
APPROVAL AND PUBLICATION OF COMMON GOOD ASSET REGISTER

Report by Director of Finance and Regulatory Services

SCOTTISH BORDERS COUNCIL

29 SEPTEMBER 2022

1 PURPOSE AND SUMMARY

- 1.1 This report seeks approval to publish the final Common Good Register for the Council's twelve Common Good Funds.**
- 1.2 Under the Community Empowerment (Scotland) Act 2015 the Council is required to establish and maintain a register of property which is held by the authority as part of the Common Good. Before establishing a Common Good register, the Act requires the Council to publish a list of property that it proposes to include in the register and to consult the public on this list.
- 1.3 Each individual Common Good Fund Sub-Committee approved its respective draft asset register in December 2021 and agreed to the commencement of the public consultation. The consultation ran from December 2021 to 31 March 2022.
- 1.4 Following completion of the consultation, each Common Good Fund Sub Committee considered the responses received to the consultation relative to that Fund, and approved its section of the final register. This Report recommends to Council the combined register attached at Appendix 1 and seeks approval of that register for publication.

2 RECOMMENDATIONS

- 2.1 **I recommend that Council:-**
 - (a) Approves the contents of the final list of heritable and moveable property assets held by the Council within the former Burghs of Coldstream, Duns, Eyemouth, Galashiels, Hawick, Innerleithen, Jedburgh, Kelso, Lauder, Melrose, Peebles and Selkirk ("the Common Good Register") as set out in Appendix 1;**
 - (b) Agrees to publish the Common Good Register;**

- (c) Notes that, following publication, the Common Good Register will be reviewed every five years, or at such time as relevant new information becomes available.**

3 BACKGROUND

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

4. CONSULTATION

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

- 4.3 Officers responded directly to each consultation comment, where contact details were provided. The responses for each former Burgh were then discussed at meetings of the individual Sub-Committees, who approved the final lists of assets set out in Appendix 1. Following that approval, all consultation comments, together with officers' approved responses, have been made available to view on the Council's website.
- 4.4 Council approval is now sought for publication of the final Common Good Register for all of the Common Good assets in the Scottish Borders.
- 4.5 It is possible that following this process, further assets may be identified as being Common Good, and where that is the case, the Council will update the Common Good Asset Registers. The Registers will similarly be updated if existing property is disposed of or reclassified. The Council will also ensure that the Common Good Asset Registers are reviewed on a regular basis, and at least every five years.

5 IMPLICATIONS

5.1 Financial

There are no direct costs attached to implementing any of the recommendations contained in this report. However, the Council has a duty to ensure the accuracy of the Council's accounts. It is therefore important that any assets which should properly be classified as being Common Good are contained within the Common Good Registers, and therefore the Common Good Accounts. However, any assets owned by the Common Good but operated by the Council, remain in the Council's accounts with appropriate disclosure notes included in both sets of accounts.

5.2 Risk and Mitigations

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

5.3 Integrated Impact Assessment

Steps were taken to ensure that the consultation was accessible to all. These steps included the publication of the consultation in paper copy which was made available on request.

5.4 Sustainable Development Goals

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

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

5.6 Rural Proofing

This is not a new policy matter.

5.7 Data Protection Impact Statement

There are no data protection implications resulting from the proposed publication of the Registers of Common Good. No personal data will be used in the publication of consultation responses.

5.8 Changes to Scheme of Administration or Scheme of Delegation

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

6 CONSULTATION

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

Approved by

Director of

Signature

Author(s)

Name	Designation and Contact Number
Hannah MacLeod	Principal Solicitor, 01835 825 216

Background Papers: Nil

Previous Minute Reference: Nil

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Contact us at Hannah MacLeod, Legal and Licensing Services, Council Headquarters, Newtown St Boswells , 01835 825216 or email hannah.macleod@scotborders.gov.uk

