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## **COMMON GOOD AND COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015**

**Report by Service Director Regulatory Services**

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### **SCOTTISH BORDERS COUNCIL**

**31 January 2019**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report advises Members of the duties placed on the Scottish Borders Council in respect of common good assets by Part 8 of the Community Empowerment (Scotland) Act 2015 (hereinafter referred to as “the 2015 Act”) and to recommend actions to ensure compliance with such duties.**
- 1.2 Section 102 of Part 8 of the Community Empowerment (Scotland) Act came into force in June 2018 and places a duty on the Council to establish an asset register for each Common Good Fund. Section 104 of the Act came into force in June 2018 and places a duty on the Council to ensure that, prior to any disposal or change of use of common good assets, the Council publishes details about the proposed disposal or change of use.
- 1.3 In order to comply with Section 102, Legal Services is currently completing the proposed list of common good assets, using the current heritable property registers together with information available regarding moveable items. Following approval of these lists by the individual Common Good Fund Sub-Committees, the Council will then publish the proposed lists of common good assets, followed by a 12 week public consultation period. Representations will need to be made by email or letter and can be on (i) whether a proposed asset should be included as part of the common good; or (ii) whether there should be other assets included in the common good asset list. As soon as practicable after expiry of the twelve week consultation period, the Council will publish its Common Good Asset Registers and in any case within six months of the end of the consultation period.
- 1.4 Section 104 of the Act gives details of the consultation required around the disposal and use of common good property. When disposing or changing the use of a common good asset, details of the asset, what is being proposed and likely timescales, together with the same information detailed in the Common Good Asset Register relating to that asset must be published.

## **2 RECOMMENDATIONS**

**I recommend that the Council agrees:**

**(a) to approve the processes detailed in the report for compliance with Sections 102 and 104 of the Community Empowerment (Scotland) Act 2015;**

**(b) to add to the Scheme of Administration as follows:**

**(i) Common Good Fund Sub-Committees - Functions Referred**

- **“To approve the Common Good Fund Asset Register(s) as required in terms of Section 102 of the Community Empowerment (Scotland) Act 2015, reviewing these at least every 5 years”**
- **“To approve the disposal or change of use of a Common Good asset up to the value of £20,000, following due process in terms of Section 104 of the Community Empowerment (Scotland) Act 2015”**
- **“To make recommendations to Council regarding the disposal or change of use of a Common Good asset of a value greater than £20,000, following due process in terms of Section 104 of the Community Empowerment (Scotland) Act 2015”**

**(ii) Scottish Borders Council – Functions Referred – “To approve the disposal or change of use of a Common Good asset of a value greater than £20,000, following due process in terms of Section 104 of the Community Empowerment (Scotland) Act 2015.**

### **3 BACKGROUND**

- 3.1 Section 102 of Part 8 of the Community Empowerment (Scotland) Act came into force in June 2018 and places a duty on the Council to establish an asset register for each Common Good Fund. Prior to finalising the common good asset registers the Council is required to publish its proposed list of common good assets and consult with the public on the proposed list.
- 3.2 Section 104 of the Act came into force in June 2018 and places a duty on the Council to ensure that, prior to any disposal or change of use of common good assets, the Council publishes details about the proposed disposal or change of use.
- 3.3 Sections 103 and 105 of the Act came into force in November 2015 and place a duty on the Council to have regard to any guidance issued by the Scottish Ministers in respect of the duties imposed on the Council under sections 102 and 104 of the Act.

### **4 NEXT STEPS**

- 4.1 In order to comply with Section 102, Legal Services is currently completing the proposed list of common good assets, using the current heritable property registers together with information available regarding moveable items, and shall provide extracts of the proposed list to the relevant Common Good Fund Sub-Committees for approval once this is complete.
- 4.2 The Council will then publish the proposed lists of common good assets on its website and paper copies shall be made available, free of charge, at Council Headquarters in Newtown St Boswells as well as at each of the former Burgh libraries and contact centres. Notification advising of the publication of such lists and a twelve week consultation period will be made on the Council's website, social media and in the local newspapers where deemed necessary.
- 4.3 During the twelve week consultation period the Council will make all of the Community Councils and other community bodies aware of the publication of the proposed Common Good Asset lists and invite those community bodies and the public to make representations in respect of these lists. Representations will need to be made by email or letter and can be on (i) whether a proposed asset should be included as part of the common good; or (ii) whether there should be other assets included in the common good asset list. These representations will be published by the Council alongside the Common Good Asset lists, and the Council's response to such representations. Representations and the final draft Asset Register of each Common Good Fund will then be brought to the appropriate Common Good Fund Sub-Committee.
- 4.4 As soon as practicable after expiry of the twelve week consultation period, the Council will publish its Common Good Asset Registers and in any case within six months of the end of the consultation period. Once the final Common Good Asset Registers are published they will be made available, free of charge, electronically on the Council's website, and in paper format at Council Headquarters in Newtown St Boswells as well as at each of the former Burgh libraries and contact centres.

- 4.5 The Council will update the Common Good Asset Registers when a new asset is identified or acquired and when existing property is disposed of or reclassified. The Council will also ensure that the Common Good Asset Registers are reviewed on a regular basis, at least every five years.
- 4.6 In identifying Common Good assets and publishing Registers of these, the Council will also be required to amend its current list of assets and also take cognisance of the separate Registers as part of the various Annual Accounts.

## **5 DISPOSAL OR CHANGE OF USE OF COMMON GOOD ASSETS**

- 5.1 Section 104 of the Act gives details of the consultation required around the disposal and use of common good property. When disposing or changing the use of a common good asset, details of the asset, what is being proposed and likely timescales, together with the same information detailed in the Common Good Asset Register relating to that asset must be published. Such publication will be made available, free of charge, electronically on the Council's website, and in paper format at Council Headquarters in Newtown St Boswells as well as at each of the former Burgh libraries and contact centres. Notification advising of such publication will be made on the Council's website, social media and in the local newspapers where deemed necessary.
- 5.2 Where the proposed sale or change of use relates to a building or area of land, a public notice will be placed on the building or land or on an object close to it. Where the building is open to the public the Council will place a notice in a prominent place within the building.
- 5.3 During the consultation period (which shall be at least eight weeks, in accordance with the statutory guidance) the Council shall make the relevant community council and other interested community bodies aware of the publication of the proposal and invite those community bodies and the public to make representations in respect of such proposal. Representations can be made in writing by email or letter. Such representations will be published by the Council alongside the proposal, the Council's response to such representations and the Council's final decision on the proposed disposal or change of use. Depending on the value of the change, the decision on any disposal or change of use will be made either by the relevant Common Good Fund Sub-Committee (up to a value of £20,000) or full Council (a value over £20,000). All parties who made a representation will be contacted directly to be made aware of the Council's decision relating to the proposed disposal or change of use.
- 5.4 Where the Council decides to amend the proposal in response to representations by community bodies or the public it will, where the amendment results in the proposal being materially different from the original proposal, commence a new eight week consultation period.

## **6 IMPLICATIONS**

### **6.1 Financial**

There are no direct costs attached to implementing any of the recommendations contained in this report.

## 6.2 Risk and Mitigations

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

## 6.3 Acting Sustainably

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

## 6.4 Carbon Management

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

## 6.5 Rural Proofing

This is not a policy matter.

## 6.6 Changes to Scheme of Administration or Scheme of Delegation

There is no change to the Council Scheme of Delegation as a result of accepting the recommendations in this report. There are changes required to the Scheme of Administration and these are detailed in the recommendations.

## 7 CONSULTATION

- 7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Service Director HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

### Approved by

**Brain Frater**

**Service Director Regulatory Services**

**Signature .....**

### Author(s)

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**Background Papers:** Nil

**Previous Minute Reference:** Nil

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

Contact us at Hannah MacLeod, Principal Solicitor, Council Headquarters, Newtown St Boswells , 01835 825216T or email [hannah.macleod@scotborders.gov.uk](mailto:hannah.macleod@scotborders.gov.uk)