

South Ayrshire Council

**Report by Director of Strategic Change and Communities
to South Ayrshire Council
of 15 December 2022**

Subject: New Leisure Centre Project

1. Purpose

- 1.1 The purpose of this report is to provide Members with a further update on the New Leisure Centre Project including the response from HubSW to the Stage 2 rejection letter.

2. Recommendation

2.1 It is recommended that the Council:

2.1.1 notes the further update on the response from HubSW to the Stage 2 rejection letter; and

2.1.2 provides instructions on how officers should proceed.

3. Background

- 3.1 On 13 October 2022, a report was presented to South Ayrshire Council with an update on the New Leisure Centre Project including details of abortive costs should the project not proceed, the acquisition of the Arran Mall and the options available to the Council in response to the Stage 2 submission from HubSW.

- 3.2 Members agreed that given the project is now £7m over budget, that Council should reject the Stage 2 submission from HubSW on the basis it does not meet the Affordability Cap Approval Criteria prescribed by the HubSW Agreement and asked Officers to provide a report to Members detailing the response from HubSW to the rejection notice for their consideration.

- 3.3 On 17 October 2022, a letter was issued to HubSW informing them of the Council's decision to reject the Stage 2 submission.

4. Proposals

- 4.1 The rejection of the Stage 2 submission triggered a process in which there was a requirement for the Council to work together with HubSW to address the reasons for the failure to meet the Affordability Cap Approval Criteria. HubSW were then required 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.

4.2/

- 4.2 To facilitate the collaborative approach to addressing the failure to meet the Affordability Cap Approval Criteria, Officers from the Council (including SAC Leisure) met with HubSW on 2 separate occasions to discuss the revised proposals and provide feedback from an operational and aspirational perspective.
- 4.3 The 30 Business Days have now elapsed and HubSW have issued the Council with a revised Stage 2 Report. To achieve the required savings and present a proposal that does now meet the Affordability Cap Approval Criteria on the basis that Financial Close is reached by 31 March 2023, HubSW have proposed a revised design with several key elements reduced/removed. The original and revised plans are contained in [Appendix 1](#) for reference. In summary they are proposing the following changes:
- a. The rear of the former Hourstons Dept Store will be demolished to create space for the new build element, but the revised proposals do not allow for the refurbishment of the remaining historic building which would have contained several key spaces, including consultation rooms, studios, multi-use spaces and staff facilities. Instead, these have been relocated to the new build element and reduced in size and/or numbers.
 - b. To create space in the new build element to accommodate those spaces that have been displaced from Hourstons, the revised proposals have:
 - reduced the size of the main pool from 8 lanes to 6;
 - reduced the offering in the 'fun water' zone including the removal of flumes;
 - removed the soft play zone;
 - reduced the size of the wet changing area;
 - reduced spectator seating capacity from 150 to 100; and
 - overall, the floorspace of the leisure centre has been reduced by 20%.
- 4.4 Following the resubmission of the Stage 2 Report from HubSW, the Council now has a further 60 Business Days to either accept or reject the revised Stage 2 Submission in accordance with the terms of the Territory Partnering Agreement (TPA).
- 4.5 If the Council accepts the revised Stage 2 submission, the new project will have Stage 2 Approval (as per the usual process). If the Council decides to reject the revised Stage 2 Submission, then the Stage 2 process and subsequently the development of the project will come to an end. Unlike the previous Stage 2 rejection by the Council on the grounds that the submission did not meet the Affordability Cap Approval Criteria, if the Council were to reject the resubmitted Stage 2 then it would be on the grounds that the project does not meet the Specific Requirements and each of the Relevant Participant(s)' other requirements (including for the avoidance of doubt: design quality; sustainability; and terms and conditions of the Project Agreement) as identified at the time the project became a Stage 1 Approved Project.
- 4.6 If the revised Stage 2 proposals are rejected and HubSW wishes to challenge the rationale for the rejection, then they will have a further 10 Business Days to take the matter to the Dispute Resolution Process (DRP) should they wish to do so. If HubSW do not take the rejection of the revised Stage 2 Submission to the DRP or if they do but the DRP decides that the rejection is valid, then no further action is required from HubSW or the Council and the Council does not have to pay HubSW's Project Development Fees. If the DRP determines that the revised Stage 2 Submission did

meet the Approval Criteria and should not have been rejected on that basis, then the Council must reject the Stage 2 Submission for 'other reasons'. Rejection for 'other reasons' would entitle HubSW to payment of the Stage 2 Project Development Fees. These fees equate to £980,441 and have not been paid to date.

- 4.7 Members should be aware that the revised proposals deviate significantly from those the public were consulted on and subsequently approved by Leadership Panel in August 2021. It should also be noted that the Council agreed to several concessions at the time including the removal of the main games-hall from the project in exchange for the enhanced swimming offering and agreed to increase the funding for the project by £4m.
- 4.8 The aspiration for the new leisure centre was to provide a facility with the correct balance between sport and leisure that would be more flexible and could see significant increases in participation at all levels. The new building would also be a 'destination' for families to spend more leisure time together in a town centre location. The revised proposals would see a noticeable diminishment of these aspirations.
- 4.9 Members should also be aware that planning consent was granted for the previously approved proposals in March 2022. As to whether the proposed changes to those approved plans are material or non-material considerations, it has not yet been established. HubSW are of the opinion that the revisions to the design of the approved development are considered modest and non-material in nature. An application seeking approval for the proposed Non-Material Variations (NMV) would require to be submitted to SAC for consideration in due course. If these changes are subsequently considered Material by the Planning Authority, then a new planning application will be required.
- 4.10 Members are asked to consider the proposals in the revised Stage 2 Submission as shown in [Appendix 1](#) and summarised in paragraph 4.3; note the comments from Officers in paragraphs 4.7 to 4.9 in relation to the impact of these changes; note the options available to the Council in response to the revised Stage 2 Submission as described in paragraphs 4.4 to 4.6; and provide 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 with regards to the Stage 2 submission review process.
- 5.2 The DRP (as referenced in paragraph 4.6) is set out in Schedule 21 of the Territory Partnering Agreement. To summarise, and subject always to the right of either party to take a dispute to court proceedings, the parties shall first consult in good faith to come to agreement. That is then escalated to senior management/shareholders from the relevant parties. Failing agreement there, the parties can agree to refer the dispute to mediation, but that does not prevent either party finally taking the dispute to arbitration.
- 5.3 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 as detailed in paragraph 6.2 and £713,700 for other project related costs as detailed in paragraph 6.6, leaving £43,315,519 unspent.

- 6.2 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:

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

- 6.3 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.
- 6.4 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) would not necessarily be considered an abortive cost.
- 6.5 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) would not necessarily be considered an abortive cost.
- 6.6 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.

7. Human Resources Implications

- 7.1 Not applicable.

8. Risk

8.1 Risk Implications of Adopting the Recommendations

- 8.1.1 Not proceeding with the project may impact on the reputation of the Council by failing to meet the commitments set out in the previously agreed Ayr Town Centre Strategy and Action Plan with regards to the development of the Leisure Centre.
- 8.1.2 There is a risk that the revised proposals are not considered Material by the Planning Authority and a new planning application would then be required to be submitted which would add a significant delay to the project.

8.2 **Risk Implications of Rejecting the Recommendations**

8.2.1 If the revised Stage 2 submission is rejected, then HubSW is entitled to refer the matter to dispute resolution. That said, the remedies only apply where the resolution is that the Approval Criteria were met by the re-submitted Stage 2 Submission, which, in relation to the Participants Requirements, is highly unlikely in this case.

9. **Equalities**

9.1 This report provides an update on the progress of a recent Council 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**

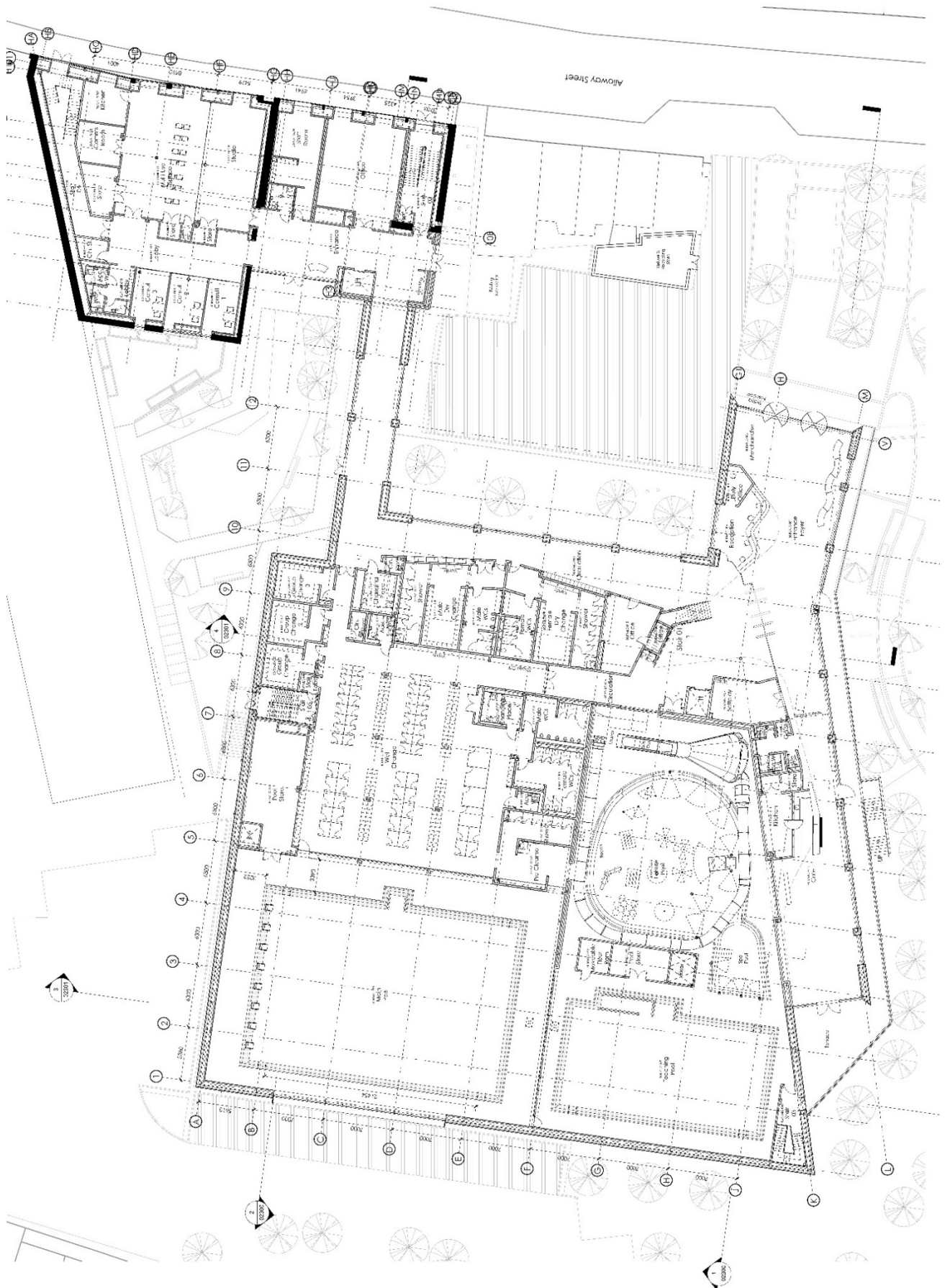
14.1 If the recommendations above are approved by Members, the Director of Strategic Change and Communities will ensure that all necessary steps are taken to ensure full implementation of the decision within the following timescales, with the completion status reported to the Cabinet in the 'Council 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

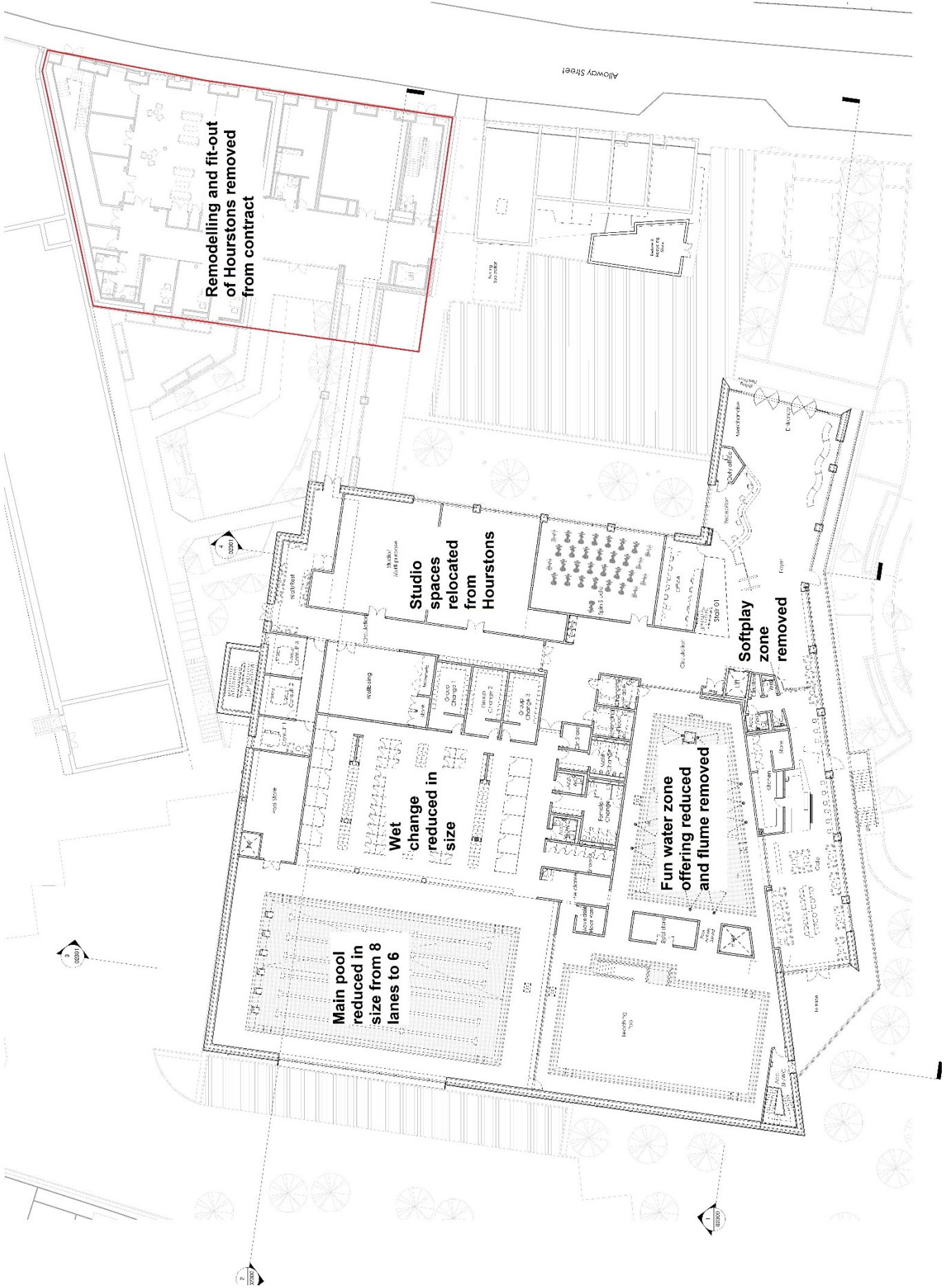
Background Papers **Report to South Ayrshire Council of 13 October 2022 – [New Leisure Centre Project](#)**

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Date: **6 December 2022**



Proposals previously approved in August 2021 - Ground Floor Plan



Resubmitted proposals November 2022 - Ground Floor Plan



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)
Eliminate unlawful discrimination, harassment and victimisation	Low impact
Advance equality of opportunity between people who share a protected characteristic and those who do not	Low impact
Foster good relations 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>Is a full Equality Impact Assessment required? (A full Equality Impact Assessment must be carried out if impacts identified as Medium and/or High)</p>	<p>YES</p> <p>NO</p>
<p>Rationale for decision: The proposal does not have significant positive or negative impact with regards to equality therefore an EQI is not required</p>	
<p>Signed : Derek Yuille Date: 8 July 2022</p>	<p>Service Lead</p>