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LAUDER COMMON GOOD FUND SUB-COMMITTEE TUESDAY, 12 DECEMBER 2023

A MEETING of the LAUDER COMMON GOOD FUND SUB-COMMITTEE will be held VIA
MICROSOFT TEAMS on TUESDAY, 12 DECEMBER 2023 at 2.00 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,

6 December 2023

BUSINESS		
1.	Apologies for Absence	
2.	Order of Business	
3.	Declarations of Interest	
4.	Minute (Pages 3 - 4) Consider Minute of the Meeting held on 28 August 2023 for approval and signature by the Chair. (Copy attached.)	2 mins
5.	Monitoring Report for 6 Months to 30 September 2023 (Pages 5 - 18) Consider report by Director Finance and Procurement. (Copy attached.)	10 mins
6.	Charitable De-Registration of SBC Common Good Funds (Pages 19 - 30) Consider report by Acting Chief Financial Officer tabled at 30 March 2023 meeting of Scottish Borders Council for noting by the Sub-Committee. (Copy attached.)	2 mins
7.	Any Other Items Previously Circulated	
8.	Any Other Items which the Chair Decides are Urgent	
9.	Private Business Before proceeding with the private business, the following motion should be approved:	

	“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.”	
10.	Minute (Pages 31 - 32) Consider Private Section of the Minute of the Meeting held on 28 August 2023 for approval and signature by the Chair. (Copy attached.)	2 mins
11.	General Property Update Consider update by Estates Surveyor.	15 mins

NOTES

1. **Timings given above are only indicative and not intended to inhibit Members' discussions.**
2. **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 D. Parker (Chair), J. Linehan, J. PatonDay and Mr A. Smith (Lauderdale CC)

Please direct any enquiries to William Mohieddeen
Tel: 01835 826504; Email: william.mohieddeen@scotborders.gov.uk

**SCOTTISH BORDERS COUNCIL
LAUDER COMMON GOOD FUND SUB-COMMITTEE**

MINUTES of Meeting of the LAUDER
COMMON GOOD FUND SUB-COMMITTEE
held via Microsoft Teams on Monday, 28
August 2023 at 3.00 pm

Present:- Councillors D. Parker (Chair), J. Linehan, J. PatonDay and Mr A. Smith.

In Attendance:- Estates Strategy Manager (J. Stewart), Principal Solicitor (G. Sellar),
Statutory Accountant (G. Reid), Graduate Trainee Surveyor (A. Watson) and
Democratic Services Officer (W. Mohieddeen).

1. **MINUTE**

There had been circulated copies of the Minute of the Meeting held on 20 June 2023.

DECISION

AGREED to approve the Minute for signature by the Chair.

2. **MONITORING REPORT FOR 3 MONTHS TO 30 JUNE 2023**

There had been circulated copies of a report by Director Finance and Procurement that provided the details of the income and expenditure for the Lauder 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 of the report provided the projected income and expenditure position for 2023-24 which showed a projected deficit of £9,674 for the year. Appendix 2 of the report provided a projected balance sheet value as at 31 March 2024 which showed a projected decrease in reserves of £81,850. Appendix 3a of the report provided a breakdown of the property portfolio which showed projected rental income and projected net return for 2023-24 and actual property income to 30 June 2023. Appendix 3b of the report provided a breakdown of the property portfolio which showed projected property expenditure for 2023-24 and actual property expenditure to 30 June 2023. Appendix 4 of the report provided a breakdown of the property portfolio which showed projected property valuations at 31 March 2024. Appendix 5 of the report showed the value of the Aegon Asset Management Investment Fund to 30 June 2023.

DECISION

NOTED:

- (a) **the actual income and expenditure for 2023-24 in Appendix 1 of the report;**
- (b) **the projected balance sheet value as at 31 March 2024 in Appendix 2 of the report;**
- (c) **the summary of the property portfolio in Appendices 3 and 4 of the report;**
and,
- (d) **the current position of the Aegon Asset Management Investment Fund in Appendix 5 of the report.**

URGENT BUSINESS

Under Section 50B(4)(b) of the Local Government (Scotland) Act 1973, the Chair was of the opinion that the item dealt with in the following paragraph should be considered at the meeting as a matter of urgency, in view of the need to make an early decision.

3. **LAUDERDALE YOUTH FOOTBALL CLUB**

With reference to paragraph 3 of the Minute of the Meeting held on 20 June 2023, the Chair proposed that a letter of comfort be written to Lauderdale Youth Football Club on behalf of the Sub-Committee to express support for their planned works to develop the training pitches and pavilions to assist in their efforts to secure external funding from other sources. Members agreed for Cllr Parker to draft a letter for circulation and submission to Lauderdale Youth Football Club.

DECISION

AGREED that a letter of comfort be written to Lauderdale Youth Football Club to express support for the proposed development of football facilities to assist with the club's efforts to secure external funding.

4. **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 Paragraph 9 of Part I of Schedule 7A to the Act.

5. **MINUTE**

Members considered the Private Section of the Minute of the Meeting that was held on 20 June 2023.

6. **GENERAL PROPERTY UPDATE**

Members considered an update on Common Good property by the Estates Surveyor.

The meeting concluded at 3.20 pm.



MONITORING REPORT FOR 6 MONTHS TO 30 SEPTEMBER 2023

Report by Director of Finance & Procurement

LAUDER COMMON GOOD FUND SUB-COMMITTEE

12 December 2023

1 PURPOSE AND SUMMARY

- 1.1 This report provides the details of the income and expenditure for the Lauder 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 £9,674 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 £81,850.
- 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 £9,674.

4.2 Income & Expenditure – Property Income

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 £200 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 £11,542, 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 £55, which has been re-invested to purchase an additional 59 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 proposed budget for property rental and repairs for 2023/24. These will be revised as further information is received from Estates.

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 Lauder Community Council. Resilience Group	21/03/23	3,000
Total Paid to 31 March 2024		3,000
Total Budget 2023/24		5,900
<i>(Unallocated)/Overallocated Budget</i>		<i>(2,900)</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 £72,176. 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 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 31 March 2023, projected depreciation charges for 2023/24 and projected values at 31 March 2024.

4.10 Balance Sheet – Investment Fund

The fund has an 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 (£19,228) at 31 March 2024 and is detailed below:

Cash Balance	£
Opening Balance at 1 April 2023	(9,267)
Projected deficit for year from Income & Expenditure Statement	(9,674)
Net movement in debtors / creditors	(0)
Rebate Investment in Aegon	(287)
Projected Closing Balance at 31 March 2024	(19,228)

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 Integrated 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 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 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: Lauder Common Good Fund Sub-Committee
22 August 2023

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 & Investment Team, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA.

Tel: 01835 824000

Fax: 01835 825166

Email: t&cteam@scotborders.gov.uk

**LAUDER 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 Budget 2023/24	Full Year projected Over/ (under) Spend 2023/24	Para Ref	Comments
	£	£	£	£		
Property Income						
Rental Income	(3,762)	(10,985)	(10,985)		4.2	
Non-Property Related Income						
Interest on Cash deposited with Council	(0)	(200)	(200)			
Income from Other Bodies	(55)	(244)	(244)		4.3	
Investment Fund – Dividends Rec'd	(6,370)	(11,542)	(11,542)		4.3	Est 5% return
Total Income	(10,187)	(22,971)	(22,971)			
Property Costs – General	6,335	15,035	15,035		4.4	
Grants & Other Donations	3,000	5,900	5,900		4.5	3 year average
Central Support Service Charge	0	11,710	11,710		4.6	Subject to review
Depreciation						
Depreciation Charge	0	72,176	72,176		4.7	
Contribution from Revaluation Reserve	0	(72,176)	(72,176)		4.7	
Net impact of Depreciation on Revenue Reserve	0	0	0			
Total Net (Surplus)/Deficit for year	(852)	9,674	9,674			

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	1,607,874	(72,176)	1,535,698
Heritable Assets	0	0	0
Total Fixed Assets	1,607,874	(72,176)	1,535,698
Capital in Investment Funds			
Investment Fund Book Value	249,811	287	250,098
Unrealised Gains/(Loss)	(29,151)	0	(29,151)
Market Value	220,660	287	220,947
Long Term Debtors	0	0	0
Current Assets			
Debtors	8,064	0	8,064
Cash deposited with SBC	(9,267)	(9,961)	(19,228)
Total Current Assets	(1,203)	(9,961)	(11,164)
Current Liabilities			
Creditors	0	0	0
Receipts in Advance	(359)	0	(359)
Total Current Liabilities	(359)	0	(359)
Net Assets	1,826,972	(81,850)	1,745,122
Funded by:			
Reserves			
Revenue Reserve	6,752	9,674	16,426
Capital Reserve	(227,499)	0	(227,499)
Revaluation Reserve	(1,606,225)	72,176	(1,534,049)
Total Reserves	(1,826,972)	81,850	(1,745,122)

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

Rental Income – Land & Buildings	2023/24			2023/24
	Approv'd Budget	Projected Budget	Actuals as at 30/09/23	Projected Net (Return) /Loss
	£	£	£	£
Lauder Cemetery (Old)	0	0	0	0
Lauder War Memorial	0	0	0	0
Old Castleriggs Grazings	(390)	(390)	(430)	(390)
Burnmill Haugh	0	0	0	0
Raiths Acre & Chesters Acre	(235)	(235)	81	(235)
Lauder Golf Course	0	0	0	0
Lauder Town Hall	0	0	0	0
Lauder Common Farm	(8,500)	(8,500)	(1,346)	(4,500)
Lauder Common Farm Shootings	(1,200)	(1,200)	(1,637)	(1,200)
Lauder Common Plantations	0	0	0	7,500
Land Refuse Tip (1) Grazings	0	0	0	0
Land Refuse Tip (2) Grazings	0	0	0	0
Calfward Park Grazings	(430)	(430)	(430)	(430)
Burnmill Woodland	0	0	0	0
Burnmill Area	0	0	0	0
Lauder Library (Old Jail)	0	0	0	0
Old Castleriggs Recreation Grnd	(230)	(230)	0	(230)
Lauder Public Hall (land only)	0	0	0	0
Lauder Public Toilets (land only)	0	0	0	0
Old Pavilion & Site	0	0	0	0
Lauder Play Park	0	0	0	0
Lauder Recreation Park	0	0	0	0
Lauder Hill	0	0	0	3,535
Lauder Burn Woodland	0	0	0	0
Property Expenditure (General)	0	0	0	0
Total	(10,985)	(10,985)	(3,762)	4,050

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	Actual (Repair & Maint)	Actual (Other)	Actual Total
	£	£	£	£
Lauder Cemetery (Old)	0	0	0	0
Lauder War Memorial	0	0	0	0
Old Castleriggs Grazings	0	0	0	0
Burnmill Haugh	0	0	0	0
Raiths Acre & Chesters Acre	0	0	0	0
Lauder Golf Course	0	240	0	240
Lauder Town Hall	0	0	377	377
Lauder Common Farm	4,000	5,718	0	5,718
Lauder Common Farm Shootings	0	0	0	0
Lauder Common Plantations	7,500	0	0	0
Land Refuse Tip (1) Grazings	0	0	0	0
Land Refuse Tip (2) Grazings	0	0	0	0
Calfward Park Grazings	0	0	0	0
Burnmill Woodland	0	0	0	0
Burnmill Area	0	0	0	0
Lauder Library (Old Jail)	0	0	0	0
Old Castleriggs Recreation Grnd	0	0	0	0
Lauder Public Hall (land only)	0	0	0	0
Lauder Public Toilets (land only)	0	0	0	0
Pavilion & Site	0	0	0	0
Lauder Play Park	0	0	0	0
Lauder Recreation Park	0	0	0	0
Lauder Hill	3,535	0	0	0
Lauder Burn Woodland	0	0	0	0
Property Expenditure (General)	0	0	0	0
Total	15,035	5,958	377	6,335

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

Fixed Assets – Land & Buildings	Net Book Value at 01/04/23 £	Project'd Depn Charge 2023/24 £	Project'd Net Book Value at 31/03/24 £
Lauder Cemetery (Old)	0	0	
Lauder War Memorial	0	0	0
Old Castleriggs Grazings	8,000	0	8,000
Burnmill Haugh	13,700	0	13,700
Raiths Acre & Chesters Acre	12,000	0	12,000
Lauder Golf Course	75,300	0	75,300
Lauder Town Hall	47,200	(42,600)	4,600
Lauder Common Farm	1,052,074	(2,926)	1,049,148
Lauder Common Farm Shootings	6,000	0	6,000
Lauder Common Plantations	16,000	0	16,000
Land Refuse Tip (1) Grazings	1,500	0	1,500
Land Refuse Tip (2) Grazings	1,750	0	1,750
Calfward Park Grazings	7,000	0	7,000
Burnmill Woodland	3,700	0	3,700
Burnmill Area	0	0	0
Lauder Library (Old Jail)	20,350	(16,650)	3,700
Old Castleriggs Recreation Grnd	0	0	0
Lauder Public Hall (land only)	15,500	0	15,500
Lauder Public Toilets (land only)	800	0	800
Old Pavilion Site	3,500	0	3,500
Pavilion	323,500	(10,000)	313,500
Lauder Play Park	0	0	0
Lauder Recreation Park	0	0	
Total	1,607,874	(72,176)	1,535,698

Fixed Assets – Moveable Assets	Projected Net Book Value at 31/03/24 £
Art & Artefacts – held in locations below: <u>Thirlestane Castle</u> Charter Snuff Mull Set of Imperial Weight and Measures Brass Yard Stick 1824 Silver Punch Ladle o/w Toddy Ladle 1831 <u>Lauder Town Hall</u> Burgh Standard, 1912 <u>Galashiels Town Hall</u> Certificate of Matriculation, Royal Burgh of Lauder 1938 Burgess Roll (2) Map of Burges Acres, Royal Burgh of Lauder 1803 <u>Stored by Bank of Scotland</u> Burgh of Lauder Seal Provosts Chain <u>Other</u> Provosts Robes	0
	0

Fixed Assets – Land & Buildings (owned by the Common Good Fund but not included in the Balance Sheet)	Projected Net Book Value at 31/03/24 £
Lauder Public Hall (building only)	235,000
Lauder Public Toilets (building only)	24,000
Total	259,000

INVESTMENTS EXTERNALLY MANAGED

Cost of Investment	Units	£
Aegon Capital Investment (February 2018)	229,584	248,572
Aegon Fund Rebate – (2018-2019)	235	254
Aegon Fund Rebate – (2019-2020)	190	211
Aegon Fund Rebate – (2020-2021)	234	234
Aegon Fund Rebate – (2021-2022)	229	253
Aegon Fund Rebate – (2022-2023)	295	287
Aegon Fund Rebate – (2023-2024)	59	55
Total Invested to 30 September 2023	230,826	249,866

Value of Investment	£
31 March 2018	248,572
31 March 2019	250,549
31 March 2020	211,287
31 March 2021	251,241
31 March 2022	251,238
30 June 2022	223,476
30 September 2022	209,423
31 December 2022	221,196
31 March 2023	220,660
30 June 2023	221,606
30 September 2023	217,022
Increase/(Decrease) from Total Cash Invested	(32,844)

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 30 June 2020	-8.52	+2.76
to 30 September 2020	-7.91	+4.83
to 31 December 2020	-0.61	+14.09
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

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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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