

CLACKMANNANSHIRE COUNCIL

Report to: Clackmannanshire Council

Date: 15 December, 2011

Subject: The Disposal of Land by Local Authorities (Scotland) Regulations 2010 - Minute of Meeting of Council of 3rd November, 2011 - Item CC.71 - Alva Pool: Ochil Leisure Enterprise Business Case

Report by: Chief Executive (as Monitoring Officer)

1.0 Purpose

- 1.1 The purpose of this report is to enable officers to implement a Council decision lawfully by:
- 1.2
 - a) Alerting Council to the requirements of Section 74 of the Local Government (Scotland) Act 1973 (as amended) which provides that a local authority shall not dispose of land for a consideration less than the best that can reasonably be obtained except in circumstances set out in The Disposal of Land by Local Authorities (Scotland) Regulations 2010; and
 - b) Seeking confirmation that the Council is satisfied that those circumstances have been satisfied in relation to its decision recorded at Item CC.71 of the Minute of Meeting of Council of 3rd November, 2011 (Alva Pool: Ochil Enterprises Business Case).

2.0 Recommendation

- 2.1 It is recommended that the Council considers its decision as detailed at paragraph 3.1 of this report and confirms that it is satisfied that it has adequately appraised the proposal and applied the statutory requirements of section 74 of the Local Government (Scotland) Act 1973 and related Regulations to enable it to dispose of the Alva Pool Complex and associated car park legally for a consideration less than the best that can be obtained.

3.0 Considerations

- 3.1 The decision at item CC.71 states:- *"The Council agreed unanimously to transfer the Alva Pool Complex and associated car park ("the Complex") to Ochil Leisure Enterprises ("OLE") for a sum of £1, along with a sum of not less than £100,000 (ie. the sum identified for demolition costs) to operate the Complex as a community facility for the benefit of the people of Alva and*

Clackmannanshire. In the event that the Complex is no longer required by OLE, the Complex to be transferred back to the Council."

- 3.2 Section 74 of the Local Government (Scotland) Act 1973 (as amended) provides that a local authority shall not dispose of land for a consideration less than the best that can reasonably be obtained except in circumstances set out in The Disposal of Land by Local Authorities (Scotland) Regulations 2010.
- 3.3 The Regulations specify two essential requirements whereby the Council must:-
- (a) *appraise and compare the costs and other disbenefits and the benefits of the proposal; **and***
 - (b) *be satisfied (i) that the disposal for that consideration (in this case £1) is reasonable and (ii) that the disposal is likely to contribute to the promotion or improvement of (a) economic development or regeneration, (b) health, (c) social well-being, or (d) environmental well-being in respect of the whole or part of the Council's area or any persons resident or present in that area.*
- 3.4 The power to advance "well-being" includes power to incur expenditure, give financial assistance, and provide staff, goods, materials, services or property to any person.
- 3.5 Having taken the decision as detailed at 3.1 Members must be satisfied that their decision meets the requirements set out at paragraph 3.3, otherwise they are acting ultra vires i.e outwith their legal powers.

4.0 Background

- 4.1 The position now before Members arises in slightly unusual circumstances. What Members had before them at the Council Meeting of 3rd November, 2011 was not an appraisal of the benefits and disbenefits of the proposal ultimately adopted by the Meeting, but a report on the Interim Business Plan put forward by Ochil Leisure Enterprises by the Head of Facilities Management which expressed the officer's professional opinion and which Council was invited to note.
- 4.2 This report is not submitted because Members declined to accept the recommendation of that report but because the decision ultimately taken by the Council on the matter requires confirmation of certain matters which were not explicitly and formally agreed by the meeting.
- 4.3 Specifically, there are legal requirements which must be met before the land and buildings comprising Alva Swimming Pool can be disposed of at less than the best price that can reasonably be obtained. In order to comply with those legal requirements and thus allow officers lawfully to implement Council's unanimous decision, it is a requirement that members' conclusions and reasons with reference to the above regulations are properly set out and recorded.

5.0 Consideration of the Relevant Requirements of Disposal of Land by Local Authorities Regs etc

Contribution to the Promotion or Improvement Well-Being

- 5.1 The decision involves the retention of a swimming pool and narrates that the disposal is to operate as a community facility for the benefit of the people of Alva and Clackmannanshire. Substantial local community support for the proposal has already manifested itself to the Council in various forms. Sections 2.1 and 3 of the OLE Business Plan describe how the community running of the pool complex would contribute to economic and social well-being and health improvement.
- 5.2 Copies of the Interim Business Plan had been provided individually to members, who are invited to confirm that they:
- a) have had regard to these sections of the Interim Business Plan and that these sections form part of the basis for the decision CC71; and
 - b) are, therefore, satisfied that there is a reasonable basis for their concluding that the disposal is likely to contribute to the health and social wellbeing of at least part of the Council's area and persons resident in that part.

Disposal At Consideration Less Than Can Reasonably Be Obtained

- 5.3 Having regard to the imposed restriction on use and provided that the stipulation in the decision that the Complex is to be transferred back to the Council when it is no longer required as a community facility for the benefit of the people of Alva and Clackmannanshire can be adequately and legally secured, Members may consider that a consideration of £1.00 is reasonable in the circumstances.
- 5.4 Members were made aware that the Council has rated the Alva Pool Complex building as in need of major repair immediately which would involve major refurbishment expenditure (circa £3M). It is difficult to apply a positive asset value to the land and buildings in the context of the premises as a swimming pool requiring major refurbishment identified in previous Council feasibility studies. Community swimming pools are not regarded as major profit generators and, therefore, if the Swimming Pool were to be advertised as a going concern, it would be unlikely to find a buyer, far less achieve a substantial capital receipt. The potential value to the Council lies, as it would to any potential buyer, in the demolition and clearance of the site and its marketing as a development site along with the adjoining site created from the demolition of the Alva Academy. The specified retention as a community swimming pool and facility with the requirement that it will be transferred back when no longer required as such a community facility was viewed by Council as justifying that to transfer the asset for £1 is reasonable.
- 5.5 Further the Council was aware of strength of community support for the retention of the swimming pool. It was considered that OLE would have the best opportunity to obtain external funding support if the transfer took place early for a nominal value allowing the group and funders clarity on asset

ownership. This would support early decisions by funders. In the event that OLE were not able to operate/develop the facility in accordance with the objectives contained in their interim business plan the asset would revert via a clawback to the Council.

- 5.6 Council is invited to confirm that these factors were part of the basis for their concluding that disposal at a nominal consideration is reasonable.

Appraise and Compare Cost, Benefits and Disbenefits

- 5.7 It is estimated that capital expenditure of £100,000 will be required to meet the demolition and clearance costs of the existing building but this cannot be regarded as a saving since the decision taken requires that this sum is given to OLE to assist their re-opening of the pool.
- 5.8 As required by a previous council decision, the swimming pool has been retained on a care and maintenance basis at an approximate cost of £8,000 per month (approximately £96,000 per annum) and as soon as the responsibility for the building transfers to OLE, there will be an immediate revenue saving to the Council.
- 5.9 Having regard to the current economic climate and, in particular, what can only be regarded as a depressed housing property market, it is difficult to assess when a sale as a development site might be achieved and, more significantly, the size of any capital receipt which might be generated. This is certainly not the optimum time to assemble and market a potential housing site and the Council has already experienced the consequences of the changed property market.
- 5.10 A comparison of the benefits and disbenefits is not limited to purely financial considerations and the retention and operation of the community swimming pool facility represents a benefit greater in community terms than, for example, the ultimate development of the site for housing, particularly when there does still remain a site which can be marketed for housing purposes and is capable of achieving a capital receipt, as well as a redevelopment for private housing with an element of social housing. The development of the adjoining site can be undertaken in such a way that it allows for further development of the swimming pool site should it return into the Council's ownership.
- 5.11 At the Council meeting, Members had before them the report by the Head of Facilities Management highlighting his assessment of the interim Business Plan. That report was not an appraisal of the proposal adopted by Council. As such, members are invited to confirm that having regard to the considerations set out in this report, the Interim Business Case and the report by the Head of Facilities Management, they consider sufficient information has been available to them whereby they have been able to weigh up the costs and disbenefits on the one hand and the benefits on the other.

6.0 Conclusions

- 6.1 Members are asked to consider their position in the light of the legal requirement and to confirm that, in reaching their decision, they had

sufficiently appraised and compared the costs, the disbenefits and the benefits of the proposal to fulfill the legal requirement. If Members are not satisfied that this requirement has been met in any respect, the decision at the Council Meeting must be considered to be legally invalid and implementation will require to be postponed until such time as members are so satisfied.

7.0 Sustainability Implications

7.1 This report raises no sustainability issues.

8.0 Resource Implications

8.1 Financial Details

8.2 The financial implications for the Council arise from the decision already taken and there are no additional financial implications arising from this report.

8.3 Staffing

8.4 There are no staffing implications arising from this report.

9.0 Exempt Reports

9.1 Is this report exempt? No

10.0 Declarations

10.1 The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities 2008 - 2011** (Please double click on the check box)
- | | |
|--|---|
| The area has a positive image and attracts people and businesses | √ |
| Our communities are more cohesive and inclusive | √ |
| People are better skilled, trained and ready for learning and employment | |
| Our communities are safer | |
| Vulnerable people and families are supported | |
| Substance misuse and its effects are reduced | |
| Health is improving and health inequalities are reducing | √ |
| The environment is protected and enhanced for all | |
| The Council is effective, efficient and recognised for excellence | √ |

(2) **Council Policies** (Please detail) N/A

11.0 Equalities Impact

11.1 N/A

12.0 Legality

12.1 This report is submitted to ensure that the Council acts within its legal powers. It is submitted to Members by the Chief Executive as Monitoring Officer and to fulfill the statutory duty in terms of section 5(2) of the Local Government and Housing Act 1989, to prepare a report to the authority, "if it appears that any

proposal, decision or omission by the authority constitutes, has given rise to or is likely to give rise to, or would give rise to a contravention by the authority of any enactment, or rule of law, or of any code of practice made or approved by or under any enactment".

13.0 Appendices

13.1 None

14.0 Background Papers

14.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)

Yes:

- a) Report to Council on 3rd November, 2011 (Item 5) and subsequent draft Minute relating thereto.
- b) OLE Interim Business Plan

Author(s)

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Approved by

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