with best practice.

Our review has identified weaknesses relating to the decision to demolish Lochside Leisure Centre and we have set out recommendations relating to those within this report. The weaknesses though were not of a significant nature.

Three of the weaknesses identified in our review were similar to those raised in the Internal Audit report in November 2018. We echo the recommendations made in that report and reference these in our own recommendations, where relevant, rather than repeat them.

The weaknesses identified specifically from our review are:

- The paper (48/19) presented to Council on 7 February 2019 provided Elected Members with better information to support decision making than was the case with the paper to Policy & Resources Committee on 1 May 2018. The information within the 7 February 2019 paper, however, was not fully consistent with best practice for documentation of options appraisals.
- The need for better documentation and communication of the decision not to proceed with the original intent of having an invasive structural survey of Lochside Leisure Centre in October 2018.
- It would have been helpful in mid-January 2019 to have had set out indicative timescales for making a decision on the future of Lochside Leisure Centre to those parties who potentially had an interest in purchasing it.

Management should develop an action plan to address any actions contained within this report that have not already been addressed through previous reports.

We are grateful for the cooperation of Angus Council officers during our work. This included virtual meetings and the provision of large volumes of information relating to decisions made in the period 2013 to 2020.

## Scope

We have performed our review in line with Angus Council's Statement of Requirements. These are set out below.

Angus Council's full Council at its meeting on 5 November 2020 agreed to the following remit for an independent external review of all evidence and decisions taken from 2013 to present in determining the decision to demolish Lochside Leisure Centre, Forfar.

The scope of work was to:

- review the decisions made from 2013 to October 2020 to demolish the former Lochside Leisure Centre (LLC), as outlined in [Appendix 1](#);
- consider the Three Reviews in [Appendix 2](#) ;
- review the source evidence relevant to the three reviews in Appendix 2 to the extent to which we 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
  - provide a written report on the findings.

In fulfilling the above scope, we were free to consider existing evidence afresh and reach our own conclusions and recommendations on it.

## Our approach

In conducting our review, we met with the following Council officers:

- Margo Williamson, Chief Executive
- Jackie Buchanan, Director of Legal Services
- Ian Cochrane, Director of Infrastructure
- Ian Lorimer, Director of Finance
- Cathie Wyllie, Service Leader – Internal Audit

Due to the Covid-19 pandemic, all meetings were held remotely by video.

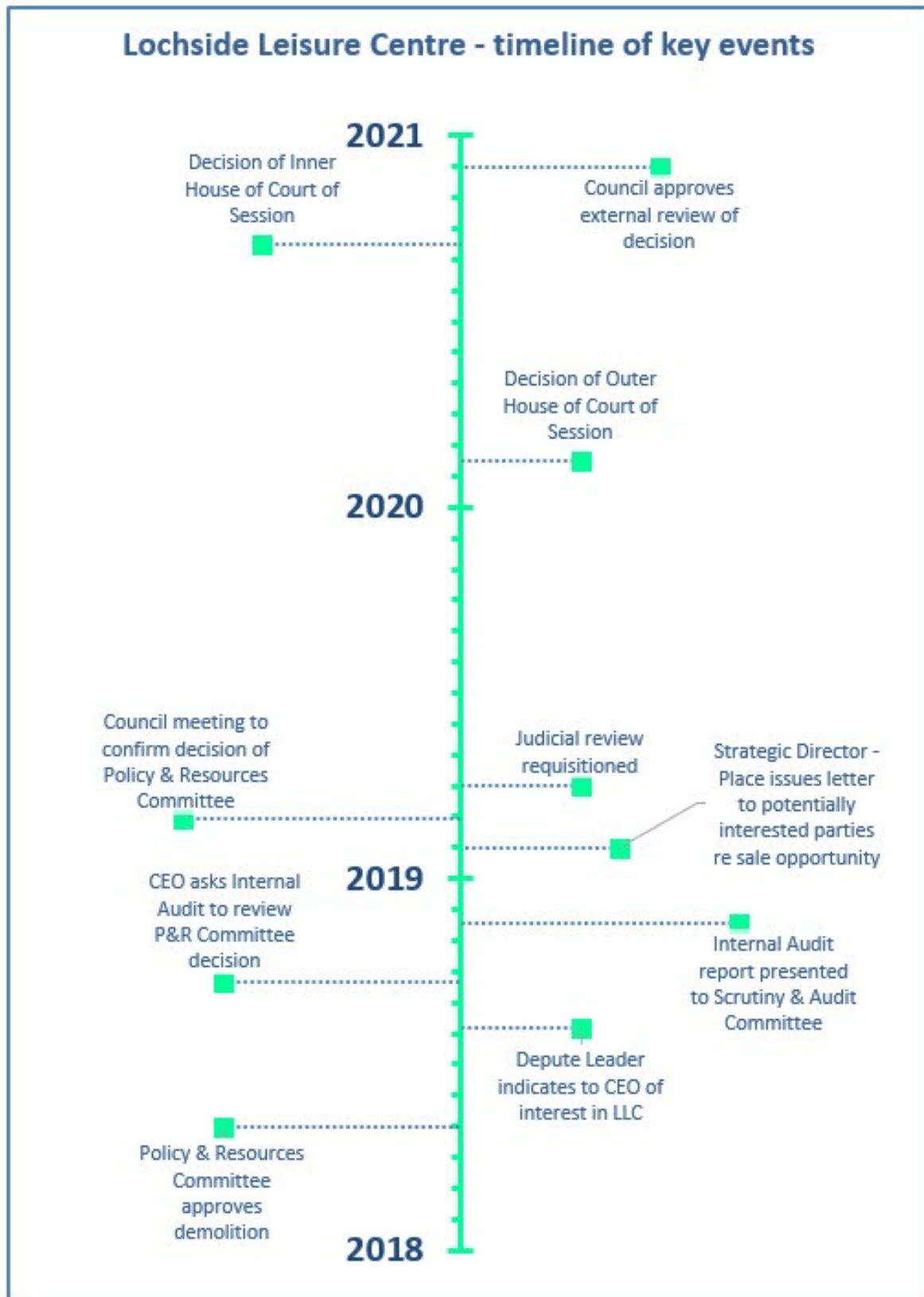
In conducting our work, we have reviewed each of the papers in Appendices 1 and 2 respectively, as well as relevant supporting papers and evidence to allow us to form an assessment of the decision making by the Council and to identify lessons learned that would support better governance and decision making in the future.

## Background and context

The future of LLC was placed into question in April 2013 when the Education Committee agreed to build Forfar Community Campus. The Campus would provide leisure facilities in a modern environment rendering LLC redundant for that purpose.

We have set out below a timeline of key events between 2018-2020 relevant to this review to assist readers in understanding the chronology of events relating to the future of LLC. Prior to this, key events were:

- The Council had received reports on the condition of the building in 1998, 2001 and 2008. The 1998 report was produced by the then Roads department and included an external report from Terra Tek who performed detailed ground investigation work. That 1998 report also identified that there had been concerns relating to the structure of the building dating back to the mid-1980s. A consistent theme of the surveys was the need for continuous monitoring of movements in the building.
- April 2013 – Education Committee approval to build Forfar Community Campus
- February 2017 – approval of £500,000 in the capital budget for demolition of LLC.



## Our findings

A number of our findings and recommendations echo those set out in the Internal Audit report in November 2018. This report was commissioned by the Chief Executive in September 2018 to establish whether proper process had been followed in the decision making to that point. The Internal Audit team operates in line with the Public Sector Internal Audit Standards and is independent, with this being recognised in the External Quality Assessment report that was submitted to the Scrutiny & Audit Committee on 26 January 2021.

We have set out in separate sections below areas where we believe that there is scope for improvement in processes and controls that support effective governance and decision making.

Where it is the case that the Internal Audit review in November 2018 identified issues of a similar nature, we have identified this and referenced the relevant finding in that report rather than restating it. We have also provided, where relevant, recommendations for management that should support better governance and decision making in the future.

### Approval of the decision to demolish LLC

The issue that Officers and then Elected Members had to deal with following the closure of LLC was the future of the building.

#### **Policy and Resources Committee 1 May 2018**

The decision to demolish LLC was made at the Policy & Resources Committee meeting on 1 May 2018. From a review of minutes of the meeting, a unanimous decision was reached to approve the demolition.

We would expect that a decision of this nature would be informed by an options appraisal which identified and formally evaluated a range of options.

Weaknesses have been identified in our work on the quality of documenting key decisions. Internal Audit reached similar conclusions in their review in late 2018.

We reviewed the paper submitted to the committee (paper 151/18) and noted that it did not contain the level of detail that we would expect to support decision making. The paper did not contain any options appraisal. We also noted from discussions and a review of the minutes of this meeting that there was no request from Elected Members, as those responsible for making the decision, for any additional information.

For a decision of this nature, we would expect that those responsible for making a decision would be provided with information that identified a range of potential options for the future of LLC. In the case of LLC, these would typically be, for example, do nothing, sale, community asset transfer, alternative or internal use, demolition, etc.

In not formally documenting the appraisal of different options for LLC, the Council has missed the opportunity to demonstrate that the decision made represents Best Value. It also indicates potential weaknesses in how informed decisions are made



The decision to recommend demolition in paper 151/18 to the Policy & Resources Committee was based on three primary factors:

- LLC had closed as its functions had moved to the Forfar Community Campus. The building was vacant and had been, according to local media reports in the months leading up to the decision, targeted by vandals during the 12 months it had been closed;
- Alternative uses / users had been informally explored without success. This included communications with other Council services to explore interest as well as discussions with Angus Alive and community groups; and
- There had been a history of concerns regarding subsidence of LLC and ongoing maintenance of the building and there was a belief within the Technical Services team that LLC had a useful life of 5-10 years without further investment and/or improvement works.

In the absence of a detailed options appraisal, it is inherently difficult to determine if the recommendation made by officers was the one that represented best value for the Council.

### **Council meeting 7 February 2019**

A paper (48/19) was submitted to the Council meeting on 7 February 2019, recommending Elected Members confirm the decision of the Policy & Resources Committee meeting of 1 May 2018.

That paper took on board the recommendation from the Internal Audit report from November 2018 to include options appraisal when requesting Elected Members to make a decision. The paper set out five options in total:

- 1 – Do nothing
- 2 – Demolish
- 3 – Sale via current offer
- 4 – Sale via full and formal marketing
- 5 – Disposal via Community Asset Transfer

The paper included a brief evaluation of the five options by identifying advantages, disadvantages and cost benefit analysis of each. The paper also contained significantly more background information and explanation of options than the paper to Policy & Resources Committee on 1 May 2018. The Council approved the decision by a majority of 13 in favour and 8 against.

Our review of this paper has identified that it represented better practice than the paper to Policy & Resources Committee on 1 May 2018. It was beneficial for Elected Members to have greater information to support their decisions, although we identified scope for further development of the documentation of options appraisal so that it is line with best practice.

For example, at paragraph 6.5, only two of the five options were subject to financial evaluation. It is stated in the paper that the information provided is estimated for “*main costs given time constraints to produce this paper*”. In addition, there could have been established criteria set out for evaluation of the respective merits of each option.

In reviewing the decision taken by the Council to approve the decision to demolish LLC, we have considered the following:

- Review of surveys performed on LLC from 1998, 2001 and 2008 by the Council as well as subsequent surveys commissioned by a third party and the Council (Millard and Morgan reports respectively).
- Review of relevant evidence, where this was available, including Committee papers.
- Discussions with senior officers regarding the circumstance relating to the timeline of activities and in making the recommendation to the Policy & Resources Committee.
- The impact of the lack of options appraisal in paper 151/18 to the Policy & Resources Committee as well as the more detailed information contained within paper 48/19 to Council on 7 February 2019.

Taking all of this into account, and recognising the areas for improvement identified above, the recommendation by Council officers to the Policy & Resources Committee in May 2018 was not unreasonable.

### **Recommendations**

See recommendation R1 in the Internal Audit report (362/18).

**R1** We acknowledge that management has committed to improve information within Committee reports to support decision making. As stated above, the report to Council on 7 February 2019 to confirm the decision of the Policy & Resources Committee on 1 May 2018, represents better practice through the inclusion of all reasonable options, pros and cons of each as well as a cost-benefit analysis.

As a minimum, officers should present a summary of detailed options appraisals within Committee reports. Formal guidance on what should be included within options appraisal should be produced and this should include:

- Details of each option considered
- Analysis of lifecycle costs and benefits associated with each
- Formal evaluation criteria to be applied to support decision making
- Rationale for exclusion or no consideration of specific options
- Risks associated with each option
- Qualitative and quantitative benefits of each options as well as disbenefits.

In producing formal guidance, reference should be made to the HM Treasury Green Book as well as the Accounts Commission guidance from March 2014 "[Options Appraisal: are you getting it right?](#)". The latter was part of a series of documents produced for councillors and officers. Guidance in relation to options appraisals should recognise the need for proportionality of documentation to support decisions. It should set out minimum documentation requirements to reflect factors such cost, risk and complexity of the decision.

The detailed options appraisals should also be accessible to Elected Members upon request.

**R2** In addition, whilst the information in the paper to Policy & Resources Committee on 1 May 2018 did not provide sufficient information for Elected Members to make a decision, it is incumbent upon those responsible for making a decision to ensure that they have sufficient information to allow them to do so. Where sufficient information is not provided in Committee

or Council papers, Elected Members should at pre-agenda or, at the formal meeting, request additional information to support decision making.

Consideration should be given to providing Elected Members with training/development that would support how they provide effective scrutiny over decisions.

## Closing LLC

The paper to the Education Committee on 18 April 2013, contained the following at para. 10.6:

*“At this stage, it is uncertain what will happen to the physical assets that become surplus to the Council’s requirements in due course (i.e. the existing town swimming pool and Lochside Leisure Centre). The Council would aspire to dispose of these assets in a cost neutral position at worst. However, in the event that demolition and site clearance is identified as the preferred option, then, at this stage, it is estimated that net additional costs associated with that approach, up to a value of around £150k, could potentially be contained within the overall development budget.”*

As stated in the Internal Audit report, there was no formal exit strategy in place for either building that closed once the Forfar Community Campus was opened, nor were costs factored in and ring-fenced within the business case for the Campus, to accurately reflect the total cost of the project. This meant that funding had to be sought from the Capital budget as part of the 2016/17 budget round with funding approved for the 2017/18 financial year.

### **Recommendation**

See recommendation R1 in the Internal Audit report (362/18).

## Communications and documentation

In conducting this review, we have identified issues in relation to documentation and communication at key stages of the process. These are set out in chronological order below.

### **Community and Angus Alive interest**

In looking at future options for LLC, management stated that they explored future use with a number of parties, including community groups, Angus Alive and within other Council directorates.

As was stated within the Internal Audit report, documented evidence of communications and discussions with community groups and Angus Alive was not available. As a result, we have had to rely on the recollection and knowledge of officers. We were told that options considered with Angus Alive include a central resource centre as well as a temporary library decant.

We did have sight of a memo that was circulated to all heads of service within the Council seeking interest in the facility to which no positive response was received.

The above is referenced in the paper 151/18 to Policy & Resources Committee on 1 May recommending demolition.

### **Recommendation**

See recommendation R2 in the Internal Audit report (362/18).

### **Structural survey – late 2018**

Much of the discussion around the future of LLC has centred on the results of surveys. The Council had conducted several surveys, in 1998, 2001 and 2008 as there were concerns regarding the structural integrity of the building. The 1998 report identified that there were concerns regarding cracks in the building dating back to the mid-1980s. Since 2010, the Council had undertaken annual inspection reviews, although these were not as extensive as a survey and primarily focused upon repair and maintenance issues. Internal professionally qualified staff within the Council estimated that LLC had a useful life of 5-10 years. This was documented in an email, rather than as part of a formal inspection/survey.

A survey was performed on behalf of an interested party in September 2018, the Millard Report. This was a visual survey of the building. This survey estimated that the useful life of the building could be up to 30 years, on the basis that some remedial work was performed.

To cut through this, the Council approached an external party to undertake an invasive structural survey of the building. The Internal Audit report reflects an understanding that this was what was being commissioned. This was also a common understanding with one other person we met.

The email to Shepherd Chartered Surveyors from the Service Leader – Assets reflects this. That email on 3 October 2018 states:

*“In addition I’d like an invasive structural survey to include assessing the causes of movement in the building and any likely future movement.”*

However, the actual review performed (which became known as the ‘Morgan report’ – Shepherd Chartered Surveyors sub-contracted the review to Morgan Associates) included a site visit and, in effect, a review of the Council’s documentation and the Millard survey.

It was explained to us, and this is reflected to some extent in the Morgan report, that there was limited value in performing an invasive structural survey as it would not have provided any further insight on the building condition than was contained in historic reports held by the Council. Extract from Morgan Report below:

*“At the recent meeting it was agreed that in view of the apparent condition no further invasive inspection would be required, and report from ourselves in brief confirmation of discussions would be sufficient. We trust this will be satisfactory however please do not hesitate to call to discuss anything further.”*

It was stated to us that a ground survey would have been required which would have resulted in significant cost (understood to be in six figures).

We understand that the decision not to perform an invasive structural survey was made during a discussion between Angus Council officers, Shepherd Chartered Surveyors and

Morgan Associates following a site visit to LLC. That meeting was not documented by a Council officer. We do recognise that the Morgan report was tabled at the Scrutiny & Audit Committee on 20 November 2018 and was also referenced in the paper to Council on 7 February 2019.

This reason for the decision not to perform an invasive structural survey, though apparently well intended and justifiable, was not communicated to internal key stakeholders who would therefore have understood that a more extensive review had been commissioned. This did not afford the opportunity for others who had a direct and/or indirect interest in this review to question this decision or to suggest alternative approaches to the issue around the surveys.

### **Recommendation**

**R3** We recommend that there is better documentation and communication of such decisions with all relevant parties informed where there is a change of course in a planned action. This should ensure appropriate checks and balances within processes, allow for the risk and impact of such changes to be considered and alternative courses of action investigated.

### **Council meeting – 7 February 2019**

The decision to include an Urgent paper on LLC to the Council meeting on 7 February 2019 was a core element of the Judicial Review. Compliance with processes and the law on this matter were dealt with extensively by Lady Carmichael in the Outer House decision of the Court of Session. That determination was not subject to challenge as part of the Inner House case. As a result, we have made no determination of the processes followed by the Council as part of our review as it was deemed reasonable in the decision of the Outer House of the Court of Session.

Prior to the Council meeting on 7 February 2019, the then Strategic Director – Place issued a letter to potentially interested parties on 17 January 2019 offering the opportunity to conduct a site visit of LLC and set a deadline of 30 January 2019 for offers to be received.

The letter of 17 January 2019 stated:

*“To facilitate any sales process elected members would need to call for a meeting to consider and reverse (or reaffirm their commitment to demolition) the current agreement to demolish, the calling for and setting up of this meeting may take a number of weeks.”*

This was vague and gave no indication that this issue would be dealt with or the process that would follow from then i.e. the submission of a paper to Council on 7 February 2019, especially when it is stated in the same letter that:

*“By early February it is the Council’s intention to enter into a legally binding demolition contract”.*

This implies that a decision on this process would have to have been made at pace following the 30 January 2019 deadline for bids and creates confusion on the timescales for decisions.

### **Recommendation**

**R4** Whilst not a legal requirement to do so, it would have been helpful for Officers to have set out an indicative timetable for a decision to potentially interested parties at the outset so that they were aware of the process that would then follow. This should be borne in mind for future processes that have deadlines which then impact on the decision-making timetable.





| Recommendation   | Management response   | Responsible officer                              | Timescale             |
|--|---|--|-----------------------|
| <p>options appraisals should recognise the need for proportionality of documentation to support decisions. It should set out minimum documentation requirements to reflect factors such as cost, risk and complexity of the decision.</p> <p>The detailed options appraisals should also be accessible to Elected Members upon request.</p>  |   |  |                       |
| <p><b>R2</b> In addition, whilst the information in the paper to Policy &amp; Resources Committee on 1 May 2018 did not provide sufficient information for Elected Members to make a decision, it is incumbent upon those responsible for making a decision to ensure that they have sufficient information to allow them to do so. Where sufficient information is not provided in Committee or Council papers, Elected Members should at pre-agenda or, at the formal meeting, request additional information to support decision making.</p> <p>Consideration should be given to providing Elected Members with training/development that would support how they provide effective scrutiny over decisions.</p> | <p>Training to support elected members in their scrutiny over decisions will be undertaken and included in future member Induction training.</p>                                      | <p>Director of Legal and Democratic Services</p> | <p>September 2021</p> |
| <p><b>R3</b> We recommend that there is better documentation and communication of such decisions with all relevant parties informed where there is a change of course in a planned action. This should ensure appropriate checks and balances within processes, allow for the risk and impact of such changes to be considered and alternative courses of action investigated.</p>   | <p>Documentation of decisions where there is a change of course in a planned action agreed at Committee will be improved and appropriately communicated with all relevant parties</p> | <p>Director of Infrastructure</p>                | <p>September 2021</p> |



| Recommendation  | Management response   | Responsible officer               | Timescale             |
|---|---|-----------------------------------|-----------------------|
| <p><b>R4</b> Whilst not a legal requirement to do so, it would have been helpful for Officers to have set out an indicative timetable for a decision to potentially interested parties at the outset so that they were aware of the process that would then follow. This should be borne in mind for future processes that have deadlines which then impact on the decision-making timetable.</p> | <p>We will build on our practice to standardise our communication with interested parties and set out an indicative timetable for our property transaction to potentially interested parties so that they were aware of the process that we follow.</p> | <p>Director of Infrastructure</p> | <p>September 2021</p> |

## Appendix 1 – Table One from Statement of Requirements

| Committee Report   | Minuted decision   |
|--|--|
| <p><b>18 April 2013 Education committee report 254/13 Forfar Community Campus: consultation feedback /procurement authority approval request.</b></p> <p><a href="http://archive.angus.gov.uk/ccmeetings/reports-committee2013/Education/254.pdf">http://archive.angus.gov.uk/ccmeetings/reports-committee2013/Education/254.pdf</a></p> <p>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 &amp; Maintain (DBFM) model.”</p> <p><b>Observation</b> 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.</p> | <p>“The Committee agreed:-</p> <p>(i) to note the contents of the Report; (ii) to note the Scottish Government funding conditions;</p> <p>(iii) to note the feedback from the recent consultation exercise with the Forfar community;</p> <p>(iv) to approve the proposed scope of the community campus facilities;</p> <p>(v) to note the current progress in relation to the initial development of the project;</p> <p>(vi) to authorise the Strategic Director – People to procure the project using the hub Design, Build, Finance &amp; Maintain model;</p> <p>(vii) to note the next steps in relation to the development of the project and the associated risks; and</p> <p>(viii) to note the financial implications.”</p> |

| Committee Report  | Minuted decision  |
|---|---|
| <p><b>16 February 2017 Special Budget Meeting of Council Report 58/17 – Provisional Revenue and Capital Budgets – background report</b></p> <p><a href="https://www.angus.gov.uk/sites/angus-cms/files/2017-07/58_0.pdf">https://www.angus.gov.uk/sites/angus-cms/files/2017-07/58_0.pdf</a></p> <p><b>Report 60/17 Provisional Capital Budget 2017/18</b></p> <p><a href="https://www.angus.gov.uk/sites/default/files/2017-07/60.pdf">https://www.angus.gov.uk/sites/default/files/2017-07/60.pdf</a></p> <p>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</p> <p><b>Observation</b> 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)</p> | <p>The Council resolved to approve the motion which included that 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 60/17”</p> |
| <p><b>1 May 2018 Policy &amp; Resources Committee Report 151/18</b></p> <p><a href="https://www.angus.gov.uk/sites/default/files/2018-04/151.pdf">https://www.angus.gov.uk/sites/default/files/2018-04/151.pdf</a></p> <p>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.</p>  | <p>“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.”</p>            |

| Committee Report  | Minuted decision   |
|---|--|
| <p><b>7 February 2019 Council Report 48/19 and Addendum Lochside Leisure Centre</b></p> <p><a href="https://www.angus.gov.uk/sites/default/files/2019-02/Report_48_Additional%20Item.pdf">https://www.angus.gov.uk/sites/default/files/2019-02/Report_48_Additional%20Item.pdf</a></p> <p><a href="https://www.angus.gov.uk/sites/default/files/2019-02/Report_48_Addendum_Additional%20Item.pdf">https://www.angus.gov.uk/sites/default/files/2019-02/Report_48_Addendum_Additional%20Item.pdf</a></p> <p>Abstract The report seeks to inform the Members regarding Lochside Leisure Centre, Craig O' Loch Road, Forfar; and the options for consideration. 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</p> | <p>Article 7</p> <p>Provost Ronnie Proctor, seconded by Councillor Fairweather, moved that this council:-</p> <p>(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</p> <p>(ii) agrees that the modular building previously used as changing rooms is offered for sale, subject to removal by the prospective purchaser.</p> <p>Councillor Davy, seconded by Councillor Boyd, moved as an amendment, that the Council agrees Option 4 – to sell the property via full formal marketing.</p> <p>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 Lulgair, 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.</p> <p>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</p> |
| <p><b>February 2019 Council Report 49/19 Private Lochside Leisure Centre – Offer of Purchase</b></p>  | <p>In light of the decision taken at Article 7 above, the Council resolved to note the contents of the Report.</p>   |

## Appendix 2 – Table Two from Statement of Requirements

| The Three Reviews  | Scope of Consideration for each of the Three Reviews   |
|--|--|
| <p><b>Internal audit review</b> reported to Scrutiny &amp; Audit committee in November 2018, within the Internal Audit Activity Update Report 362/18<br/><a href="https://www.angus.gov.uk/sites/angus-cms/files/2018-11/Item%207%20Report%20362%20Internal%20Audit%20Activity%20Update.pdf">https://www.angus.gov.uk/sites/angus-cms/files/2018-11/Item%207%20Report%20362%20Internal%20Audit%20Activity%20Update.pdf</a></p>     | <p>The scope of the Internal Audit review was to:</p> <ul style="list-style-type: none"> <li>• Review the processes and evidence that led to the recommendation in Report 151/18</li> <li>• Consider the governance procedures applied in preparing the recommendation</li> <li>• 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</li> <li>• If appropriate standards of probity and propriety in relation to best value would reasonably have been expected to be achieved.</li> </ul>  |
| <p>The judgement in the Petition by Messrs Guild and Stewart (the Petitioners) in the <b>Judicial Review</b> as considered in the Outer House of the Court of Session<br/><br/><a href="https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csoh16.pdf?sfvrsn=0">https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csoh16.pdf?sfvrsn=0</a></p> | <p>Below is the joint statement of the issues as agreed by both parties to the court action</p> <p>(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.</p> <p>(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"). <b>(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)</b></p> <p>(3) Whether the decision made by the respondent required to be made under and was within the statutory requirements of section 15(4) of the Local Government (Scotland) Act 1994 ("the 1994 Act").</p> <p>(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").</p> <p>(5) Whether the respondent took into account irrelevant considerations or failed to take into account relevant material considerations.</p> <p>(6) Whether the respondent required to give proper, adequate and intelligible reasons for its decision and, if so, whether it did.</p> <p>(7) Whether in all the circumstances the respondent's decision was unlawful</p> |
| <p>The judgement in the Judicial Review as considered at the <b>Inner House</b> of the Court of Session on <b>Appeal</b></p>   | <p>There were two grounds of challenge in the written court documents but only one was taken forward on the day in</p>   |

| The Three Reviews   | Scope of Consideration for each of the Three Reviews   |
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| <a href="https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csih50.pdf?sfvrsn=0">https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csih50.pdf?sfvrsn=0</a> | court, namely that the statutory requirements of section 104 of the Community Empowerment (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. |



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