

Dundonald Gymnastics Club SCIO Charity No. SC048271, 4 Esk Road, Troon, Ayrshire, KA10 7EH requests a review of the South Ayrshire Council decision to refuse the asset transfer of Muirhead Activity Centre and car park under Part 5 of the Community Empowerment (Scotland) Act 2015.

We request the review based on the following reasons;

**1. Outline of Basis for Request to Review**

Dundonald Gymnastics Club (DGC) successfully appealed the decision of the South Ayrshire Council (SAC) Leadership Panel. Having considered all information submitted as part of the review process, on 6<sup>th</sup> November, the Audit and Governance Panel (AGP) detailed their reasons for recommending our application be accepted subject to additional conditions. The Full Council subsequently rejected this recommendation and on 16<sup>th</sup> January 2020 issued a decision notice again refusing the application. The decision notice was essentially a copy of the decision notice dated 25<sup>th</sup> June 2019.

Under Section 82 subsection 5, *“the authority must agree to the request unless there are reasonable grounds for refusing it”*. Our first appeal challenged the specific reasons given in the refusal letter and whether they constituted reasonable grounds for refusal. We challenged whether the reasons provided were legitimate and within SAC’s agreed policy and framework as agreed by the Leadership Panel (LP) on 27 November 2018.

Sect 86(6)(a) and (b) details the council’s requirement to issue a decision notice and provide reasons for its decisions. In effectively reissuing the decision notice the Full Council has failed to detail any reasons for overturning the AGP recommendations or provide any indication as to the reason for their decision in terms of Sect 82 of the Act.

We continue to believe that the decisions by South Ayrshire Council (SAC) to refuse the asset transfer of Muirhead Activity Centre (MAC) and car park under Part 5 of the Community Empowerment (Scotland) Act 2015 (the Act) to Dundonald Gymnastics Club (DGC) on 15<sup>th</sup> June 2019 and 18<sup>th</sup> December 2019 are irrational, procedurally improper and fail to meet the legitimate expectations of Dundonald Gymnastics Club. Our response to the reasons provided in the decision notices are detailed below.

We further wish a review of the terms and conditions issued by the AGP

(Document 11. Audit and Governance Panel draft minute)

Condition (C) details a clawback condition if expected benefits justifying the reduction are not met.

This condition provides no reference as to how that will be evaluated or who will be responsible for the evaluation. Neither is the condition timebound.

Condition (D) requires the granting of the Council a first ranking standard security.

We submit that the combined effect of these two clauses would have the effect of the Council not actually transferring the asset to DGC. Whilst we are aware the legislation allows for the inclusion of such clauses, we believe that to combine them in this way is against the spirit of the legislation.

We would further submit that the first standard security clause would prevent DGC from accessing grant funding, slowing its ability to redevelop the centre and expand community based activities. In turn this could negatively impact on any 'assessment' of its delivery relating to Condition (C).

## 2. Reason 1

### ***The feasibility and cost of the services elsewhere and the lack of guarantee from officers that existing users could be accommodated in this facility or any local facility.***

It is unreasonable to refuse the application due to the failings of SAC. We have repeatedly stated our willingness to discuss continuity of provision of complimentary activities but would expect such groups and businesses to be prepared to make reasonable adjustments in terms of timing and costs.

As a charity our focus is on our charitable aims and within the context of our legal requirement to be financially stable cannot expect our members and users who are overwhelmingly resident in South Ayrshire to subsidise business users.

We are not aware of any detailed information in the papers considered by the Leadership Panel (LP) relating to the cost of relocation or whether this relates to council costs or businesses/groups using MAC. It is unreasonable to use this unquantifiable cost as a valid reason for refusing the application when set against the SAC savings resulting from the transfer of £73,121.83 based on 2018/19 accounts and backlog maintenance of £142,168. (Appendix 1). It should be noted that there has been a consistent deterioration of both income and deficit over the last 3 years and there are no published SAC plans to address this.

Dundonald Gymnastics Club currently provides services at prices comparable with local authority rates. Our business plan demonstrates multipurpose use across a range of physical activities and we fully intend to develop an affordable community letting policy within the

parameters of the plan. The plan has always been transparent in the activities it will displace and clear in the positive alternatives it can provide.

We have contacted a number of the businesses/groups of the 14 listed on SAC website as scheduled groups and had follow up discussions with Dance Stars, Meta Fit and Jo Jingles. The Majorette group have not taken up the offer to meet. The possibility of continuing and expanding these services at MAC, should the asset transfer be successful, was discussed and we indicated our willingness to work with them. (Appendix 2). It is in our interest to accommodate any outside organisations who wish to use MAC to achieve our charitable goals.

We understand that the significant £300k SportScotland investment in the re-development of Marr College was conditional on making the sports facilities available to the local community and for SAC to maximise usage of the facility.

We are aware that SAC officers have contacted businesses/groups currently using MAC regarding alternative facilities (Appendix 3). Reasonable alternative arrangements should be offered/considered but the concept of an unspecified guarantee (same place? same times? same price?) would appear to set an unreasonably high bar.

Costs of usage at Dailly Activity Centre, operating as a charity under a full costs and maintenance lease, represent the reality of operating such a facility and associated hall hire charges are worthy of consideration. (Appendix 4).

### **3. Reason 2**

***The proposal failed to demonstrate sufficiently that there would be enhanced local services or that the local community would be served or accommodated by the proposals for other uses in the application.***

Our Business Plan clearly shows that we are planning to increase the range of exercise, related services available to the local community including Keep-fit, Cheer and Dance accessible to all including, Baby & Toddler, Pre-school, Adult and Disabilities. We are committed to developing a range of community-based services alongside gymnastic related activities.

All our gymnasts are school age, the overwhelming majority of whom train outside school hours and at weekends. It is important for the development of the charity that we maximise the usage of MAC during school time through lettings to sports and social clubs/businesses compatible with the space available. Our published proposed timetable (Appendix 5) shows potential available letting hours for non – gymnastics, managed community activity at 54 hours per week against current published opening hours for the centre of 61 hours. Whilst the nature of community usage would change there is clear capacity for its levels to remain.

As detailed by the AGP, (Appendix) a high-quality, sustainable and well- managed sports facility including improved rental space for managed community use, that they will repurpose the Centre for beneficial community use to primarily enhance health and social well-being for residents in Troon and the wider South Ayrshire population, making a positive contribution to meeting the strategic objectives of the Council Plan 2018-2020 and beyond.

Although we can demonstrate our commitment to these developments, it is unclear where in either the regulations or SAC assessment framework that such a requirement is necessary.

#### 4. Reason 3

***The lack of evidence to show that the benefits for the other parts of the community excluding the gymnastic community would be delivered and in the time periods set down in the application.***

As outlined in our business plan it is in our interest to maximise the usage of MAC through lettings to sports and social clubs/businesses as soon as possible to both help our charity and build a relationship with the community.

Neither the application nor business plan reference time periods for delivery.

We are a charity whose sole source of income currently derives from user fees, there is compelling evidence based on our current waiting list and the experience of another gymnastics club (Appendix 6 & 7) who have acquired their own facilities that we will be able to at least double the number of our gymnasts. The rate of growth will be constrained by a number of factors including the availability of appropriately trained coaches some of whom will inevitably be developed from among parents, gymnasts and other interested people.

As detailed by the AGP the applicants have undertaken that they will repurpose the Centre for beneficial community use to primarily enhance health and social well-being for residents in Troon and the wider South Ayrshire population, make a positive contribution to meeting the strategic objectives of the Council Plan 2018-2020, provide a high-quality, sustainable and well- managed sports facility including improved rental space for managed community use. They comment that full consideration has been given to the aims, objectives and vision of the applicants with clear thought to the future direction of the proposal. The proposal provides a social/ economic/ environmental impact and comprehensive evidence has been provided of need/demand including consultation, research and surveys and the applicants have evidenced some partnership working arrangements. Relevant links with groups has also been evidenced along with strong community engagement activity

#### 5. Reason 4

***More weighting and more detailed consideration should have been applied to the local community objections, the number type and specific issues raised by the significant objectors in the local community than Dundonald Gymnastic Club.***

We believe this is a potentially illegal proposal which would represent an explicit commitment to increase inequality and run counter to SAC's equality commitments. It should be noted that we have substantial number of gymnasts from the Troon and immediately surrounding area who should be considered as residents (Appendix 8). It is not clear what proportion of MAC users are resident in the immediate area.

We can evidence that the petition and other media postings pre-date the publication of the DGC detailed Business Plan and should be interpreted in that context (Appendix 9).

The online petition was started well before details of the Community Asset Transfer (CAT) application by Dundonald Gymnastics Club SCIO (DGC) for Muirhead Activity Centre (MAC) were published and mis-represents the proposals outlined in the Business Plan supporting the CAT which is published on South Ayrshire Council's website.

DGC also wishes to 'Save our Centre' for the benefit of our community and made application in response to the premises being earmarked for closure in 2017. DGC fears that SAC cannot maintain the centre in the long term on the basis of existing losses, outstanding repair and future council budget cuts. In addition SAC now has to consider the energy efficiency of its estate to meet government climate change targets, incurring further expense across its whole estate.

A quick review of the first 75 or so online comments made by people identify a number of themes:

***Concern at loss of council run facilities.*** - MAC has made substantial and increasing financial losses over the last 3 years. The premises are deteriorating with a large backlog of maintenance and repairs. There is no published SAC proposal to address these issues. If approved the CAT will guarantee a viable well managed facility, with increased opening hours, improve the state of the building and safeguard access a wide range of activities

***Facilities should not be transferred to private businesses.*** - DGC is a Scottish Charitable Incorporated Organisation with charitable purposes regulated by the Office of the Scottish Charity Regulator. (Appendix 10)

***Facilities should not be restricted to single community of interest.*** - DGC Business Plan clearly demonstrates a commitment to multi use and an expansion of access to the facility.

In considering the petition, SAC need to consider whether the basic premise of the petition fairly reflects the actual application made by Dundonald Gymnastics Club SCIO. It should further reflect on whether refusing the application is indeed 'saving the centre' or

consigning it to future closure and the inevitable negative public reaction to actually having no facility access.

During the application process DGC were advised by SAC Asset Transfer Department that surveys and petitions would not be allowed to be used in the consultation process. This is the reason none were undertaken or submitted by the applicant.

The Act makes no distinction between geographical or common interest groups and neither does SAC's Assessment Framework. In fact, SAC's report to the LP recognised in relation to Equality Impact Assessment the '...likely positive impact to the characteristics of disability and age.'

We believe that the constant and deliberate misrepresentation of our business plan by the Muirhead Resident and Tenants Association and local councillors has negatively impacted on our application.

In addition, the formal committee hearing process has left the applicant ineffectively represented with officers regularly unable to answer basic questions relating to the proposal particularly in regard to addressing community objections or concerns.

We have refrained from entering the toxic social media arena in the belief that the true delivery of the plan, working closely with the local community will be the most effective way of genuinely saving the centre.

The applicant is not insensitive to the objections raised to the application but due to the timing and nature of the objections has been unable to find the appropriate forum to have a constructive discussion to properly address the concerns. The applicant is willing to engage in appropriate mediation with concerned parties as part of this process.

## **6. Reason 5**

***There was a lack of consideration of whether the Muirhead Activity Centre, as the second most used community facility, was the most appropriate Council facility and a failure to explore with the Applicant alternative Council venues that might offer a better alternative for the club.***

Current 2019 Q1 and Q2 figures indicate that MAC is the third most used facility behind Dundonald and Coylton (Appendix 11).

DGC has been based in Dundonald since it began and naturally draws its members from the surrounding area including Troon and Muirhead although because of its success and the high quality of coaching draws gymnasts from across South Ayrshire.

Discussion with SAC on the potential for an application for transfer was made by the club in November 2017 when both Muirhead and Whitletts Activity Centres were recommended for closure in the published Budget Savings Review (Appendix 12). Whitletts along with the

other SAC Activity Centres, provide the only reasonably accessible resources for the local geographical communities they serve. Muirhead is sited adjacent to extensive high-quality sports facilities associated to the recent redevelopment of Marr College. Our proposal is designed to provide a centre of excellence for the development of the sport of gymnastics alongside the other successful sports clubs serving our community. This is the diversification of provision of high-quality sport whilst maintaining a commitment to other community-based activities.

The close proximity of 2 Primary and 1 Secondary School provide further potential for DGC to provide support for the delivery of a compulsory curriculum sport.

MAC is the best fit with regards to current members with alternative SAC facilities likely to involve substantial additional travel time and cost.

We are not aware that the Act or SAC's assessment framework requires a consideration of alternative facilities.

## **7. Other**

We feel that the Full Council discussion on our application was unfairly focused on the less positive aspects of the application with information introduced that was not quantifiable or confirmed as accurate. Constant reference was made to inaccurate usage figures and the application being made for single usage to the exclusion of the community. Council officers failed to ensure discussion related to the facts relating to the application and supporting documents.

The Community Empowerment (Scotland) Act 2015, Asset Transfer Guidance for Authorities provides the following direction in relation to the decision making process;

*10.8. In reaching its decision the authority must consider the reasons for the request and the information provided in the request and in support of the request, and compare the benefits of the community transfer body's proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request, or another proposal made by the authority, or by any other person. If the relevant authority does not consider the property to be surplus, continuing the existing use would be treated as an alternative proposal; if the property has been identified for disposal, disposal on the open market could be an alternative.*

*10.9. In assessing the benefits of the request, the relevant authority must consider whether agreeing to it would be likely to:*

- *promote or improve*

- *economic development*
- *regeneration*
- *public health*
- *social wellbeing*
- *environmental wellbeing, or*
- *reduce inequalities of outcome which result from socio-economic disadvantage*

*10.10. The authority must also make the decision in a manner which encourages equal opportunities and the observance of the equal opportunities' requirements. While some of this may come under the heading of promoting or improving "social wellbeing", it provides a focus for considering activities which may benefit particularly disadvantaged groups or promote inclusion and understanding between different groups.*

*10.11. When comparing the benefits of other proposals to the benefits of the asset transfer request, the non-financial benefits of the other proposals should be considered, where possible, as they are for the asset transfer request. The price offered for the transfer should also be considered alongside the non-financial benefits. In its simplest form, you should consider what outcomes could be achieved with any profit or savings that might be made, or what impact any financial loss might have, compared with the benefits offered by the community project or alternative proposals.*

No such assessment has been carried out despite it being specifically requested by the applicant in the initial review. We believe that the availability of such an assessment could impact positively on the process in terms of transparency and fairness to applicant and objectors alike.

The AGP provided its detailed response in close alignment to Section 10.9 of the above criteria.

The replicated refusal notices issued by the Leadership Panel and Full Council do not align to this structure and it is unclear how they align to either section 10.9 of the above guidance or SAC Summary Assessment Criteria. The decision notices state that the decision was made after a thorough evaluation process against pre-determined criteria outlined in the leadership panel report of 11<sup>th</sup> June 2019.

The applicant submits that a Summary Assessment of the continued status quo would benefit understanding of the decision-making process and be more compliant with the legislation.

The contribution of our application to SAC strategies of improving the quality of life of individuals, improve well-being, counter anti-social behaviour, promote social inclusion, or the ability of gymnastics and sport in general to raise self-esteem, increase confidence and widen horizons received little if any recognition or consideration in the Full Council decision.

The Full Council ignored the evaluation by officers of its own assessment framework which rated the application as strong or very strong on all four aspects. It further ignored the recommendations of its own AGP without any reference to its findings or reasons for overturning.

## **8. Conclusion**

We believe that the process was procedurally improper: by allowing new information to be entered without being quantified or checked for accuracy, ignoring its own assessment framework and misinterpreting the Act. Additionally, the discussion was biased to reject in unfairly failing to consider the positive aspects of the application as highlighted in the DGC Business Case and SAC officers report. Because of the above, the Leadership Panel and Full Council discussions and decisions failed to meet the legitimate expectations of Dundonald Gymnastics Club Scottish Charitable Incorporated Organisation.

In relation to the procedures to be used in the review the applicant is willing to provide any written submissions requested by Scottish Ministers. We would request that the review include a hearing session. The applicant wishes the opportunity to represent its own plan and answer questions of Scottish Ministers directly.

We would further request site visit to our existing facility at Dundonald Activity Centre which replicates the Muirhead Activity Centre building, and at Inverclyde National Sports Centre Gymnastics Facility where we now operate the performance aspect of our athlete development program. This will facilitate a greater understanding of the proposal, the sport of gymnastics and the potential of the plan to make a positive impact in the community.

The applicant wishes all documentation submitted throughout the application process to be included in Scottish Ministers Review. Documentation has been provided in attached e-mail and listed below :-

- 1. Asset Transfer Request**
- 2. DGC Strategic Business Plan**
- 3. DGC Constitution**
- 4. DGC Financials inc Timetable**
- 5. DGC Intelligence**
- 6. DGC Response to Public Consultation**
  - a. Support Letter**

- b. Support Letter***
- 7. SAC CAT Report for Leadership Panel***
  - 8. SAC DGC CAT Assessment Form***
  - 9. SAC Decision Notice June 2019***
  - 10. DGC Request for Review of Decision***
  - 11. SAC Audit & Governance Panel Decision Notice***
  - 12. DGC Response to Consultation***
  - 13. SAC Leadership Panel Decision Notice***
  - 14. SAC Full Council Decision Notice***

Below are a detailed list of all the Appendices referred to in this document and submitted as part of the original appeal in July 2019.

- Appendix 1: Muirhead Condition Survey 2019***  
***Appendix 2: DGC Summary of User Group Meetings***  
***Appendix 3: SAC Summary of User Group Meetings***  
***Appendix 4: Dailly Activity Centre Hall Hire***  
***Appendix 5: DGC Proposed Sample Timetable for MAC***  
***Appendix 6: West Dumbartonshire Gymnastics Club (WDGC) Facility Info***  
***Appendix 7: West Dumbartonshire Gymnastics Club (WDGC) Usage & Testimony***  
***Appendix 8: DGC Demographic***  
***Appendix 9: Change.org Petition – Save Muirhead Activity Centre***  
***Appendix 10: DGC SCIO Certification***  
***Appendix 11: MAC 2019 Q1 & Q2 Usage Figures***  
***Appendix 12: SAC Budget Savings Review 2017***  
***Appendix 13: List of information requested from SAC***

As part of the initial review the applicant made a number of requests to SAC for information relating to usage of MAC to provide proper context of usage and potential displacement. Full responses to these questions have not been received at time of submission of appeal but the associated information is requested to be considered by Scottish Ministers.

***Appendix 13***

Item 1 - List of 30 MAC user groups referenced during Leadership Panel Meeting on June 11<sup>th</sup> 2019.

During the hearing Councillor Saxton asserted the presence of 30 user groups at MAC, refuting the work carried out by SAC in identifying 14 user groups. The Change.org Petition – Save Muirhead Activity Centre (Appendix 8) refers to '12 or so other clubs' which is in line with correspondence received by attributable groups during the consultation process.

Item 2 - 2014 Review of MAC when previously considered for closure. Applicant understands that at this time, centre opening hours and staffing levels were reduced to address losses and ensure centre remained open. It is requested that response includes

- Reasons for consideration of closure
- All financial and usage information leading to decision
- Recommendations made regarding continued usage

Item 3 - SAC Current plans to address to losses of £73,121.83 per annum based on 2018/19 accounts and backlog maintenance of £142,168.

Item 4 - Details of any current SAC Lets who have a guarantee of continued access to their let at same time, same place, same price.

Item 5 - MAC 2019 Q1 and Q2 financial income and expenditure

Item 6 - MAC 2019 Q1 and Q2 usage, detailing all user group participation levels and associated income generated.

Item 7 - Demographic of MAC current usage.

Item 8 - List of 'events' run in MAC including number of recorded birthday parties 2018/2019.

Item 9 – Minutes from Leadership Panel Meeting – Date June 11<sup>th</sup> 2019

Item 10 – SAC Assessment of Status Quo as per Section 10.8 Community Empowerment (Scotland) Act 2015.