

**ANGUS COUNCIL**

**POLICY AND RESOURCES COMMITTEE – 9 OCTOBER 2018**

**COMMON GOOD REGISTER**

**REPORT BY THE HEAD OF FINANCE AND LEGAL**

**ABSTRACT**

This report advises members that in line with new legislation and guidance the Council requires to establish and maintain a common good register, after publishing a list of property to be included and taking representations into account.

**1. RECOMMENDATION(S)**

It is recommended that the Committee:

- (i) notes the new statutory obligations on the Council to establish and maintain a common good register, after publishing a list of property it proposes to include in the register and taking into account representations.
- (ii) approves the proposed method of complying with the obligations in (i) above.
- (iii) notes the new statutory obligation on the council to publish details of any proposed disposal or change of use of common good property, invite representations, publish these and responses to them, take representations into account in deciding whether to go ahead with the proposal, publish the final decision and notify community bodies and anyone who made a representation and carry out a new consultation if the proposal is amended to be materially different from what was proposed originally.
- (iv) notes that these new requirements will mean delays in comparison to present arrangements will arise where common good property is intended for disposal or change of use and this will need to be factored into decision making and planning timetables.

**2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN**

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

**PLACE**

- Safe, secure, vibrant and sustainable communities
- An enhanced, protected and enjoyed natural and built environment.

**3. BACKGROUND**

Sections 102 and 104 of the Community Empowerment (Scotland) Act 2015 came into force on 27 June 2018. The Scottish Government issued statutory guidance in July 2018: <https://beta.gov.scot/publications/community-empowerment-common-good-property-guidance-local-authorities/> .

Under Section 102 the council must now establish and maintain a register of property held as part of the common good (“common good register”). It must first publish a list of property (“list”) it proposes to include in the common good register and make this available to the

public free of charge at council offices, hubs, libraries and on its website. The council has records of property it considers common good and does not require to make further checks so long as the information held is robust. The council must publish this consultation on the list on its website, social media and in its publications and make the list publicly available for at least 12 weeks. It must notify community councils and community bodies and invite them to make representations. Anyone else may do so too.

Representations may include whether property on the list is common good and identifying other property which may be common good. The council should aim to consider and respond to these within 12 weeks and all representations and responses should be published. In establishing the common good register the council must take into account representations by community councils, community bodies and anyone else.

It should aim to publish the first version of its common good register as soon as practicable after the consultation period and, in any case, within 6 months after that. Where there have been numerous or complex representations and the council is still carrying out investigations it should add a note to the common good register making clear some representations are still being followed up. Like the list, the common good register must be available to the public to inspect.

It must be updated if new property is identified or existing property disposed of or reclassified. Changes to the register for acquisitions and disposals must be made in the same financial year as the property is acquired or disposed. This will ensure the register and the common good accounts are aligned. The register should be reviewed at least every five years and this can be a rolling review where a percentage of the register is reviewed each year. The review process requires to be published.

In 2010 Legal Services embarked upon an audit of common good assets, starting with the burgh of Arbroath. Reports 614/11 to Angus Council on 15 September 2011, 722/12 on 13 December 2012 and 400/13 on 20 June 2013 detailed the results of the Arbroath audit. Work was also done on some of the Brechin assets. It was decided not to complete the audit of Brechin and other burghs on the basis of time and cost but the work undertaken then will assist in preparing the list.

The council lodged a petition with the Scottish Parliament seeking to get legislation introduced to provide that any asset regarded as common good for 50 years without successful legal challenge should be treated for all legal purposes as common good (report 506/13 to Angus Council on 12 September 2013 refers). The new legislation did not make the change sought.

Under Section 104, before the council disposes or changes the use of any common good property it must now publish details of the proposal. It must notify the community council and community bodies and invite them to make representations, allowing 8 weeks for these. It should aim to respond to representations within 8 weeks and must publish these and responses. In deciding whether to go ahead with a proposal the council must take into account representations by community councils, community bodies and anyone else. The council must publish the final decision about the proposal and notify community bodies and anyone who made a representation. If the council decides to amend a proposal in response to changing circumstances or representations received so it is materially different from what was proposed originally it should carry out a new 8 week consultation.

#### **4. CURRENT POSITION**

Members' approval is sought for the following method of dealing with the council's statutory obligations in relation to establishing and maintaining a common good register:

The records of property already considered to be common good, including the results of the common good audit, will form the basis of the list. These records are believed to be comprehensive but some aspects may need to be re-checked to ensure there are robust reasons for including properties on the list or not. In such cases officers from Property, Legal or Finance as appropriate will check available records, including title deeds, extraneous documentation and records from the time of the acquisition (where available). This review of records for assets requiring further investigation is likely to take a considerable amount of officer time. The council recently advertised unsuccessfully for a surveyor for a two year

temporary post to assist with community asset transfers and is now looking at other options. If that proves successful the officer appointed to an amended temporary post may be able to assist with some aspects of this.

It is proposed the council should aim to publish the list in spring next year with the proposed list coming to this Committee for information prior to its publication. As the investigations are likely to be very time-consuming it is unlikely they will all be completed by then. If so it is proposed that a note be added to the list that investigations are being carried out on specific assets, with a timetable of when each will be looked at. This approach is suggested by the guidance in relation to the common good register. Using it for the list will prevent delay in publishing the list and assist the council in managing workloads.

Following consultation on the list, responding to representations, publishing these and responses and taking representations into account the council will aim to publish the first version of the common good register as soon as possible and, in any case, within 6 months following consultation. The proposed register will be the subject of a report to this Committee so members are aware of its contents prior to publication. As with the list the register may include notes that further investigation is required on particular properties, with a timescale for this.

Once the common good register is established it will be reviewed and updated if property is reclassified. Changes to the register for acquisitions and disposals will be made in the same financial year as the property is acquired or disposed. The register will be reviewed at least every five years and the review process published.

A short-life officers' working group, with officers from Property, Finance and Legal, has been set up to look at the implications of the council's statutory obligations in relation to the common good register and a report will be brought back to committee later once the working group has met.

## **5. PROPOSALS**

Members are asked to note the new statutory obligations on the Council to establish and maintain a common good register, after publishing a list of property it proposes to include in the register and taking into account representations.

Members are asked to approve the proposed method of complying with the Council's obligations in this regard.

Members are asked to note the new statutory obligation on the council to publish details of any proposed disposal or change of use of common good property, invite representations, publish these and responses to them, take representations into account in deciding whether to go ahead, publish the final decision and notify community bodies and anyone who made a representation and carry out a new consultation if the proposal is amended to be materially different from what was proposed originally.

## **6. FINANCIAL IMPLICATIONS**

The most significant implication is in officer time if there are a large number of queries to be investigated and in undertaking consultations. Given the significant reductions in the numbers of back office staff in recent years it may take a considerable amount of time to address queries alongside other work demands.

There will be costs involved in carrying out searches in the Register of Sasines and Land Register of Scotland for investigations in relation to the list and the common good register. There will be postage costs etc in relation to consultations on the list, the common good register and all proposals to dispose or change the use of common good property. No specific budget provision exists for such costs which will need to be met from existing common good and Council budgets as appropriate.

There will be financial implications for both the General Fund and Common Good Fund from any re-classification of property between the two. Confirmation of the financial implications will form part of update reports to

Committee following consultation on the list and publication of the first version of the common good register.

## 7. **PROPERTY IMPLICATIONS**

Changes in the classification of property as common good, or not, have property implications. As mentioned in report 614/11 case law has established that some types of common good land may be subject to some form of restriction on its disposal. These are considered to be land and buildings which, by use by the public for time immemorial have acquired an inalienable characteristic; buildings dedicated to some form of public purpose by the burgh itself; or deeds of gift by benefactors in which the land is expressly dedicated to a Common Good purpose. The disposal of this type of land is governed by Section 75 of the Local Government (Scotland) Act 1973. The council (the authority) must apply to the Court of Session or the Sheriff to authorise the disposal of the land "on which a question arises as the right of the authority to alienate". Consequently, if properties are removed from the ambit of common good, there shall be no such restriction on disposal other than the requirement to abide by the rules of disposal of council property as set out in Financial Regulations. Likewise, the council's ability to deal with the land transferred to the common good may be affected if it is to be treated as inalienable common good land.

**NOTE:** The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report No 614/11 to Angus Council on 15 September 2011
- Report No 722/12 to Angus Council on 13 December 2012
- Report No 400/13 to Angus Council on 20 June 2013
- Report No 506/13 to Angus Council on 12 September 2013

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List of Appendices: None