



**COLDSTREAM COMMON GOOD FUND
SUB-COMMITTEE
WEDNESDAY, 22 JUNE, 2022**

**Please find attached the papers in respect of Item 7 on
the agenda for the above meeting**

7.	Consultation on Common Good Fund Register for Coldstream (Pages 3 - 10) Consider report by Principal Solicitor. (Copy attached)	10 mins
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Consultation on Heritable and Moveable Asset Registers for former Burgh of Coldstream

Report by Principal Solicitor

Coldstream Common Good Fund Sub Committee

22 June 2022

1 PURPOSE AND SUMMARY

- 1.1 This report is to advise on the outcome of the recent consultation under the Community Empowerment (Scotland) Act 2015, and to seek approval of the final Common Good Register for Coldstream.**
- 1.2 Under the Community Empowerment (Scotland) Act 2015 the Council is required to establish and maintain a register of property which is held by the authority as part of the Common Good ("a Common Good Register"). Before establishing a Common Good Register, the Act requires the Council to publish a list of property that it proposes to include in the Register and consult the public on this list.
- 1.3 The Coldstream Common Good Sub-Committee approved the draft asset register in December 2021 and agreed to the commencement of the public consultation. The consultation ran from December 2021 to 31 March 2022,
- 1.4 The Sub Committee now requires to consider the responses received to the consultation, and approve the final register to be recommended to Council for publication.

2 RECOMMENDATIONS

- 2.1 **I recommend that the Sub-Committee:-**
 - (a) Notes the consultation submissions and officers' responses thereto, as set out at Appendix 1 to this report;**
 - (b) Approves the contents of the final list of heritable and moveable property assets held by the Council within the former Burgh of Coldstream, as set out in Appendix 2;**
 - (c) Agrees to recommend to Council the said final asset list for publication as a completed Common Good Register for Coldstream.**

3 BACKGROUND

- 3.1 Under the Community Empowerment (Scotland) Act 2015 the Council is required to establish and maintain a register of property which is held by the authority as part of the Common Good ("a Common Good Register"). Before establishing a Common Good Register, the Act requires the Council to publish a list of property that it proposes to include in the Register and to consult the public on this list.
- 3.2 A draft list was agreed by the Sub-Committee in December 2021 and a public consultation on that list took place from 21 December 2021 to 31 March 2022. The consultation was available on-line via Citizens Space, with paper copies of the lists being made available on request. The Council advertised the consultation on its website and through each of its Local Area Partnerships. In addition, details of the consultation were issued to every Community Council in the Scottish Borders.

4. CONSULTATION AND CONSIDERATION

- 4.1 The consultation published the draft list of assets, together with a location plan for each of the land or building assets. The consultation asked for comments on (i) whether a proposed asset should be included as part of the Common Good and (ii) whether there should be other assets included in the Common Good asset list.
- 4.2 There were 65 responses to the consultation and 2 of these responses related to Coldstream. The comments received relating to Coldstream were received from the Coldstream Community Council and the Berwickshire Area Partnership, and are set out in Appendix 1.
- 4.3 In considering the responses received, officers from the Council's Legal team have liaised with Estates and Finance colleagues in order to determine the provenance of the assets concerned. The legal tests have then been applied to the information gathered in order to form a view as to the assets' common good status. The legal tests can be summarised as follows:
- All property or land owned by the Burgh in 1975 *may* belong to the Common Good;
 - If the title deeds of the asset contain a 'common good declaration' which clearly indicates that the property should be held for the people of the Burgh, it is likely that the asset belongs to the Common Good;
 - If there is evidence, from the title deeds or the Burgh records that the asset was acquired for a statutory purpose, or using statutory powers, the asset is unlikely to be part of the Common Good.
 - If the asset is part of a separate Trust, it will not form part of the Common Good.
 - Moveable items (such as art and artefacts) again may be Common Good if owned by the Burgh in 1975.
 - Items used principally for the administration of the Burgh (such as minute books) will not be part of the Common Good, whereas ceremonial items such as robes and chains are likely to form part of the Common Good.

- 4.4 Officers' responses to the consultation comments are set out in Appendix 1. If the Sub-Committee agrees that all consultation responses have been appropriately considered, the next step in the process is for the Sub-Committee to approve the asset list set out at Appendix 2, as being the final Common Good Register for Coldstream. Any changes from the draft register approved in December have been highlighted.
- 4.5 Following approval by the Sub-Committee of the final Register, Council approval will be sought for publication of the final Registers for all of the Common Good assets in the Scottish Borders. The aim is to have the full Scottish Borders Common Good Asset Register published by the end of September 2022.
- 4.6 It is possible that following this process, further assets may be identified as being Common Good, and where that is the case, the Council will update the Common Good Asset Registers. The Registers will similarly be updated if existing property is disposed of or reclassified. The Council will also ensure that the Common Good Asset Registers are reviewed on a regular basis, and at least every five years.

5 IMPLICATIONS

5.1 Financial

There are no direct costs attached to implementing any of the recommendations contained in this report. However, the Council has a duty to ensure the accuracy of the Council's accounts. It is therefore important that any assets which should properly be classified as being Common Good are contained within the Common Good Registers, and therefore the Common Good Accounts.

5.2 Risk and Mitigations

The Council's primary aim is to ensure compliance with Part 8 of the Act in respect of Common Good assets. If the Council fails to comply with the duties contained in Part 8 of the Act it will be in breach of the legislation and the Council may be subject to adverse public comments and legal challenge. The risk is mitigated by considering this report and the Council carrying out the actions detailed herein.

5.3 Integrated Impact Assessment

Steps will be taken to ensure that the proposed consultation is accessible to all. These steps include the publication of the consultation in paper copy to be available at multiple locations, as well as the availability of large-type formats.

5.4 Sustainable Development Goals

There are no economic, social or environmental effects in accepting or rejecting the recommendation

5.5 Climate Change There are no effects on carbon emissions in accepting or rejecting the recommendation.

5.6 Rural Proofing

This is not a new policy matter.

5.7 Data Protection Impact Statement

There are no data protection implications resulting from the proposed publication of the Registers of Common Good.

5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Council Schemes of Administration or Delegation.

6 CONSULTATION

6.1 The Director Finance & Corporate Governance, the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Director People, Performance & Change, the Clerk to the Council and Corporate Communications have been consulted and comments received have been incorporated into the final report.

Approved by

Director of

Signature

Author(s)

Name	Designation and Contact Number
Hannah MacLeod	Principal Solicitor, 01835 825216

Background Papers: Nil

Previous Minute Reference: Nil

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Hannah MacLeod can also give information on other language translations as well as providing additional copies.

Contact us at Hannah MacLeod, Principal Solicitor, Council Headquarters, Newtown St Boswells , 01835 825216 or email hannah.macleod@scotborders.gov.uk







**Consultation on Heritable and Moveable Asset Registers for former
Burgh of Coldstream**

Appendix 1: Submissions to Consultation and Officers' Responses

	Consultation Comment	SBC Response	Recommended action
1.	Home Park Pavilion and Pitch – why is this not on consultation register?	This is a Common Good asset, and it should be listed within the consultation. Although present on our draft register, it was originally left out of the consultation, in error. On receipt of this comment in January 2022, the asset was added onto the online survey.	Include in CG register
2	The General Monck portrait – why is this on consultation list but not mentioned in previous draft register?	This asset was raised by Councillor Greenwell at the December 2021 meeting of the Sub-Committee, as he felt it should be on the register. Our research suggests that it is not owned by the Coldstream Guards, and does not form part of SBC's museum collection. We therefore consider it appropriate to add to the Common Good register.	Include in CG register
3	The flat above Coldstream museum - was this asset Common Good and if so, were the proceeds of sale applied to the Common Good fund?	The flat was transferred by Berwickshire District Council to Berwickshire Housing Association in 1995 as part of the authority's stock transfer. The flat was not at this time held on the Common Good account. Coldstream Common Good was established by Scottish Borders Council in	No action

		November 2018, following a review of heritable assets formerly belonging to the Burgh.	
4	Blacks Bequest for the deserving poor of Coldstream, administered by Berwickshire District Council - should this have gone to Common good? (possibly £2300)	<p>This bequest was transferred to the Welfare Trust which was set up in 2014.</p> <p>The bequest has been ring-fenced for the Mid & East Berwickshire area and for the following purposes : Prevention or relief of poverty, and, Relief of those in need by reason of age, ill-health, Disability, financial hardship or other disadvantage.</p>	No action
5	Fairs Bequest for the support of aged or infirm and 'indigent head families' of the Burgh of Coldstream, administered by Berwickshire District Council - should this have gone to Common good? (possibly £1466)	As above, number 5	No action
6	Marjoribanks Bequest for the support of aged and infirm in Coldstream and District, administered by Berwickshire District Council - should this have gone to Common Good? (possibly £347)	As above, number 5	No action

BURGH OF COLDSTREAM

Land			
Name of Asset	Location	Description	Plan
Coldstream Museum	12 Market Square, Coldstream, TD12 4BD	Museum building acquired by the Coldstream Town Council in 1952. Minutes of 20.6.1952 states that the property is to be gifted to the Town Council by the Coldstreamers Association and that the Town Council is to accept.	 <p>CS008-01 Museum 13 Market Square Site</p>
Home Park (including play area, Pavilion, and Pitch)	Coldstream, TD12 4DT	Land used as a park and play area, gifted by the Earl of Home in 1922 to the Burgh “as representing the community of the said Burgh” for the purposes of a recreation ground only.	 <p>CS012-01 Home Park Site Plan (2016).pdf</p>  <p>CS012-06 Home Park Pavilion Site & P</p>  <p>CS012-04 Home Park Play Area Site Pl:</p>
Lees Mill (and play area)	Coldstream, TD12 4AS	Land used as a park and play area, acquired by the Burgh in 1933 for price of £150 from Percy William Rampton.	 <p>CS012-02 Lees Mill Site Plan (2016).pdf</p>  <p>CS012-05 Lees Mill Play Area Site Plan (2016).pdf</p>

ART AND ARTEFACTS			
Name of asset	Location	Description	
Provost's Robes	Coldstream Museum	Used for civic purposes relating to former Burgh	
Provost's Chain of Office	Coldstream Museum	Used for civic purposes relating to former Burgh	
Portrait of General Monck	Coldstream Town Hall	Believed to have been donated to the Burgh.	