

**South Ayrshire Council**

**Report by Assistant Director – Place  
to South Ayrshire Council  
of 13 October 2022**

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**Subject: New Leisure Centre Project**

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**1. Purpose**

- 1.1 The purpose of this report is to provide Members with a further update on the work to cleanse the outstanding suspensive conditions for the site acquisition of the Arran Mall; to present options available to Council to respond to the Stage 2 submission; and to provide further information on the abortive costs should the project not go ahead.

**2. Recommendation**

**2.1 It is recommended that Council:**

- 2.1.1 notes the further update on the site acquisition of the Arran Mall to facilitate the new leisure centre development;**
- 2.1.2 notes the options available to the Council in response to the Stage 2 submission from HubSW;**
- 2.1.3 notes the information provided on the abortive costs should the project not proceed; and**
- 2.1.4 provides instructions on how officers should proceed with the project.**

**3. Background**

- 3.1 On 30 August 2022, a report was presented to Cabinet with an update on the new leisure centre project including costs, site acquisition and the UK Levelling Up Fund bid.
- 3.2 In summary Members were informed that:
- a. the costs for the new leisure centre project are now sitting at £51,004,915 which is approx. £6m over the approved budget in the Council's Capital Programme;
  - b. there are still 2 outstanding suspensive conditions that are yet to be purified to allow the site acquisition of the Arran Mall to be concluded; and
  - c. a bid for the UK Levelling Up Fund has now been submitted.

3.3 Members noted the update provided and requested that officers submit a further report to a meeting of South Ayrshire Council on 13 October 2022 with a further update on the work to purify the outstanding suspensive conditions for the site acquisition of the Arran Mall and to provide further information on the abortive costs should the project not go ahead.

#### 4. Proposals

4.1 The Council is currently in receipt of a Stage 2 submission from HubSW that is considerably over the affordability cap set for the project. Members should be aware that the £6m funding gap was predicated on the successful conclusion of the site acquisition and signing of the contract at financial close by 8 July 2022. By the time this report is presented to Council in October 2022, the project costs would likely be exposed to an additional quarters inflation of 2% which would add approx. £1m to the project costs reported to Cabinet in August 2022.

4.2 In response to the Stage 2 submission, the Council has a number of options that could be considered and further details on those options is contained in [Appendix 1](#).

4.3 A considerable amount of development work has already been undertaken on the project for which fees were due and have been paid. This equates to £968,018 and is broken down as follows:

<b>Paid to date</b>	<b>Amount</b>
Strategic Support Services (SSS) Fees	£105,777
Stage 1 Fees	£478,876
<b>Sub Total</b>	<b>£584,653</b>
Surveys and Investigative Works (Arran Mall)	£237,042
<b>Sub Total</b>	<b>£821,695</b>
Surveys and Investigative Works (Hourstons)	£146,323
<b>Total</b>	<b>£968,018</b>

4.4 If the project was not to proceed, then the costs associated with Strategic Support Services (SSS) and Stage 1 Fees (£584,653) would be classified as abortive as they are specific to the design development of the new leisure centre.

4.5 The output from the surveys and investigative works carried out on Arran Mall could be utilised in the future if the Council proceeds with the site acquisition and develops the site for an alternate use, so this sum (£237,042) wouldn't necessarily be considered an abortive cost.

4.6 The output from the surveys and investigative works carried out on Hourstons (which the Council owns) could also be utilised in the future if the Council proceeds with an alternate use, so again this sum (£146,323) wouldn't necessarily be considered an abortive cost.

4.7 If the procedure to reject the Stage 2 submission is triggered as detailed in [Appendix 1](#), Option 3, and Hub fail to resubmit a revised Stage 2 Report, or do and it is rejected, then the Council is not obliged to pay HubSW the incurred Project Development Fees in respect of Stage 2. These fees equate to £980,441 and have not been paid to date.

- 4.8 In addition, the Council has also incurred other project-related costs including the non-returnable deposit for the Arran Mall, in-house staff costs and statutory consent fees, totalling £713,700. With the exception of the non-returnable deposit for the Arran Mall, which would not be considered an abortive cost if the site is acquired for a different use, these costs would also be considered abortive should the project not proceed.
- 4.9 The report presented to Cabinet on 30 August 2022 provided an update on the suspensive conditions that require to be purified before the sale of the Arran Mall can be concluded. The one regarding planning consent has been achieved, leaving 2 remaining for reciprocal access rights and vacant possession.
- 4.10 With regards to the matter of reciprocal access rights, Project Officers have communicated the layout of the proposed leisure centre and are working with the Seller to agree terms for the temporary and permanent access rights over the Seller's Kyle Centre site during and after the development. In response, the Seller has now communicated the temporary access rights that they are seeking. The design of the development has been undertaken to respond to the historical access known to the Council and this will be maintained during and after the construction phase. The Seller has now informed the Council that they would be happy to accept these rights also. It is understood that the Sellers Legal Representative will be communicating these requirements to the Council for review.
- 4.11 With regards to the matter of vacant possession, Project officers are aware of a particular issue with one tenancy of a storage unit in particular. In respect of that storage unit the Council has been advised that the Seller is not going to be able to provide vacant possession and is looking into providing title indemnity insurance to cover the risk of another party coming forward and claiming a right to the tenancy and that they therefore have a right to occupy the storage unit. This title indemnity insurance would allow a claim against the insurance company if an event like that arose. In the event of such a claim, whilst the Council would potentially receive an insurance pay-out (and we have asked for this amount to be for the currently estimated full development value of the site), the Council's solicitors, Harper Macleod, who are acting in respect of the conveyancing with the Seller, have advised that such a pay-out would not change the risk that this Council could be forced to close down at least part of the leisure centre to reinstate the storage unit and allow any potential tenant access and use (which would potentially mean also clearing some of the leisure centre site to allow access and egress from the unit to the nearest street). The proposed terms of the title indemnity policy are currently being worked on with the Seller.
- 4.12 Members are asked to consider the update on costs associated with the Stage 2 Submission provided in paragraph 4.1; the options available to the Council in response as detailed in [Appendix 1](#); notes the information provided on the abortive costs should the project not proceed as detailed in 4.3 to 4.8; notes the further update on the work to cleanse the outstanding suspensive conditions for the site acquisition of the Arran Mall provided in paragraphs 4.9 to 4.11; and provides instructions on how officers should proceed.

## **5. Legal and Procurement Implications**

- 5.1 The Council has appointed specialist legal advisors (Shepherd and Wedderburn) to develop the project agreements with HubSW to deliver the project. They have provided legal advice on the Council's obligations and rights in response to the Stage 2 submission in [Appendix 1](#).
- 5.2 There are no procurement implications arising from this report.

## **6. Financial Implications**

- 6.1 The new leisure centre development is an approved identified project within the General Services Capital Programme with a budget of £44,997,239. To date a total of £1,681,720 has been spent on the project and funded from this budget (£968,018 for project development fees and £713,700 for other project related costs), leaving £43,315,519 unspent.

## **7. Human Resources Implications**

- 7.1 Not applicable.

## **8. Risk**

### **8.1 *Risk Implications of Adopting the Recommendations***

- 8.1.1 Any acquisition of the Property made without full vacant possession being granted by the Seller is a variation of standard term of missives. The Council have been notified of a particular issue with one tenancy of a storage unit and that the Seller cannot grant vacant possession. Although title indemnity insurance is being offered by the Seller, which could lead to the Council receiving an insurance pay-out in the event of a claim on the insurance, if the Council accept this rather than full vacant possession the Council would have to accept the risks of another party claiming that they have a right to occupy the affected storage unit and of the Council being forced to close down at least part of the leisure centre, to reinstate the storage unit and allow any potential tenant access and use: this would in addition potentially mean clearing some of the leisure centre site to allow access and egress from the unit to the nearest street.

### **8.2 *Risk Implications of Rejecting the Recommendations***

- 8.2.1 Not proceeding with the project may impact on the reputation of the Council by failing to meet the commitments set out in the agreed Ayr Town Centre Strategy and Action Plan with regards to the development of the Leisure Centre.
- 8.2.2 If the project were not to proceed, then the Council may be liable for abortive costs for development work already undertaken as detailed in paragraphs 4.3 to 4.7.
- 8.2.3 If the Stage 2 submission is rejected, then Hubco is entitled to refer the matter to dispute resolution. That said, the remedies only apply where the resolution is that the Approval Criteria were actually met by the re-submitted Stage 2 Submission, which, in relation to the Affordability Cap, is highly unlikely in this case.

## **9. Equalities**

- 9.1 This report provides an update on the progress of a recent Cabinet report which was assessed for potential equality impacts and the relevant documentation is attached in [Appendix 2](#).

## 10. Sustainable Development Implications

- 10.1 **Considering Strategic Environmental Assessment (SEA)** - The proposals in this report do not represent a qualifying plan, programme, policy or strategy for consideration for SEA. There exists therefore no obligation to contact the Scottish Government Gateway and no further action is necessary. An SEA has not been undertaken.

## 11. Options Appraisal

- 11.1 An options appraisal has not been carried out in relation to the subject matter of this report.

## 12. Link to Council Plan

- 12.1 The matters referred to in this report contribute to Commitment 6 of the Council Plan: A Better Place to Live/ Enhanced environment through social, cultural and economic activities.

## 13. Results of Consultation

- 13.1 There has been no public consultation on the contents of this report.
- 13.2 Consultation has taken place with Councillor Martin Kilbride, Portfolio Holder for Buildings, Housing and Environment, and Councillor Brian Connolly, Portfolio Holder for Sport and Leisure, and the contents of this report reflect any feedback provided.

## 14. Next Steps for Decision Tracking Purposes

- 14.1 If the recommendations above are approved by Members, the Assistant Director - Place will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Cabinet in the 'Council and Cabinet Decision Log' at each of its meetings until such time as the decision is fully implemented:

<i>Implementation</i>	<i>Due date</i>	<i>Managed by</i>
Implement instructions provided	To be confirmed	Service Lead – Special Property Projects

**Background Papers**      **Report to Cabinet of 30 August 2022 – New Leisure Centre Update (Members only)**

**Person to Contact**      **Derek Yuille – Service Lead - Special Property Projects**  
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**Date: 3 October 2022**

## Options available to the Council in response to Stage 2 Submission:

### 1. ***A significant redesign of major elements of the building to bring the costs back down to align with the budget.***

Any significant changes to the design of the building would require an amendment to the planning consent already granted, or in the worst-case scenario, a new application. It would also require additional time to implement the design changes in the work packages that have already been tendered. Due to the time required for both these actions, any savings brought about may be offset by additional inflation costs, thus potentially nullifying the effectiveness of the exercise. This option would also result in a potential compromise of the spaces in the new leisure centre, e.g. a reduction in the size of the pool hall, or removal of certain facilities such as the fitness suite or multi-use studios. The building would no longer contain the level of accommodation that was consulted on and approved at Leadership Panel on 24 August 2021. It could also result in a reduction in the quality of the fabric of the building with materials swapped for cheaper alternatives.

### 2. ***Seek additional funding for the project.***

A report would be presented to Members at Cabinet seeking to increase the existing approved budget to address the predicted £7m shortfall as of October 2022. Members should be aware that the original approved budget has already been uplifted twice, £4m in October 2021 to address the impact of inflation on projects, and £942k to offset rising costs associated with covid lockdowns. A further increase in the project budget will result in additional pressure on the capital programme, likely resulting in deferrals or cancellation of other commitments.

It should be noted that on 29 June 2022, South Ayrshire Council approved the submission of 3 bids to the UK Levelling Up Fund. One of these bids targets the theme of Town Centre Regeneration with particular focus on the new leisure centre development at the Arran Mall and is seeking funding of £20m. It was understood that applicants will be notified of the outcome of their bids in October 2022 although this is yet to be officially confirmed and as of 13 October 2022, no response has been received. If the bid is successful, then the funding received could be used to offset the increased project costs.

### 3. ***Reject the Stage 2 submission from HubSW.***

Under the Territory Partnering Agreement (TPA) that was set up to oversee the Hub delivery process, if Hubco fails to submit proposals at Stage 2 that align with the affordability cap set by the Client, then the Client can reject the submission.

If the Council rejects the Stage 2 Submission on the grounds that it fails the Affordability Cap Approval Criteria, then there is a requirement for the Council to work together with Hubco to address the reasons for such failure. Hubco will also have to attempt to produce a revised Stage 2 Submission 'in good faith' which they must re-submit to the Council within 30 Business Days of the rejection. As such, if Hubco fails to re-submit in that timescale or having re-submitted, the re-submitted Stage 2 Submission it is again rejected by the Council on the grounds that it still fails the Affordability Cap Approval Criteria it will be treated as rejected. Subject to any dispute resolution, neither party will then have any further obligations to the other in relation to that New Project and would not be treated as a Council Event of default under the TPA. However, in the event of rejection, Hubco is entitled to refer the matter to dispute resolution. That said, the remedies only apply where the resolution is that the

Approval Criteria were actually met by the re-submitted Stage 2 Submission, which, in relation to the Affordability Cap, is highly unlikely in this case.

## South Ayrshire Council Equality Impact Assessment Scoping Template

Equality Impact Assessment is a legal requirement under the Public Sector Duty to promote equality of the Equality Act 2010. Separate guidance has been developed on Equality Impact Assessment's which will guide you through the process and is available to view here: <https://www.south-ayrshire.gov.uk/equalities/impact-assessment.aspx>

Further guidance is available here: <https://www.equalityhumanrights.com/en/publication-download/assessing-impact-and-public-sector-equality-duty-guide-public-authorities/>

The Fairer Scotland Duty ('the Duty'), Part 1 of the Equality Act 2010, came into force in Scotland from 1 April 2018. It places a legal responsibility on Councils to actively consider ('pay due regard to') how we can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions. [FSD Guidance for Public Bodies](#) in respect of the Duty, was published by the Scottish Government in March 2018 and revised in October 2021. See information here: <https://www.gov.scot/publications/fairer-scotland-duty-guidance-public-bodies/>

### 1. Policy details

Policy Title	New Leisure Centre
Lead Officer (Name/Position/Email)	Derek Yuille, Service Lead – Special Property Projects – derek.yuille@south-ayrshire.gov.uk

**2. Which communities, groups of people, employees or thematic groups do you think will be, or potentially could be, impacted upon by the implementation of this policy? Please indicate whether these would be positive or negative impacts**

Community or Groups of People	Negative Impacts	Positive impacts
Age – men and women, girls & boys	No	No
Disability	No	Yes
Gender Reassignment (Trans/Transgender Identity)	No	No
Marriage or Civil Partnership	No	No
Pregnancy and Maternity	No	No
Race – people from different racial groups, (BME) ethnic minorities and Gypsy/Travellers	No	No
Religion or Belief (including lack of belief)	No	No
Sex – (issues specific to women & men or girls & boys)	No	No
Sexual Orientation – person's sexual orientation i.e. LGBT+, lesbian, gay, bi-sexual, heterosexual/straight	No	No
Thematic Groups: Health, Human Rights & Children's Rights	No	No



**3. What likely impact will this policy have on people experiencing different kinds of social disadvantage i.e. The Fairer Scotland Duty (This section to be completed for any Strategic Decisions). Consideration must be given particularly to children and families.**

Socio-Economic Disadvantage	Negative Impacts	Positive impacts
Low Income/Income Poverty – cannot afford to maintain regular payments such as bills, food, clothing	No	No
Low and/or no wealth – enough money to meet Basic living costs and pay bills but have no savings to deal with any unexpected spends and no provision for the future	No	No
Material Deprivation – being unable to access basic goods and services i.e. financial products like life insurance, repair/replace broken electrical goods, warm home, leisure/hobbies	No	No
Area Deprivation – where you live (rural areas), where you work (accessibility of transport)	No	No
Socio-economic Background – social class i.e. parent’s education, employment and income	No	No

**4. Do you have evidence or reason to believe that the policy will support the Council to:**

General Duty and other Equality Themes Consider the ‘Three Key Needs’ of the Equality Duty	Level of Negative and/or Positive Impact (High, Medium or Low)
<b>Eliminate unlawful discrimination, harassment and victimisation</b>	Low impact
<b>Advance equality of opportunity</b> between people who share a protected characteristic and those who do not	Low impact
<b>Foster good relations</b> between people who share a protected characteristic and those who do not. (Does it tackle prejudice and promote a better understanding of equality issues?)	Low impact
Increase participation of particular communities or groups in public life	Low impact
Improve the health and wellbeing of particular communities or groups	Low impact
Promote the human rights of particular communities or groups	Low impact
Tackle deprivation faced by particular communities or groups	Low impact

**5. Summary Assessment**

<p><b>Is a full Equality Impact Assessment required?</b> (A full Equality Impact Assessment must be carried out if impacts identified as <b>Medium and/or High</b>)</p>	<p><b>YES</b></p> <p><b>NO</b></p>
<p><b>Rationale for decision:</b> <b>The proposal does not have significant positive or negative impact with regards to equality therefore an EQI is not required</b></p>	
<p><b>Signed :</b> Derek Yuille <b>Date:</b> 8 July 2022</p>	<p><b>Service Lead</b></p>