

(Name and address supplied)

And on behalf of Muirhead Tenants & Residents Association

Full document submitted as representation

Subject

Dundonald Gymnastics Club (DGC) request for a review of South Ayrshire Council (SAC) Leadership Panel (LP) decision to refuse their Community Asset Transfer (CAT) request of Muirhead Activity Centre (MAC)

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Synopsis of DGC Basis for Review

DGC have requested a review based on their belief that the SAC decision has failed to meet their legitimate expectations. The justification for this review is based on the DGC belief and conclusion that can be summarised as follows:

1. The decision made by the SAC Leadership Panel was irrational
2. The reasons for refusal do not constitute “reasonable grounds”
3. The decision-making process was procedurally improper - reasons including:
 - a. Allowing new information to be entered without being quantified or checked for accuracy
 - b. Ignoring the councils’ own assessment framework
 - c. Misinterpreting the Community Empowerment Act (ACT)
 - d. The decision discussion and resulting decision outcome was biased

As part of the request for a review, DGC have:

- Put forward many detailed points towards justifying their belief and conclusions
- Provided additional information they consider relevant
- Requested site visits to Dundonald Activity Centre and Inverclyde National Sports Centre
- Requested additional information from SAC regarding the MAC, including:
 - List of user groups of the MAC
 - Historical council decisions on the future of the MAC
 - Plans to address financial losses and the backlog maintenance
 - Details on SAC lets
 - 2019 Q1 and Q2 financial and usage data, user groups and income associated with each user group
 - Demographics of MAC usage
 - Events and birthday parties
 - SAC assessment of status quo as per section within the ACT

Additional Note/Comment:

- *There appears to be no detailed financial cashflow model made available by DGC as part of the original Business Plan submission or in response to request for this information by earlier representations. It would be expected/anticipated that a future financial cashflow model is a key requirement to support and validate the business plan, and an element of any CAT evaluation process.*

Executive Summary

Conclusions and Suggestions

Having reviewed the justification put forward by DGC and the additional information provided – it is the view and perspective that:

- The assertions and justification put forward by DGC fail to present a strong enough case for reversal
 - The SAC LP discussion and decision outcome can be regarded as both rational and unbiased
 - The decision and recommendation made by the SAC LP should be upheld
- AND
- Suggestion that DGC consider withdrawing the decision review and adopt alternative strategy, either:
 - Search for an alternative location – and allow the local communities and Residents Association to also use the ACT mechanisms to help them rejuvenate the MAC in collaboration with SAC
 - OR
 - Make a fresh start – by adopting an alternative more collaborative and participative strategy in partnership with local community groups, Residents Association and SAC representatives towards achieving a shared and joined-up community vision, goals, improved business plan and alternative governance structure for rejuvenating the MAC.

Rationale

The rationale for the above is based on the following, in two parts:

Part 1

1. The SAC LP decision can be shown to be both rational and unbiased – recognising the complexity of the community situation, information provided, interpretation of the ACT and goal of equality and fair treatment.
2. The reasons for refusal can be shown to be “reasonable grounds” – within the context of the ACT, information provided and goal of taking a balanced view of all community stakeholders involved.
3. The DGC assertion that one specific reason for refusal is potentially illegal and represents an explicit commitment to increasing inequality – can be refuted. *The ACT guidelines state that authorities have the right and are likely to take into consideration any conflicts of interest and impact on local communities - specifically when a CAT request involves a community of interest.*
4. Other than allow representations to be made, published and responded to – thereby ensuring statutory process has been followed – SAC CATAG Report contained no executive summary information that conveyed the scale and breadth of community objections and perspectives put forward. There was no attempt to articulate, quantify, examine, summarise the conflict of interest as expressed by local representations, or to search the representations for ‘reasonable grounds’ or alternative proposals – or explanation and justification why these perspectives were considered “not reasonable”. There is therefore a strong case for suggesting that the report gave inadequate attention to important non-financial aspects, gave inadequate attention and proper due diligence to explicitly represent the local community views. Such an analysis would have

presented better information to the SAC LP for a more fully informed decision process and ‘given voice’ to the local community.

5. Within the CATAG Report – there is mention of potential alternative venues for MAC users as part of the ‘consultation’ process – *but which was still subject to further analysis and validation* – at the time SAC LP were asked to make their decision. Without a full detailed impact analysis of the actual viability and effectiveness of each proposed new location for each user group – an important and significant understanding of how MAC users would be truly impacted or supported - remained unresolved. The SAC LP was therefore not able to make a fully informed decision on this matter.
6. The SAC CATAG report included certain ratings within its Equality Impact Assessment Scoping that are open to challenge - for example:
 - a “Strong” rating for the level and nature of support for the proposal – including community participation and stakeholder engagement. This may be true from a DGC community perspective, but is open to challenge from the perspective of the local community users of the MAC.
 - A “Low” rating for negative consequences for the local community – which again is open to challenge from the perspective of the local community users of the MAC.
 - It could be argued that a full Equality Impact Assessment was required in certain areas - but the report said this was not required. The CATAG analysis could therefore be considered weak in this specific area.
7. Similarly - it can also be argued that DGC did not have a rich understanding of the ethos and detail of the ACT, did not conduct effective collaborative consultation with the local community as part of formulating their proposal – as is suggested within the ACT guidelines. It can also be suggested that DGC failed to fully appreciate, assess and understand the significant change management implications and approach required for their request - and considering the obvious potential negative consequences for the local community, that early engagement and participative consultation would be essential. The overall approach and subsequent content of the Business Plan could therefore be considered weak in this regard.

Part 1 Conclusion:

- The SAC LP discussion and decision process appears to have quite rightly placed a very bright spotlight on these key weaknesses within the proposal and recommendation report – these weaknesses being significant and important enough to warrant the discussion, attention and examination given, and be considered within the holistic context of all community stakeholders involved.
- The SAC LP decision to reject the application and recommend an alternative proposal – can therefore be considered a very rational, unbiased and objective decision, and one that reflects weighing up the full complexity of the circumstances, is compliant with the ethos and legal obligations of the ACT, and aimed at achieving a goal of fair and equal treatment of all the community stakeholders involved.

Part 2

In addition to the above – the review application includes:

- Additional information being put forward as justification for the review and original application
 - Much of this additional information does not appear to have been part of the original business plan submission or provided as requested via original representations – when it could have been with some foresight thinking.
 - Some information relates to usage of the MAC during 2019 – however it is known that the CAT request, the uncertainty, and conversations between SAC CAT representatives and DGC with existing users has potentially already resulted in some user groups moving away from the MAC. *To use this new information as a justification is therefore a possible false premise – as interventions which have influenced people to take actions and move from the MAC prior to a decision – should not have been made.*
 - Some information relates to the West Dunbartonshire Gymnastic Club (WDGC) example in justifying the DGC request – however - this will have had a unique community circumstances and context. Each case has to be determined on its local circumstances and context and are therefore not relevant to this decision review. This Dumbarton Activity Centre example was NOT a CAT request.

Therefore - this additional information can be considered not relevant to the DGC request to review the process, reasons and decision outcome that was reached on the 11th June.

However – the experience of the WDGC may be useful learning and approach should DGC consider an alternative strategy (referenced in Reason 3).

- Requesting a site visit to Dundonald Gymnastics Club and Inverclyde National Centre Gymnastics Facility (the visit participants are not specified)
 - There is no doubting the beneficial value of Gymnastics to the members of DGC and potential new members – and DGC are to be commended for their success and contribution to the sport.

While understanding the rationale for a site visit – it is not directly relevant to the DGC beliefs, explanation and conclusions put forward to challenging the decision reached on the 11th – which had to be based on the information available at the time.

Such a visit is therefore not relevant to a decision review – however – visiting and learning from the WDGC experience may be a useful learning and approach if considering an alternative future strategy.

Part 2 Conclusion

Much of the nature and type of new information being put forward now can be considered as recognition of weaknesses and gaps in information within the original business plan and proposal (for example, the proposed detailed timetable) - as this information represents the level of thinking and analysis that would have been useful earlier in the submission, evaluation and decision process.

More importantly - it can also be argued that had this type of thinking, analysis and planning been carried out in a more participative way – that included consulting with and working collaboratively and in partnership with the MAC management team, the various user groups of the MAC, the local Residents Association, SAC representatives – it is quite possible and feasible that a very different kind of community relationship and shared goals/shared vision outcome could have been achieved.

DETAILED APPENDICES - “Reasonable grounds for refusal”

As part of the SAC LP discussion and decision process – a number of reasons were put forward for rejecting the application. The DGC appear to consider none of these as “reasonable grounds for refusal” and against each reason, provide information in support of their view. Each of these are examined below:

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.

DGC state firstly that “It is unreasonable to refuse the application due to the failings of SAC”.

Additional challenges to not accepting this reason include:

- DGC has obligations and cannot be expected to subsidise other ‘business’ users
- Reference to the running costs and backlog maintenance costs
- Reference to deterioration of income and deficit over last three years
- Contacting a number of user groups (but not all) to try to agree continued use and expansion of non-gymnastic services (after the CAT submission and during the ‘consultation’ process)
- Reference to re-development of Marr college and obligation on SAC to maximise usage of the facility
- Challenging the concept of an unspecified guarantee as setting an unreasonably high bar
- Referencing a letter from Dailly Activity Centre as justification for increased costs

This reason has nothing to do with the “failings’ of the SAC” – and – many of the DGC points are not directly related to the specific reason – and are therefore missing the key point. The key point here – is related to fully understanding the impact on existing users – where they have to relocate to and whether they will now suffer a loss and degradation in the availability, ease of use, cost of gaining access to similar services at other locations as a result of being displaced from the MAC.

The intent and goal is to be able to decide with confidence that existing users are not significantly disadvantaged and disenfranchised - while another community is favoured and empowered.

It seems that neither the DGC nor SAC officers have a full grasp of the total consequences to all existing users – and without this – cannot provide a robust answer to just how existing users needs will be accommodated in order to gain access to equivalent services to what they experience today.

Within the CATAG Report – there is mention of potential alternative venues for MAC users as part of the ‘consultation’ process – *but which was still subject to further analysis and validation* - when SAC LP were asked to make their decision. Without a full detailed impact analysis of the actual viability and effectiveness of each proposed new location for each user group – an important and significant understanding of how MAC users would be truly impacted or supported - remained unresolved.

It is incumbent on our SAC leaders to ensure fair and equal treatment across all community stakeholders – and operate within the ethos and intent of the Community Empowerment Act - and to be seen to not empower one community while disenfranchising another.

The above reason – aimed at considering the rights and equal treatment of existing users could therefore be considered a valid and reasonable ground for refusal – in the spirit of maintaining, enhancing and building community cohesiveness – and not favouring one community over another.

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

Taken in conjunction with Reason 1:

- The goal is to ensure that all impacted MAC users are adequately catered for in how their needs are met – in combination across both the MAC and other facilities
- This reason appears to be focusing on the view that the original DGC Business Plan and CATAG report content did not contain enough information to give confidence on how and when targeted non-gymnastics users needs would be met in the future.

As challenge to this reason - DGC espouse the commitment and intent to provide additional services for selected categories of non-gymnastics users:

- a) Additional information is now being presented as part of the review – for example – DGC Appendix 5 appears to be a new proposed draft timetable - that requires further validation and consultation
- b) DGC also state that – “Although DGC 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”.

The original DGC Business Plan does not convey or demonstrate any roadmap, goal, approach and plan on how DGC would implement supporting selected non-gymnastics activities across current MAC users. Its primary focus is on gymnastics development. Aspirations are however expressed in the CAT proposal document.

Without clear demonstration in the original plan and proposal – the espoused commitment after the decision process carries the risk of being perceived as a gesture towards getting the approval required.

For the draft proposed timetable – while a useful and positive contribution now – it is unclear how/if this has been constructed in collaboration with appropriate community members and would require validation as to its effectiveness. From a change management perspective - similar levels of understanding and detail would be required for all other displaced groups to provide evidence and understanding on all the knock-on consequences. Without such work – there is no clear view or explanation that gives evidence/confidence on how the community is served or accommodated. This forward thinking would ideally be part of a well-structured and fully thought-through proposal that looks at the impact from the perspective of those affected.

While statement (b) above may be correct about the regulations – it can also be interpreted as possible DGC ambiguity, lack of clarity and strong future commitment to the espoused goal of community integration for non-gymnastics support.

The above reason – can therefore be considered a valid and reasonable ground for refusal – as there is limited evidence that existing users would be able to achieve their current/similar levels of service.

Reason 3 – The lack of evidence to show that the benefits for the other part of the community excluding the gymnastic community would be delivered and in time periods set down in the application.

DGC are correct in stating that neither the application nor business plan reference time periods. They also cite that:

- DGC state that they are a charitable organisation whose sole source of income derives from user fees
- Their waiting list and the experience of West Dunbartonshire Gymnastics Club (WDGC) acquiring their own facility – will enable DGC to grow while recognising certain constraints
- “As outlined in our business plan it is in our interest in maximising usage of MAC through letting to sports and social clubs/businesses – as soon as possible – to help our charity and build a relationship with the community”

It is worth pointing out that for the WDGC example cited – it would appear that:

- WDGC appear not to have taken the route of raising a CAT request for the West Dumbarton Activity Centre
- The facility is still owned by West Dunbartonshire Council and the WDGC operate under an “exclusive use let”, with restricted usage for other activities, and which also involved displacement of users to other locations
- The Dumbarton Activity Centre has a governance structure and day-to-day centre management overseen by a combined team of West Dunbartonshire Leisure and a WDGC Development Officer
- Prior to the above setup – the centre appears to have only had 50% occupancy rate
- This has clearly been beneficial to WDGC

There is no doubt that having a dedicated facility will be beneficial to the future of DGC - *however – this reason is related to lack of evidence relating to non-gymnastics activity.*

The DGC Business Plan outlines their Vision, Objectives, Executive Summary and detailed listing of various activities, responsibilities and targets under the themed Headings of People, Facilities, Infrastructure, Equipment, Gymnastics. However - there appears to be nothing in the detail of the Business plan that outlines the specific descriptions or plans on how DGC will develop the non-gymnastics supported activities side.

On the other hand - the content of the formal DGC CAT Application form does contain references that outlines the DGC approach to supporting the local community for a limited amount of non-gymnastics activities – including: maintain community access for child play, children’s parties and meeting room, and proposed plan for a potential dance studio.

There is therefore a mismatch between what is espoused in the CAT Application Form and the detail of the Business Plan. As it is the Business Plan that will arguably drive the future priorities, resourcing and activities of the Club – the Business Plan appears to not be aligned to accurately reflect the content, aspirations and commitments that are expressed in the CAT submission.

If the Business Plan is the basis for demonstrating evidence of commitment – this reason has validity.

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 the Dundonald Gymnastics Club who represent a community of interest as a sporting club.

The DGC rationale for challenging this reason include a number of points – two of the most important being:

1. *“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.”*
2. *“The Act makes no distinction between geographical or common interest groups and neither does SAC’s Assessment Framework”.*

There is no foundation for these assertions – and detailed examination of the ACT and its guidelines include the following:

5.13. An asset transfer request will be judged on the benefits it will deliver, not on the community it represents. However, if your community is a community of interest you should consider engaging with local people in the area around the property, and think about how your proposals may affect them. Relevant authorities are likely to take into account the wider benefits or impact on other groups and any potential for conflict in assessing all requests.

It would appear there was no prior face-to-face engagement with local people to understand impacts and work together, prior to making a submission – as is suggested by the above.

Within the SAC CATAG Recommendation it was very evident that:

- There was no attempt to consolidate, summarise, quantify or verbally represent the scope and scale of the various objections and perspectives put forward by the local community
- There was no apparent attempt to search for or validate community views as representing reasonable grounds for refusal or search for alternative proposals worthy of due consideration.
- There was no attempt to report back why these views were considered “not reasonable grounds” for refusal within the remit and guidance of the ACT or wrong understanding of the proposal
- The emphasis within the report was primarily towards suggesting alternative venues for impacted groups
- Overall – this lack of representation of the views of the local community can be considered a significant oversight and weakness and did not give it the appropriate weight and consideration it deserved
- Very importantly - there was no attempt to convey back to the SAC LP any meaningful analysis and representation of scale and content of objections, alternative proposals, suggestions and ideas or alternative ways others may have put forward to resolve the competing needs across DGC and local community

In summary – it is quite right and appropriate that the LP discussion focused on these aspects in order to take a balanced and objective view in reaching a conclusion and decision outcome.

Other DGC arguments refer to the local petition that was raised:

- *“...the petition and other media postings pre-date the publication of the DGC detailed Business Plan and should be interpreted in that context”*
- *“..the petition was started well before details of the ..CAT...were published and mis-represents the proposals outlined in the Business Plan..”*
- *A selection of three examples of specific objections raised and reasons why DGC disagree with them and the conclusion: “...SAC need to consider whether the basic premise of the petition fairly reflects the actual application made by DGC SCIO”*

Comments on these points

- It does appear that the on-line petition – for whatever reason – was raised before the formal submission
- With limited/no community consultation prior to making a CAT request – there is likely to be a degree of misunderstanding and misinterpretation. This is normal in any situation of significant change
- Besides the on-line petition - there were multiple other representations put forward after the DGC Application was submitted – and these representations were based on the information provided
- Regardless of timing and the eventual content of the DGC proposal and Business Plan – there is the fact that members of the community and users of the MAC are impacted, there are conflicts of interest but these were not adequately analysed and given adequate weight in reporting back to SAC LP

Very importantly – and worth recognising – is the fact that DGC – as part of this review - have undertaken a partial analysis of objections and constructed themes of the range of objections and commented against each. This gives added weight as to why this reason stands as a valid ground for refusal. It also gives added weight to the ACT guidelines that proper engagement and consultation (ideally before raising a CAT of this nature) is an important aspect to consider.

Based on the above - this reason constitutes a valid reason for refusal.

Reason 5 – There was a lack of consideration of whether the MAC, as second most used community facility, was the most appropriate Council facility and a failure to explore with the Applicant alternative venues that might offer a better alternative for the Club

The relevance of using 2019 figures for MAC usage is questionable – as usage is likely to have been impacted by recent interventions and uncertainty over its future. These interventions may well have contributed to people pre-emptively displacing themselves.

DGC refer to approaching SAC as early as 2017 on the potential of making a CAT request , presumably for the MAC. This also suggests that in the intervening period – there was opportunity for a more considered approach involving early engagement with the local community and other stakeholders towards exploring alternative ways of potentially working together to rejuvenate the MAC. Such an intervention may have helped create a shared goals/shared visions approach avoiding the current situation that now exists. While this does not help the situation now – a better understanding of the ethos and guidance in the ACT provided clear pointers in this direction, as well as an understanding of effective change management practices, and learning from how other organisations have approached it.

As DGC state - the MAC is potentially the best fit for their purposes and for the reasons they outline – however – it does not mean that alternatives should not be considered that may be equally viable.

The MAC is also likely to be the best fit for existing users.

While the ACT or SAC’s assessment framework may not specify or require consideration of alternative facilities – the ACT does state that:

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.

After weighing up all the information made available – including the CATAG recommendation, the financial benefits, the benefits to the DGC - it is clearly the limited evaluation given to understanding and resolving the impact on the local community and which is not fully understood or evaluated – that has been the driving factor in the SAC LP decision and recommendation of an alternative proposal. It could be argued this is very much in tune with the ethos of the ACT:

5.13. An asset transfer request will be judged on the benefits it will deliver, not on the community it represents. However, if your community is a community of interest you should consider engaging with local people in the area around the property, and think about how your proposals may affect them. Relevant authorities are likely to take into account the wider benefits or impact on other groups and any potential for conflict in assessing all requests.

Considering the DGC belief and assertion that the SAC LP made an irrational and biased decision?

While this may be the belief and perception of the DGC – deeper analysis of the reasons and context can also show that there is no foundation and basis for this conclusion.

Irrational - can be defined as “not using reason or clear thinking, lacking normal mental clarity or coherence”

Biased – can be defined as “favouring one side or issue over another, unfairly prejudiced for or against someone or something”

An irrational and biased decision can be considered as one that goes against logical reasoning and which favours one side against another, regardless of the consequences.

A decision can be considered rational when: multiple options are carefully considered, negative outcomes are also weighed and consequences are considered in terms of how a decision makes progress towards achieving goals.

It is understandable why the DGC feel this way about this decision that went against their goals.

It is understandable that the DGC would have convinced themselves of the logic, rationale and benefits behind their application, and that a decision in their favour was their legitimate expectation on the premise that “the authority must agree to the request unless there are reasonable grounds for refusing it”. It is also possible that DGC developed a biased and irrational perspective – in having a legitimate expectation without fully assessing all aspects of the Act within the unique circumstances associated with the MAC.

The MAC users also have a legitimate expectation that their needs and goals would be listened to and given equal treatment and consideration – as the community directly impacted by the DGC CAT request.

The DGC CAT application – from the beginning – was always going to be a very complex request for a facility in use and already deeply embedded within the lives of the local community. It could be anticipated that the CAT request was highly likely to create conflict of interests between communities. From the outset – this process would degenerate into a “win/lose” situation unless appropriate consultation and shared goals were developed and agreed collectively at the earliest stage possible.

The SAC LP had the responsibility of ensuring fair and equal treatment for all community members and stakeholders involved. Any decision and rationale needed to be considered in a way that attempted to balance and meet the needs of all stakeholders involved – using best judgement with all information, data and knowledge available.

Under these circumstances - the Leadership Panel decision to reject the application – and recommendation that the DGC work with SAC to find an alternative facility – can be considered a rational, unbiased and objective decision reflecting the weighing up of the full complexity of the circumstances and legitimate expectations of all the stakeholders involved.