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SELKIRK COMMON GOOD FUND SUB-COMMITTEE WEDNESDAY, 29 NOVEMBER 2023

A MEETING of the SELKIRK COMMON GOOD FUND SUB COMMITTEE will be held VIA MICROSOFT TEAMS on WEDNESDAY, 29 NOVEMBER 2023 at 3.00 pm.

All Attendees, including members of the public, should note that the public business in this meeting will be livestreamed and video recorded and that recording will be available thereafter for public view for 180 days.

N. MCKINLAY,
Director Corporate Governance,

21 November 2023

BUSINESS		
1.	Apologies for Absence	
2.	Order of Business	
3.	Declarations of Interest	
4.	Minute and Action Tracker	4 mins
	(a) Minute (Pages 3 - 6) Minute of Meeting held on 13 September 2023 to be agreed and signed. (Copy attached.)	2 mins
	(b) Action Tracker (Pages 7 - 10) Review Action Tracker. (Copy attached.)	2 mins
5.	Monitoring Report for 6 Months to 30 September 2023 (Pages 11 - 28) Consider report by Director – Finance and Procurement. (Copy attached.)	15 mins
6.	Charitable De-Registration of SBC Common Good Funds (Pages 29 - 40) Copy of report to Council from Acting Chief Executive for noting. (Copy attached.)	5 mins
7.	Property	10 mins

	Consider update.	
8.	Any Other Items Previously Circulated	
9.	Any Other Items which the Chairman Decides are Urgent	
10.	<p>Private Business</p> <p>Before proceeding with the private business, the following motion should be approved:-</p> <p>“That under Section 50A(4) of the Local Government (Scotland) Act 1973 the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 7A to the aforementioned Act.”</p>	
11.	Minute and Action Tracker	4 mins
	<p>(a) Minute (Pages 41 - 42)</p> <p>Private Minute of Meeting held on 13 September 2023 to be agreed and signed. (Copy attached.)</p>	2 mins
	<p>(b) Action Tracker (Pages 43 - 44)</p> <p>Review Private Action Tracker. (Copy attached.)</p>	2 mins
12.	<p>Linglie Farm Relinquishment (Pages 45 - 56)</p> <p>Consider report by Director – Infrastructure and Environment. (Copy attached.)</p>	15 mins
13.	<p>Property</p> <p>Consider Property Update.</p>	5 mins

NOTES

- Timings given above are only indicative and not intended to inhibit Members' discussions.**
- Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

Membership of Committee:- Councillors C. Cochrane (Chair), L. Douglas, E. Thornton-Nicol and Community Councillor I. King

Please direct any enquiries to Declan Hall 01835 826556
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**SCOTTISH BORDERS COUNCIL
SELKIRK COMMON GOOD FUND SUB COMMITTEE**

MINUTE of Meeting of the SELKIRK
COMMON GOOD FUND SUB COMMITTEE
conducted remotely by Microsoft Teams on
Wednesday 13 September 2023 at 16.00 pm.

Present:- Councillors C. Cochrane (Chair), L Douglas and E. Thornton-Nicol and
Community Councillor I. King
In Attendance:- Estates Surveyors (T. Hill and A. Watson), Solicitors (F. Rankine and J.
Webster), Statutory Accountant (G. Reid), Democratic Services Officer (D.
Hall).

1. MINUTE AND ACTION TRACKER

- 1.1 There had been circulated copies of the Minutes of the meetings held on 7 June 2023 and 10 July 2023. With reference to paragraph 1.2 of the Minute of 7 June 2023, Community Councillor King sought assurances that investigations and work related to insurance was still ongoing. The Solicitor, Ms Jane Webster, confirmed that discussions with the insurance department were ongoing and that the relevant information would be reported back once it was available. Regarding reference in the Minute to Community Councillor King expressing “gratitude for a response regarding the legal ownership of Common Good Funds”, Mr King disputed the use of the word gratitude as an accurate summation of his reaction. Whilst Mr King may have been grateful for a response, he did not express gratitude. The Minute would be amended to replace “expressed his gratitude for a response” with “was grateful for a response”. Mr King disputed the explanation that “further discussion regarding the ownership and administration of the Common Good could be a topic for further discussion”. Mr King requested that the word “could” be replaced by “would”. The Minute would be amended accordingly. The Solicitor acknowledged that there remained a disagreement regarding ownership of the Common Good Fund and its assets, and Community Councillor King and Scottish Borders Council officers had agreed to disagree regarding ownership. With regard to paragraph 3.3, Community Councillor King expressed his concern that he had not been invited to a site visit with the Heritage and Design Officer at the Sir Walter Scott Memorial. The Chair explained that the site visit had not taken place, and that she expected that when the visit did take Community Councillor King would be invited.

DECISION

AGREED to approve the Minute, as amended, for signature by the Chairman.

1.2 Action Tracker

The action tracker had been circulated.

DECISION

NOTED the action tracker.

2. MONITORING REPORT FOR 12 MONTHS TO 31 MARCH 2023

There had been circulated copies of a report by the Director – Finance and Procurement which his report provided the details of the income and expenditure for the Selkirk Common Good Fund for the three months to 30 June 2023, a full year projected out-turn for 2023/24, and projected balance sheet values as at 31 March 2024. Appendix 1 to the report provided the projected income and expenditure position for 2023/24. That showed a projected deficit of £2,763 for the year, which was less than the previously reported surplus

on 7 June 2023, as a result of an increase in the property repairs budget. Appendix 2 to the report provided a projected balance sheet value as at 31 March 2024. It shows a projected decrease in reserves of £142,039. A breakdown of the property portfolio showing projected rental income and projected net return for 2023/24 and actual property income to 30 June 2023 was provided in Appendix 3a to the report. Appendix 3b provided a breakdown of the property portfolio showing projected property expenditure for 2023/24 and actual property expenditure to 30 June 2023. A breakdown of the property portfolio showing projected property valuations at 31 March 2024 was provided in Appendix 4 to the report. Appendix 5 showed the value of the Aegon Asset Management Investment Fund to 30 June 2023. The Statutory Accountant, Mr Gordon Reid, presented the report and responded to questions. Mr Reid highlighted that because the tenant had withdrawn their offer to lease 28 Market Place there would be an impact associated with the loss of rental income. The Estates Surveyor, Ms Tricia Hill, confirmed that the works to refurbish 28 Market Place had proceeded as agreed. With regard to the revaluation reserve, Mr Reid explained that it was hoped that the works to refurbish 28 Market Place would offset depreciation. In response to a question regarding the depreciation associated with the caretakers flat at Victoria Hall, Mr Reid undertook to explore the issue with Estates and ensure that an update was provided at a future meeting. Mr Reid explained that he was attending the meeting as part of an interim arrangement and confirmed that he would raise displaying the value of fixed assets with his successor. It was highlighted that insurance arrangements for assets remained unclear and that it was of paramount importance that photographs, and full documentation of fixed assets should be in place to cover assets in the event of fire, theft, or loss of any description. Mr Reid undertook to explore the insurance of assets, including the thoroughness of their valuation and whether appropriate documentation and evidence of their condition was in place. In response to a question regarding the valuation and depreciation of farms, Mr Reid explained that the depreciation referred to was based on the likely lifespan of buildings. The land holdings were not depreciating in value. The revaluation referred to in the report was carried out every five years, and it was possible that there could be a significant uplift in the value of individual farms once that exercise was undertaken.

DECISION

(a) AGREED:-

- (i) that the Statutory Accountant would investigate the depreciation charges associated with the Caretakers Flat at Victoria Hall with the Estates Department;**
- (ii) that the Statutory Accountant would investigate providing fixed asset values as part of future reports; and**
- (iii) that the Statutory Accountant would explore whether appropriate photographic evidence and documentation of assets existed for insurance purposes, and whether insurance arrangements in place were sufficiently thorough to afford the appropriate level of protection from fire, theft, and loss.**

(b) NOTED:-

- (i) the actual income and expenditure for 2023/24 in Appendix 1 to the report as the revised budget for 2023/24;**
- (ii) the projected balance sheet value as at 31 March 2024 in Appendix 2 to the report; and**

- (iii) **the summary of the property portfolio in Appendices 3 and 4 to the report; and**
- (iv) **the current position of the Aegon Asset Management Investment Fund in Appendix 5 to the report**

3. **PROPERTY**

The Estates Surveyor, Ms Tricia Hill, explained that she did not have any matters related to Common Good property to discuss in public. The Property Officer, Mr Gareth Smith, was unable to attend the meeting. No matters were discussed.

**DECISION
NOTED**

4. **3 BRETHERN FENCE**

In the absence of the Property Officer, it was agreed that a discussion regarding the 3 Brethren Fence would take place at the next meeting of the Selkirk Common Good Fund Sub-Committee.

DECISION

AGREED to discuss the 3 Brethren Fence at the next meeting of the Common Good Fund Sub-Committee.

DECLARATION OF INTEREST

Councillor Douglas and Community Councillor King declared an interest in the following item of business and did not take part in the discussion.

5. **SELKIRK HILL MANAGEMENT GROUP**

There had been circulated copies of a letter from the Selkirk Hill Management Group which requested that payment of the current year's annual £10,000 maintenance grant be paid. The Solicitor explained that the five-year agreement was still being drafted, would be circulated as soon as it was ready, and that once it was in place it was expected that payment could be made promptly. The Statutory Accountant, Mr Reid, explained that payment was due to be paid in November, but could be expedited. It was confirmed that the Selkirk Hill Management Group had amended their financial year to follow the standard financial year.

DECISION

AGREED to expedite the payment of the 2023/24 grant to Selkirk Hill Management Group.

MEMBER

Community Councillor King requested that a discussion take place on the Integrated Impact Assessment (IIA) which had been circulated with the agenda. Concerns were expressed regarding the lack of reference to sustainability in the context of the Common Good and the wider Council. Mr King expected that there should be a policy in place regarding the improvement of the quality and condition of Common Good owned assets in the context of sustainability and energy conservation. It was highlighted that sustainability was not one of the headings of the impact assessment. Members explained that the IIA was directly related to the Equalities Act 2010 and was concerned with assessing the impact of Council reports on individuals with protected characteristics. Sustainability was embedded into all the Council's strategic thinking, and all monitoring reports and every council paper was produced in the context of the Council having signed up to the sustainable development goals and other climate change commitments. It was highlighted that the IIA referred to specifically related to the financial monitoring report.

6. **PRIVATE BUSINESS
DECISION**

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in the paragraph 8 of Part I of Schedule 7A to the Act.

SUMMARY OF PRIVATE BUSINESS

7. **PRIVATE MINUTE AND ACTION TRACKER**

The Private sections of the Minutes of the Meetings held on 7 June 2023 and 10 July 2023 were approved for signature by the Chair

8. **PROPERTY**

The Sub-Committee received an update on private matters relating to Common Good owned property.

The meeting concluded at 5.00 pm.

SCOTTISH BORDERS COUNCIL

ACTION TRACKER (PUBLIC BUSINESS)

SELKIRK COMMON GOOD FUND SUB-COMMITTEE – 2022 onwards

Notes:-

Items for which no actions are required are not included.

NO.	MINUTE PARAGRAPH NUMBER, TITLE AND DECISION REQUIRING ACTION	DEPARTMENT	RESPONSIBLE OFFICER	OUTCOME
13 September 2023				
2. Financial Monitoring	<p>(i) that the Statutory Accountant would investigate the depreciation charges associated with the Caretakers Flat at Victoria Hall with the Estates Department;</p> <p>(ii) that the Statutory Accountant would investigate providing fixed asset values as part of future reports; and</p> <p>(iii) that the Statutory Accountant would explore whether appropriate photographic evidence and documentation of assets existed for insurance purposes, and whether insurance arrangements in place were sufficiently thorough to afford the appropriate level of protection from fire, theft, and loss.</p>	Finance	Gordon Reid (subsequently left the Council)	
5. Selkirk Hill Management group	DECISION AGREED to expedite the payment of the 2023/24 grant to Selkirk Hill Management Group.	Finance	Gordon Reid	Email on 25/09/23 confirming that payment to be made on 27/09/23
7 June 2023				
1.2 Action Tracker	Regarding the issue of insurance, raised at the 15 June 2022 meeting, the Solicitor explained that the former Principal Solicitor, who had since left Scottish Borders Council, had been investigating the situation and that	Legal	Jane Webster	

	she was not aware of the outcome of any research. The Solicitor undertook to investigate matters and report back.			
3. Property	(a) AGREED that the Property Officer would hold discussions with the Heritage and Design Officer regarding the Walter Scott Memorial	Property	Gareth Smith	
15 February 2023				
2. MONITORING REPORT FOR 9 MONTHS TO 31 DECEMBER 2022 AND PROPOSED BUDGET FOR FINANCIAL YEAR 2023/24	Paragraph 2: Ms Douglas undertook to investigate the status of the old fire station and provide a response at a future meeting	Finance	Suzy Douglas	
15 JUNE 2022				
2. MINUTE	Para 2.2- DECISION – AGREED Ms Webster, Solicitor raise the matter of insurance for artefacts with the Principal Solicitor and report back to a future meeting	Legal	Jane Webster	Hannah Macleod left SBC, matters outstanding.

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MONITORING REPORT FOR 6 MONTHS TO 30 SEPTEMBER 2023

Report by Director of Finance & Procurement

SELKIRK COMMON GOOD FUND SUB-COMMITTEE

29 November 2023

1 PURPOSE AND SUMMARY

- 1.1 This report provides the details of the income and expenditure for the Selkirk Common Good Fund for the six months to 30 September 2023, a full year projected out-turn for 2023/24, and projected balance sheet values as at 31 March 2024.**
- 1.2 Appendix 1 provides the projected income and expenditure position for 2023/24. This shows a projected deficit of £2,763 for the year.
- 1.3 Appendix 2 provides a projected balance sheet value as at 31 March 2024. It shows a projected decrease in reserves of £142,039.
- 1.4 Appendix 3a provides a breakdown of the property portfolio showing projected rental income and projected net return for 2023/24 and actual property income to 30 September 2023.
- 1.5 Appendix 3b provides a breakdown of the property portfolio showing projected property expenditure for 2023/24 and actual property expenditure to 30 September 2023.
- 1.6 Appendix 4 provides a breakdown of the property portfolio showing projected property valuations at 31 March 2024.
- 1.7 Appendix 5 shows the value of the Aegon Asset Management Investment Fund to 30 September 2023.

2 RECOMMENDATIONS

- 2.1 I recommend that the Common Good Fund Sub-Committee:**
 - (a) Notes the actual income and expenditure for 2023/24 in Appendix 1;**
 - (b) Notes the projected balance sheet value as at 31 March 2024 in Appendix 2;**
 - (c) Notes the summary of the property portfolio in Appendices 3 and 4; and**
 - (d) Notes the current position of the Aegon Asset Management Investment Fund in Appendix 5.**

3 BACKGROUND

3.1 This report provides the Committee with financial information for the period to 30 September 2023 and projections to 31 March 2024. The report also contains a projected balance sheet for the Common Good Fund as at 31 March 2024.

4 FINANCIAL POSITION 2023/24

4.1 Appendix 1 provides details on income and expenditure for the 2023/24 financial year. The projected net position for the year is a deficit of £2,763.

4.2 Income & Expenditure – Property Income

(a) Rental income for 2023/24 is shown in Appendices 1 & 3a, with Appendix 3a detailing the actual annual rental income by individual property. Actual income is reported on a cash basis until the year end with quarter 4 reports incorporating any annual adjustments for prepayments and accruals.

4.3 Income & Expenditure – Non-Property Related Income

(a) The projected out-turn position shows an amount of £50 relating to interest receivable on cash held by SBC. Also included are dividends from the Common Good Funds investment in Aegon Asset Management amounting to £11,940 with the projection for 2023/24 remaining at the 5% target and the monthly distribution profile projections provided by Aegon. The position will be monitored closely with Aegon Asset Management.

(b) Included within other income is a rebate from Aegon Asset Management of £58, which has been re-invested to purchase an additional 61 units.

4.4 Income & Expenditure – Property Expenditure

(a) The property expenditure for 2023/24 is shown in Appendices 1 & 3b, with Appendix 3b detailing the actual property expenditure by individual property. Actual expenditure is reported on a cash basis until the year end with quarter 4 reports incorporating any annual adjustments for prepayments and accruals.

(b) Appendices 3a and 3b show a full breakdown of the projections for property rental and repairs for 2023/24. These will be revised as further information is received.

4.5 Income & Expenditure – Grants & Other Donations

The grants and other donations approved and distributed to 31 March 2024, are shown below:

Grant Recipients	Approved	£
Approved and Paid to 30 September 2023 Selkirk Silver Band	07/06/23	1,500
Total Paid to 31 March 2024		1,500
Approved Budget 2023/24		18,150
<i>(Unallocated)/Overallocated Budget</i>		<i>(16,650)</i>

4.6 Income & Expenditure – Central Support Service Charge

The proposed charge for 2023/24 is currently estimated using a 2% uplift on the 2022/23 charge. This is subject to revision once the 2023/24 pay award is confirmed and a full Service Charge Review has been completed and approved by Council.

4.7 Income & Expenditure – Depreciation Charge

The projected depreciation charge for the year is £139,276. This is not a cash transaction and is off-set by a corresponding contribution from the Revaluation Reserve at the end of the financial year.

4.8 Appendix 2 provides the actual balance sheet value as at 1 April 2023, the projected movement in year and a projected balance sheet as at 31 March 2024.

4.9 Balance Sheet – Fixed Assets

All fixed assets of the Common Good Fund are revalued every 5 years as part of the Council's rolling programme. The fixed assets were revalued at 1 April 2019. Appendix 4 shows the actual values of the individual properties at 1 April 2023, projected depreciation charges for 2023/24 and projected values at 31 March 2024.

4.10 Balance Sheet – Investment Fund

The fund has a 13.16% unrealised loss in market value since investment, largely due to continued volatility in investment markets. Overall, however, taking account of the income received the fund has achieved a return of 15.88% since investment in February 2018.

4.11 Balance Sheet – Cash Balance

The cash held by the fund is projected to be £87,986 at 31 March 2024 and is detailed below:

Cash Balance	£
Opening Balance at 1 April 2023	91,046
Projected deficit for year from Income & Expenditure statement	(2,763)
Net Cash Movement in Debtors/Creditors	0
Rebate Investment in Aegon	(297)
Projected Closing Balance at 31 March 2024	87,986

4.12 Balance Sheet – Capital Reserve

The movement in the Capital Reserves includes the unrealised gain for the Aegon Asset Management Fund as at 31 March 2023, but due to the nature of the markets no estimate has been made for the future years' movement

5 IMPLICATIONS

5.1 Financial

There are no further financial implications other than those explained above in Section 4.

5.2 Risk and Mitigations

There is a risk that investments in the Aegon Asset Management Fund may reduce in value due to market or investment performance. This risk cannot be fully mitigated; however, it is being managed by the selection of a Fund Manager with a clear objective of preserving capital values while aiming to produce returns in line with the benchmark.

5.3 Intergrated Impact Assessment

There is no impact or relevance to Equality Duty or the Fairer Scotland Duty for this report. This is a routine financial monitoring report which forms part of the governance of the management of the Common Good Funds. Nevertheless, a light touch assessment has been conducted and this will be published on SBC's Equality and Diversity Pages of the website as in doing so, signifies that equality, diversity and socio-economic factors have duly been considered when preparing this report.

5.4 Sustainable Development Goals

Whilst there are no economic, social or environmental effects arising from the proposals contained in this report, there are, through the activities reported upon, positive impacts upon the economy through protection of employment, positive impacts upon the quality of community life and improvements in local amenities and nurturing of local talent. The potential improvement in levels of income through the use of the new investment fund will act to make the Common Good Fund more sustainable in the future.

5.5 Climate Change

There are no effects on climate change arising from the proposals contained in this report.

5.6 Rural Proofing

There are no effects on rural proofing arising from the proposals contained in this report.

5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Scheme of Administration or Scheme of Delegation arising from the proposals contained in this report.

6 CONSULTATION

- 6.1 The Director of Corporate Governance (including as Monitoring Officer), the Chief Officer Audit and Risk, Director (People Performance & Change), the Clerk to the Council and Communications have been consulted and their appropriate comments have been incorporated into this report.

Approved by

Suzy Douglas
Director of Finance & Procurement

Author(s)

Kirsten Robertson	Statutory Reporting & Treasury Business Partner – Tel: 01835 825506
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Background Papers:

Previous Minute Reference: Selkirk Common Good Committee 30 August 2023

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**SELKIRK COMMON GOOD FUND
PROJECTED INCOME AND EXPENDITURE 2023/24**

APPENDIX 1

	Actuals at 30/09/23	Full Year Approved Budget 2023/24	Full Year Projected Out-turn 2023/24	Full Year Projected Over/ (Under) Spend 2023/24	Para Ref	Comments
	£	£	£	£		
Property Income						
Rental Income	(54,703)	(60,631)	(60,631)		4.2	
		0	0			
Non-Property Related Income						
Interest on Cash deposited with Council	(0)	(50)	(50)		4.3	
Investment Funds – Dividends Rec'd	(6,590)	(11,940)	(11,940)		4.3	Est 5% return
Realised Gain on Disinvestment	(0)	0	0		4.3	
Other Income	(58)	(260)	(260)		4.3	
Total Income	(61,351)	(72,881)	(72,881)			
Property Costs – General	41,062	45,500	45,500		4.4	
Grants & Other Donations	1,500	18,150	18,150		4.5	3 year average
Central Support Service Charge	0	11,994	11,994		4.6	Subject to review
Depreciation						
Depreciation Charge	0	139,276	139,276		4.7	
Contribution from Revaluation Reserve	0	(139,276)	(139,276)		4.7	
Net impact of Depreciation on Revenue Reserve	0	0	0			
Total Net (Surplus)/Deficit for year	(18,789)	2,763	2,763			

PROJECTED BALANCE SHEET VALUE AS AT 31 MARCH 2024

	Opening Balance at 01/04/23	Projected Movement in Year	Projected Closing Balance at 31/03/24
	£	£	£
Fixed Assets			
Land & Buildings	3,906,624	(139,276)	3,767,348
Moveable Assets	1,500	0	1,500
Total Fixed Assets	3,908,124	(139,276)	3,768,848
Capital in Investment Funds			
Investment Fund Book Value	258,885	297	259,182
Unrealised Gains/(Loss)	(30,611)	0	(30,611)
Market Value	228,274	297	228,571
Current Assets			
Debtors	8,178	0	8,178
Cash deposited with SBC	91,046	(3,060)	87,986
Total Current Assets	99,224	(3,060)	96,164
Current Liabilities			
Creditors	0	0	0
Receipts in Advance	(720)	0	(720)
Total Current Liabilities	(720)	0	(720)
Net Assets	4,234,902	(142,039)	4,092,863
Funded by:			
Reserves			
Revenue Reserve	(182,783)	2,763	(180,020)
Capital Reserve	(164,389)	0	(164,389)
Revaluation Reserve	(3,887,730)	139,276	(3,748,454)
Total Reserves	(4,234,902)	142,039	(4,092,863)

PROPERTY PORTFOLIO PERFORMANCE FOR 2023/24
(Actual income to 30 September 2023 and projections to 31 March 2024)

Rental Income – Land & Buildings	2023/24			
	Approv'd Budget	Project'd Budget	Actuals as at 30/09/23	Project'd Net (Return) /Loss
	£	£	£	£
The Green Hut	(2,350)	(2,350)	0	(2,350)
Town Hall Clock	0	0	0	0
Pant Well Monument	0	0	0	0
Victoria Hall Caretakers Flat	0	0	0	0
Victoria Hall	0	0	0	0
Pringle Park	0	0	0	0
Victoria Park Pavilion site	(200)	(200)	(233)	(200)
Pringle Park Play Area	0	0	0	0
Selkirk Golf Course	0	0	0	0
South Common Farm	(9,500)	(9,500)	(10,259)	(6,000)
Smedheugh Farm	(23,500)	(23,500)	(15,471)	(20,000)
Selkirk Hill Grazings	(410)	(410)	(410)	9,590
Linglie Farm	(7,300)	(7,300)	(18,767)	(3,800)
Victoria Park & Caravan Site	0	0	0	0
26 Market Place	(4,160)	(4,160)	(4,853)	(4,160)
28 Market Place	(2,500)	(2,500)	0	17,500
Selkirk Town Hall	0	0	0	0
South Common Plantations	0	0	0	0
Smedheugh Farm Shootings	(200)	(200)	(250)	(200)
Smedheugh Plantations	0	0	0	0
Linglie Plantations	0	0	0	0
Linglie Farm Shootings	0	0	0	0
Linglie Mast Site	(10,311)	(10,311)	(4,210)	(10,311)
South Common Farm Shootings	(200)	(200)	(250)	(200)
Bog Park Recreation Area	0	0	0	0
Shawburn Amenity Ground	0	0	0	0
Shawburn Toll Embankment	0	0	0	0
Bog Park Play Hall	0	0	0	0
Victoria Park Play Area	0	0	0	0
Civic Amenity Site	0	0	0	0
Rosebank Quarry Former Tip Site	0	0	0	0
Rosebank Quarry Play Area	0	0	0	0
Shawpark Road Development Site	0	0	0	0
River Ettrick Salmon Fishing Right	0	0	0	0
Sir Walter Scott Statue	0	0	0	0
Fletchers Memorial	0	0	0	0
Selkirk Swimming Pool (Live B'ders)	0	0	0	0
Property Expenditure General	0	0	0	5,000
Total	(60,631)	(60,631)	(54,703)	(15,131)

PROPERTY PORTFOLIO PERFORMANCE FOR 2023/24

(Actual expenditure to 30 September 2023 and projections to 31 March 2024)

Property Expenditure – Land & Buildings	2023/24				
	Approv'd Budget	Project'd Budget	Actual (Repair & Maint)	Actual (Other)	Actual Total
	£	£	£	£	£
The Green Hut	0	0	0	0	0
Town Hall Clock	0	0	0	0	0
Pant Well Monument	0	0	0	0	0
Victoria Hall Caretakers Flat	0	0	0	0	0
Victoria Hall	0	0	82	0	82
Pringle Park	0	0	0	0	0
Victoria Park Pavilion site	0	0	120	0	120
Pringle Park Play Area	0	0	0	0	0
Selkirk Golf Course	0	0	0	0	0
South Common Farm	3,500	3,500	1,571	0	1,571
Smedheugh Farm	3,500	3,500	3,748	0	3,748
Selkirk Hill Grazings	10,000	10,000	10,000	0	10,000
Linglie Farm	3,500	3,500	9,792	0	9,792
Victoria Park & Caravan Site	0	0	0	0	0
26 Market Place	0	0	1,710	(46)	1,664
28 Market Place	20,000	20,000	12,346	1,339	13,685
Selkirk Town Hall	0	0	0	0	0
South Common Plantations	0	0	0	0	0
Smedheugh Farm Shootings	0	0	0	0	0
Smedheugh Plantations	0	0	0	0	0
Linglie Plantations	0	0	0	0	0
Linglie Farm Shootings	0	0	0	0	0
Linglie Mast Site	0	0	0	0	0
South Common Farm Shootings	0	0	0	0	0
Bog Park Recreation Area	0	0	0	0	0
Shawburn Amenity Ground	0	0	0	0	0
Shawburn Toll Embankment	0	0	0	0	0
Bog Park Playground	0	0	0	0	0
Victoria Park Play Area	0	0	0	0	0
Civic Amenity Site	0	0	0	0	0
Rosebank Quarry Former Tip Site	0	0	0	0	0
Rosebank Quarry Play Area	0	0	0	0	0
Shawpark Road Development Site	0	0	0	0	0
River Ettrick Salmon Fishing Right	0	0	0	0	0
Sir Walter Scott Statue	0	0	0	0	0
Fletchers Memorial	0	0	0	0	0
Selkirk Swimming Pool (Live Borders)	0	0	0	0	0
Property Expenditure General	5,000	5,000	400	0	400
Total	45,500	45,500	39,769	1,293	41,062

PROPERTY PORTFOLIO VALUATION FOR 2023/24
(Projected property valuation to 31 March 2024)

Fixed Assets – Land & Buildings	Net Book Value at 31/03/23	Project'd Depn Charge 2023/24	Project'd Net Book Value at 31/03/24
	£	£	£
The Green Hut	33,000	0	33,000
Town Hall Clock	0	0	0
Sir Walter Scott Statue	0	0	0
Fletchers Memorial	0	0	0
Pant Well Monument	0	0	0
Victoria Hall Caretakers Flat	55,091	(4,909)	50,182
Victoria Hall	846,690	(68,310)	778,380
Pringle Park	0	0	0
Victoria Park Pavilion site	4,000	0	4,000
Pringle Park Play Area	0	0	0
Selkirk Golf Course	152,000	0	152,000
South Common Farm	437,819	(7,181)	430,638
Smedheugh Farm	1,076,765	(23,235)	1,053,530
Selkirk Hill Grazings	36,000	0	36,000
Linglie Farm	712,273	(7,727)	704,546
Victoria Park & Caravan Site	0	0	0
26 Market Place	30,588	(4,514)	26,074
28 Market Place	38,586	(5,714)	32,872
Selkirk Town Hall	137,312	(17,686)	119,626
South Common Plantations	9,000	0	9,000
Smedheugh Farm Shootings	1,000	0	1,000
Smedheugh Plantations	35,000	0	35,000
Linglie Plantations	22,500	0	22,500
Linglie Farm Shootings	3,250	0	3,250
Linglie Mast Site	88,000	0	88,000
South Common Farm Shooting	1,000	0	1,000
River Ettrick Salmon Fishing Rights	750	0	750
Bog Park Recreation Area	0	0	0
Shawburn Amenity Ground	40,000	0	40,000
Shawburn Toll Embankment	0	0	0
Bog Park Playground	0	0	0
Victoria Park Play Area	0	0	0
Selkirk Swimming Pool (Live Borders)	0	0	0
Civic Amenity Site	114,000	0	114,000
Rosebank Quarry Former Tip Site	0	0	0
Rosebank Quarry Play Area	0	0	0
Shawpark Rd Development Site	32,000	0	32,000
Total	3,906,624	(139,276)	3,767,348

Fixed Assets – Moveable Assets	Projected Net Book Value at 31/03/24
	£
Silver Arrow Display Case	1,500
Haining Painting	0
Arts & Artefacts – held in locations below:	0
<u>Selkirk Courthouse</u>	
Ceremonial & Related Items:	
Provosts Badge & Chain	
Treasurer’s Badge & Chain	
Baillies Badges & Chains	
Burgess Cup; Burgess Roll	
Silver Cup & Cover	
<u>Sir Walter Scott’s Courtroom</u>	
Ceremonial & Related Items:	
Copy of Royal Charter	
Framed Air View Map of Burgh of Selkirk	
Framed List of House holders in Selkirk, 1873	
Certificate of Matriculation of the Arms of the Royal burgh of Selkirk	
Ceremonial Burgh hallberds	
Paintings & Photographs:	
James Hogg “the Ettrick Shepherd”	
After the Battle of Philiphaugh	
Flowers of the Forest (or Return from Flodden)	
The Legend of Ladywoodedge	
Yarrow Valley	
Selkirk: memories of Flodden	
Thomas Anderson, surgeon, Selkirk	
Henry Scott Anderson, MD, Provost 1868 - 80	
Sir Walter Scott (7)	
Framed photograph of Andrew Lang	
Copy engraving of Mungo Park	
Engraving of Robert Burns	
Conferment of the Freedom of Selkirk on the Royal Company of Archers, 1971	
Conferment of the Freedom of Selkirk on the Duke of Buccleuch and earl Home, 1963	
Conferment of the Freedom of Selkirk on the Kings own Scottish Borderers, 1953	
Dance of the Fairies, 1935	
Engraving- Prince Leopold of Belgium	
Handwritten Letters:	
Letters from Walter Scott’s daughter Charlotte	
Letter from Sir Walter Scott	
Letters from Andrew Lang	
Letter from Mungo Park	
Signed copy of “Nithsdale”	
Other items:	
Bust of Sir Walter Scott	
Shield (2)	
Total	1,500

INVESTMENTS EXTERNALLY MANAGED

Cost of Investment	Units	£
Aegon Asset Management Investment (February 2018)	168,040	181,938
Aegon Asset Management Investment (March 2018)	46,331	50,000
Aegon Asset Management Investment (August 2018)	69,335	75,000
Aegon Asset Management Disinvestment (March 2019)	(37,216)	(40,294)
Aegon Fund Rebate – (2018-2019)	290	313
Aegon Asset Management Disinvestment (June 2019)	(36,052)	(39,033)
Aegon Fund Rebate – (2019-2020)	184	204
Aegon Fund Rebate – (2020-2021)	213	214
Aegon Asset Management Investment (September 2021)	27,076	30,000
Aegon Fund Rebate – (2021-2022)	224	246
Aegon Fund Rebate – (2022-2023)	305	297
Aegon Fund Rebate – (2023-2024)	61	58
Total Invested to 30 September 2023	238,791	258,943

Value of Investment	£
31 March 2018	231,938
31 March 2019	269,040
31 March 2020	193,744
31 March 2021	230,380
31 March 2022	259,907
30 June 2022	231,187
30 September 2022	216,649
31 December 2022	228,829
31 March 2023	228,273
30 June 2023	229,252
30 September 2023	224,511
Increase/(Decrease) from Total Cash Invested	(34,432)

Return on Investment from inception	Capital Return %	Total Return %
to 31 March 2018	-0.30	
to 31 March 2019	+3.86	+9.41
to 31 March 2020	-15.16	-5.98
to 31 March 2021	+0.78	+16.84
to 30 June 2021	+1.10	+18.71
to 30 September 2021	+0.36	+19.52
to 31 December 2021	+3.93	+25.02
to 31 March 2022	+0.68	+22.56
to 30 June 2022	-10.46	+10.70
to 30 September 2022	-16.12	+5.84
to 31 December 2022	-11.43	+12.81
to 31 March 2023	-11.69	+13.46
to 30 June 2023	-11.30	+16.45
to 30 September 2023	-13.16	+15.88

Integrated Impact Assessment (IIA)

Part 1 Scoping

1 Details of the Proposal

Title of Proposal:	MONITORING REPORT FOR 6 MONTHS TO 30 SEPTEMBER 2023
What is it?	A new Policy/Strategy/Practice <input type="checkbox"/> A revised Policy/Strategy/Practice <input checked="" type="checkbox"/>
Description of the proposal: (Set out a clear understanding of the purpose of the proposal being developed or reviewed (what are the aims, objectives and intended outcomes, including the context within which it will operate).	Quarterly report to Selkirk Common Good Fund on the projected out-turn for 2023/24 and the projected balance sheet for 2023/24
Service Area: Department:	Common Good Funds Finance & Regulatory
Lead Officer: (Name and job title)	Kirsten Robertson – Statutory Reporting & Treasury Business Partner
Other Officers/Partners involved: (List names, job titles and organisations)	
Date(s) IIA completed:	27/10/2023

2 Will there be any cumulative impacts as a result of the relationship between this proposal and other policies?

Yes / No (please delete as applicable)
If yes, - please state here:

3 Legislative Requirements

3.1 Relevance to the Equality Duty:	
<p>Do you believe your proposal has any relevance under the Equality Act 2010? <i>(If you believe that your proposal may have some relevance – however small please indicate yes. If there is no effect, please enter “No” and go to Section 3.2.)</i></p>	
Equality Duty	Reasoning:
Elimination of discrimination (both direct & indirect), victimisation and harassment. <i>(Will the proposal discriminate? Or help eliminate discrimination?)</i>	Given the subject matter of this assessment, it is not relevant to Equality duty.
Promotion of equality of opportunity? <i>(Will your proposal help or hinder the Council with this)</i>	
Foster good relations? <i>(Will your proposal help or hinder the council s relationships with those who have equality characteristics?)</i>	

3.2 Which groups of people do you think will be or potentially could be, impacted by the implementation of this proposal? (You should consider employees, clients, customers / service users, and any other relevant groups)				
Please tick below as appropriate, outlining any potential impacts on the undernoted equality groups this proposal may have and how you know this.				
	Impact			Please explain the potential impacts and how you know this
	No Impact	Positive Impact	Negative Impact	
All of the protected characteristics including Age, Disability, Gender Reassignment, Marriage or Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex, Sexual Orientation.	X			No impact or relevance. This is a routine monitoring report required as part of good governance of the Common Good Funds
3.3 Fairer Scotland Duty				
This duty places a legal responsibility on Scottish Borders Council (SBC) to actively consider (give due regard) to how we can reduce inequalities of outcome caused by socioeconomic disadvantage when making <u>strategic</u> decisions.				
The duty is set at a strategic level - these are the key, high level decisions that SBC will take. This would normally include strategy documents, decisions about setting priorities, allocating resources and commissioning services.				
Is the proposal strategic? No				
Yes / No <i>(please delete as applicable)</i>				
If No go to Section 4				
If yes, please indicate any potential impact on the undernoted groups this proposal may have and how you know this:				
	Impact		State here how you know this	

	No Impact	Positive Impact	Negative Impact	
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.				
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 and hobbies				
Area Deprivation – where you live (e.g. rural areas), where you work (e.g. accessibility of transport)				
Socio-economic Background – social class i.e. parents' education, employment and income				
Looked after and accommodated children and young people				
Carers paid and unpaid including family members				
Homelessness				
Addictions and substance use				
Those involved within the criminal justice system				

4 Full Integrated Impact Assessment Required

Select No if you have answered “No” to all of Sections 3.1 – 3.3.

Yes / No (please delete as applicable)

If a full impact assessment is not required briefly explain why there are no effects and provide justification for the decision.

Report is a regular governance report required to ensure good governance of the Common Good Fund. All members of the Fund have equal status under the regulations followed.

Signed by Lead Officer:	Kirsten Robertson
Designation:	Statutory Reporting & Treasury Business Partner
Date:	27/10/2023
Counter Signature Service Director	
Date:	

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CHARITABLE DE-REGISTRATION OF SBC COMMON GOOD FUNDS

Report by Acting Chief Financial Officer

SCOTTISH BORDERS COUNCIL

30 March 2023

1 PURPOSE AND SUMMARY

- 1.1 **This report advises Members of the intention by the Office of the Scottish Charity Regulator (OSCR) to remove the SBC Common Good Funds, charity number SC031538, from the Scottish Charity Register (the Register).**
- 1.2 The 12 Common Good Funds (Coldstream, Duns, Eyemouth, Galashiels, Hawick, Innerleithen, Jedburgh, Kelso, Lauder, Melrose, Peebles and Selkirk) are registered with the Office of the Scottish Charity Regulator (OSCR) as 1 registered charity, registration number SC031538.
- 1.3 A letter received from OSCR in December 2022 is attached at Appendix 1. This provides advance notification of the intention to remove the SBC Common Good Funds, registration number SC031538, from the Register, and outlines:
- The reason for the decision
 - The process by which the Charity will be removed from the Register
 - The effect of removal
- 1.4 OSCR has concluded that:
1. Scottish Borders Common Good is not a 'body' with a constitution distinct and separate from the Council that is capable of being entered in the Register
 2. The Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act
 3. Because it has been concluded that the Charity does not have wholly charitable purposes an assessment of public benefit has not been carried out
- 1.5 The Council's Chief Legal Officer and Acting Chief Financial Officer agree with OSCR's conclusions that this is the correct approach. Following deregistration, annual accounts will not be prepared, audited and submitted to OSCR. The Common Good funds will instead be consolidated within the Council's statutory accounts. Outturn reports will continue to be presented to Common Good fund Committees setting out the annual income and expenditure associated with each fund and assets they hold on their balances sheet at 31 March each year. Separate records will still be maintained for each Common Good funds and current monitoring arrangements will continue.

2 RECOMMENDATIONS

- 2.1 It is recommended that Scottish Borders Council agrees with the notification from OSCR to remove the SBC Common Good Funds, charity number SC031538, from the Register and therefore resolves not to challenge the OSCR decision.**

3 BACKGROUND

- 3.1 The 12 Common Good Funds (Coldstream, Duns, Eyemouth, Galashiels, Hawick, Innerleithen, Jedburgh, Kelso, Lauder, Melrose, Peebles and Selkirk) are registered with the Office of the Scottish Charity Regulator (OSCR) as 1 registered charity, registration number SC031538.
- 3.2 The original registration was by Borders Regional Council prior to 1995, when charity registration was managed by HM Revenue & Customs. The reasons for this historic decision are not clear and records no longer exist to support the rationale. It was possibly to take advantage of tax benefits available at that time with regards to investment income, particularly in relation to share dividends. These tax benefits are no longer available, and there exists an anomalous position whereby the majority of Common Good Funds controlled by Scottish local authorities are not registered charities but those in the Borders still carry this designation.
- 3.3 There are particular costs associated with the accounting and auditing arrangements for charities, and these could be mitigated were the Funds not registered as a charity. The process for deregistering charities with OSCR has not previously been clear until now.

4 OFFICE OF THE SCOTTISH CHARITY REGULATOR (OSCR)

- 4.1 A letter received from OSCR in December 2022 is attached at Appendix 1. This provides advance notification of the intention to remove the SBC Common Good Funds, registration number SC031538, from the Register, and outlines:
- The reason for the decision
 - The process by which the Charity will be removed from the Register
 - The effect of removal
- 4.2 A charity is a body entered in the Register. OSCR may enter a body in the Register and allow a body to remain in the Register only if it considers that the body meets the charity test as set out in sections 7 and 8 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). The charity test comprises the following:
1. Assessment of whether the Charity is a 'body'
 2. Assessment of whether the Charity has only charitable purposes
 3. Assessment of whether the Charity provides public benefit
- 4.3 OSCR has concluded that:
1. Scottish Borders Common Good is not a 'body' with a constitution distinct and separate from the Council that is capable of being entered in the Register
 2. The Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act
 3. Because it has been concluded that the Charity does not have wholly charitable purposes an assessment of public benefit has not been carried out

- 4.4 The Council's Chief Legal Officer and Acting Chief Financial Officer agree with OSCR's conclusions that this is the correct approach. The decision to remove the Charity will be made under section 30(1)(b) of the 2005 Act. It is the intention that the removal will take effect from 31 March 2023.
- 4.5 Scottish Borders Council will have a right to request a review of the formal decision during the 21 day period commencing on the date that the formal notice is issued in early March 2023. The procedure for requesting a review will be set out in the formal notice.
- 4.6 Once removed from the Register there will be no duty to account to OSCR and there will be no requirement to provide final accounts for the financial year ending on 31 March 2023.

5 IMPLICATIONS

5.1 Financial

There is an estimated charge of £1,000 for audit costs of the Common Good Fund accounts for 2022/23 which will no longer be applicable. This will be redirected to fund inflationary increases in the Council's external audit fees.

5.2 Risk and Mitigations

Following deregistration, annual accounts will not be prepared, audited and submitted to OSCR. The Common Good funds will instead be consolidated within the Council's statutory accounts. Outturn reports will continue to be presented to Common Good fund Committees setting out the annual income and expenditure associated with each fund and assets they hold on their balances sheet at 31 March each year. Separate records will still be maintained for each Common Good funds and current monitoring arrangements will continue.

5.3 Integrated Impact Assessment

There is no impact or relevance to Equality Duty or the Fairer Scotland Duty for this report.

5.4 Sustainable Development Goals

There are no economic, social or environmental effects arising from the proposals contained in this report.

5.5 Climate Change

There are no effects on climate change arising from the proposals contained in this report.

5.6 Rural Proofing

There are no effects on rural proofing arising from the proposals contained in this report.

5.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Scheme of Administration or Scheme of Delegation arising from the proposals contained in this report.

6 CONSULTATION

6.1 The Chief Legal Officer (including as Monitoring Officer), the Chief Officer Audit and Risk, Director (People Performance & Change), the Clerk to the Council and Communications have been consulted and their comments have been incorporated into this final report.

Approved by

Suzy Douglas
Acting Chief Financial Officer

Signature

Author(s)

Suzy Douglas	Acting Chief Financial Officer (X5881)
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Background Papers:

Previous Minute Reference:

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

Contact us at Pension & Investments, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Tel: 01835 824000 Fax: 01835 825166
Email: t&cteam@scotborders.gov.uk

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8 December 2022

BY EMAIL ONLY

Treasury Business Partner, Scottish Borders Council

**Scottish Borders Council Common Good Funds SC031538
Advance notice of removal from the Scottish Charity Register**

I am writing to you as the Principal Contact of the Scottish Borders Council Common Good Funds (SC031538) (the Charity) to give you advance notice that the Scottish Charity Regulator (OSCR) intends to remove the Charity from the Scottish Charity Register (the Register). Please bring this letter to the attention of the charity trustees.

This letter explains the reason for our decision, the process by which the Charity will be removed from the Register and the effect of removal. Please treat this as a courtesy letter, to give advance notice of our intention in order that Scottish Borders Council (the Council) can make any preparations it thinks necessary before the removal takes effect. Formal notice of our decision will follow in due course as explained below.

**The reason for our decision
The charity test**

A charity is a body entered in the Register. OSCR may enter a body in the Register and allow a body to remain in the Register only if it considers that the body meets the charity test as set out in [sections 7](#) and [8](#) of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act).

A body meets the charity test if:

1. its purposes consist only of one or more of the charitable purposes listed in section 7(2) of the 2005 Act; and
2. it provides (or, in the case of an applicant provides or intends to provide) public benefit in Scotland or elsewhere

Assessment of whether the Charity is a 'body'



The Charity was entered in the Register on 1 April 2006 under [section 99\(1\)](#) of the 2005 Act; that is, as a body entitled by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 to refer to itself as a ‘Scottish charity’ immediately prior to the commencement of the 2005 Act.

We have considered whether the Charity is a ‘body’ capable of being entered in the Register.

Common Good generally comprises land and/or other assets historically vested in Scottish burghs and then vested by legislation in successive local authorities. Section 15 of the Local Government etc. (Scotland) Act 1994 (the 1994 Act) provided for the vesting of Common Good property in the newly created unitary authorities themselves. Article 12 and Schedule 2 of the Local Authorities (Property Transfer) (Scotland) Order 1995 provided for the various burgh funds that comprise the Scottish Borders Common Good to be transferred to and vested in Scottish Borders Council with effect from 1 April 1996.

Common Good land and other assets are therefore vested in and owned by the Council itself. The assets of Scottish Borders Common Good are held in trust by the Council but critically this arrangement does not involve the creation of a trust or any other form of body that is separate in identity from the Council. While the financial accounting for Common Good funds is carried out separately from the Council’s main accounts, this is for the improved transparency regarding the use and treatment of the Common Good funds and does not denote a distinct body.

As such, we conclude that Scottish Borders Common Good is not a ‘body’ with a constitution distinct and separate from the Council that is capable of being entered in the Register.

Assessment of whether the Charity has only charitable purposes

We also considered whether the Charity meets the charity test in terms of having only charitable purposes.

Section 15(4) of the 1994 Act provides for any Common Good property vesting in a new unitary authority to be administered, in the case of the Council, ‘having regard to the interests of the inhabitants of the area to which the Common Good formerly related’. We conclude that while the Council may apply the Common Good for charitable purposes, it is not confined to doing so. In having regard to the interests of the inhabitants of the former burghs that comprise the Scottish Borders, the Council may apply the Common Good for any purpose consistent with its functions as a local authority.

As such, we conclude that the Charity does not meet the charity test because it does not have purposes that consist only of one or more of the charitable purposes in section 7(2) of the 2005 Act.

Assessment of whether the Charity provides public benefit

OSCR determines whether a charity provides public benefit by considering the activities it undertakes in furtherance of its charitable purposes. As our [published guidance *Meeting the Charity Test*](#) explains, ‘not everything that is of benefit to the public will be charitable. Public benefit in a charitable sense is only provided by activities which are undertaken to advance an organisation’s charitable purposes’. Because we have concluded that the Charity does not have wholly charitable purposes we have not carried out an assessment of public benefit.

Our duties and powers

OSCR maintains the Register. Where it appears that a charity does not meet the charity test we must, in terms of [section 30\(1\)](#) of the 2005 Act, either:

1. direct the charity to take such steps as we consider necessary for the purposes of meeting the charity test; or
2. remove the charity from the Register

We have taken the decision to remove the Charity from the Register, as opposed to directing it to take steps to meet the charity test, because we have concluded that the Charity is not a ‘body’ and, as such, it should not be in the Register.

The process of removal

The decision to remove the Charity will be made under section 30(1)(b) of the 2005 Act.

We will give formal written notice to the Charity of our decision under [section 72\(2\)\(c\)](#) of the 2005 Act setting out the reason for our decision (as set out above) and advising the Charity of its right to request a review under [section 74](#) of the 2005 Act. Section 30 decisions are reviewable upon written request by the person or body that is the subject of the decision but there is no third party right to make representations.

[Section 73\(2\)](#) of the 2005 Act provides that a decision is of no effect unless the required notice is given and either:

1. the period of 21 days within which OSCR must, on request, review the decision expires without a request being made; or

2. where a review is requested, the review and any subsequent appeal is concluded with the original decision being confirmed.

On the date that OSCR's decision takes effect, the Charity will be removed from the Register. At the same time, we will publish on our website an inquiry report as required by [section 33\(1\)\(a\)\(i\)](#) of the 2005 Act. For the avoidance of doubt, I should explain that the Charity will still be searchable in the Register after the date of removal but only under the 'ceased charities' part of the Register.

It is our intention that the removal will take effect from 31 March 2023 to coincide with the end of the Charity's financial year. We will therefore issue formal notice to the Charity in early March in order to allow for the statutory review period to expire.

Removal from the Register – protection of assets

[Section 19](#) of the 2005 Act provides for the protection of assets held by a body immediately prior to its removal from the Register. Because we have concluded that the Charity is not a 'body', we are of the view that the provisions of section 19 do not apply to it.

The Charity will not be under duty to account to OSCR and we will not monitor the use of its assets once it is removed from the Register. We will also not require the Charity to provide us with final accounts for the financial year ending on 31 March 2023. I include this information only for the sake of completeness and to avoid any doubt.

Effect of removal

Once removed from the Register, the Charity will not be entitled to refer to itself as a 'charity' or to use its former registered charity number. We ask the charity trustees to take steps to ensure that any references to its charitable status are removed from new publications intended for issue after the date of removal and from websites and other digital platforms.

If the Charity has a Tax Reference number we recommend that the trustees contact HMRC to advise them of the removal. Loss of charitable status can in some instances constitute a 'disposal' triggering a liability for Capital Gains Tax. We are advised that local authorities are exempt from Capital Gains Tax under section 271 of the Taxation and Chargeable Gains Act 1992 but the charity trustees may wish to satisfy themselves on this point.

We also recommend that the charity trustees give consideration to the effect of removal upon any relief from non-domestic rates currently enjoyed by the Charity.

Right to review

As explained above, the Charity will have a right to request a review of our formal decision during the 21 day period commencing on the date that our formal notice is issued in March 2023. The procedure for requesting a review will be set out in the formal notice.

In the meantime, if you or the charity trustees have any questions or require clarification of any of the points set out in this letter please do not hesitate to raise them with me.

Yours sincerely

Steve Kent
Policy Manager

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