

ANGUS COUNCIL

ANGUS COUNCIL MEETING – 13 MAY 2021

REVISED COMMON GOOD FUND POLICY GUIDELINES AND ADMINISTRATIVE PROCEDURES

REPORT BY DIRECTOR OF FINANCE

ABSTRACT

This report presents a revised Common Good Fund Policy Guidelines and Administrative Procedures document for approval.

1. RECOMMENDATION(S)

1.1 It is recommended that the Council:-

- (i) Approve the revised Common Good Fund Policy Guidelines and Administrative Procedures attached at Appendix B;
- (ii) Approve the transition arrangements proposed in this Report;
- (iii) Note the net book value of assets transferring from the General Fund to the Common Good Fund;
- (iv) Note that the revised Policy Guidelines and Administrative Procedures will be used to inform preparation of the Council's 2020/21 draft annual accounts;
- (v) Note the removal of Capital Adjustment Accounts from the Common Good Funds and the alternative approach to be reflected in the 2020/21 draft annual accounts as set out in Section 6 (B) of this report.

2. ALIGNMENT TO THE COUNCIL PLAN

2.1 This report contributes to the achievement of the priorities in the Angus Council Plan that we want: our communities to be strong, resilient and led by citizens; and Angus Council is efficient and effective.

3. BACKGROUND

3.1 Reference is made to Exempt Report 223/20 to the 10 September 2020 Angus Council meeting which advised the Council of the judgement of the Inner House of the Court of Session in relation to the former Lochside Leisure Centre, Forfar. In light of the determination not to appeal the Court judgement, it was noted therein that a further report would be forthcoming "with a proposed policy and approach to the future accounting treatment of Common Good assets used for General Fund service provision". This report fulfils this requirement of the report.

4. CURRENT POSITION

4.1 The Council has an existing "Common Good Funds – Policy Guidelines and Administrative Procedures" document (the "Common Good Policy" hereafter). This was originally approved by the Policy & Resources Committee on 28 November 1996 and is now incorporated within the Council's Financial Regulations which are subject to periodic review and Council approval.

4.2 The relevant aspect of the Court of Session decision (the "Court decision" hereafter), from a Common Good Policy perspective, is that assets which have been built by the General Fund on Common Good Fund land are part of the applicable Common Good Fund and have been since being built.

- 4.3 It is noted that Common Good Fund assets were vested with Angus Council at local government reorganisation under the Local Government etc (Scotland) Act 1994. The Council therefore administers both the Common Good Funds and General Fund as a single legal entity. It is highlighted that an entity cannot have a contract with itself and this means that there can be no formal lease agreements between the General / Common Good Funds. However, for the purposes of this report, and the proposed Common Good Policy, the term "lease" is used to convey the asset use / payment relationship between the Common Good Funds and General Fund. There is no written policy at present with regard to lease arrangements between the respective Funds beyond it being noted in the current Common Good Policy that "a five yearly review of Common Good rentals in respect of properties let to Council services" will be undertaken. These have historically been undertaken with all capital and revenue costs falling to the General Fund as tenant. The last five yearly rental review was undertaken in 2016/17 and the next will take place during 2021/22.

5. PROPOSALS

(A) Key Principles

- 5.1 There are some key principles which are important to establish at the outset as part of this review, as follows:-

- The Council is required by law to follow proper accounting practice so our management and accounting for the Common Good Funds and General Fund must meet those requirements.
- The Council has Best Value obligations to both the Common Good Funds (for the benefit of the inhabitants of the geographical area) and the General Fund (all taxpayers / rent payers) so it is essential that our policy and approach is fair and balanced to both Funds and their stakeholders. It is also considered desirable to minimise financial turbulence for both Funds so long as this is consistent with having a fair and balanced approach.
- No prior year accounting adjustments are proposed due to the Court decision, this is partly due to the limited changes to existing arrangements and policies which are necessary due to the Court decision; partly due to the Council not holding the detailed records to do so beyond our retention policies (generally 6 years plus current) and also due to the limited impact such adjustments would result in for both Common Good Funds and General Fund.
- This policy review re-sets the basis for how we manage Common Good Funds in the future including which Fund bears financial responsibility for the use and management of assets.
- The revised Common Good Policy is not intended to be inflexible. The policy will provide the basis from which to consider future issues and scenarios and may require to be flexed in response to specific situations which arise in future so that the Council can fulfil its Best Value obligations to both Common Good Funds and the General Fund. Any such flexibilities will be subject to Committee reports for approval.

(B) Amendments Arising From The Court Decision

- 5.2 In recognition of the position outlined above, it is considered appropriate to revise and expand the existing Common Good Policy to provide clarity with regard to the management arrangements between the General Fund and Common Good Funds, particularly with respect to the use of buildings.

- 5.3 It is considered there are five scenarios of interaction between the General Fund and Common Good Funds which require to be covered in the revised Common Good Policy.

- 1) Buildings always treated as vested in the Common Good and being used by the General Fund operationally.

- 5.4 These arrangements currently exist, with the General Fund paying a commercial rent to the appropriate Common Good Fund and having responsibility for the costs of the building. This arrangement means that the General Fund is responsible for all revenue and capital costs while it is used for service provision e.g. heating, non-domestic rates, repairs and maintenance, etc. If, at a future point in time, the General Fund no longer used the building for operational purposes, financial responsibility would revert to the Common Good Fund (as asset owner). This would be subject to any

dilapidation repairs and costs being met by the General Fund where appropriate e.g. to ensure the asset could be re-used or sold. These existing arrangements are not impacted by the Court decision and no changes in this approach are proposed through this review, merely their addition to the Common Good Policy for future reference.

2) General Fund creates a new building on Common Good land to be used by the General Fund operationally.

5.5 Prior to the Court decision the General Fund would pay a ground rent to the Common Good for the land and all costs for the buildings would be met by the General Fund with no rent applicable for the buildings as these buildings were accounted for as a General Fund asset. Following the Court decision, the building will be owned by the applicable Common Good Fund and appear on its Balance Sheet.

5.6 It is highlighted, however, that the General Fund has created the asset to facilitate service provision. Such asset creation and thus service provision may be curtailed in the future if the General Fund cannot maintain a degree of control of the asset.

5.7 In these circumstances a policy position is proposed whereby the revenue and capital costs will continue to be the responsibility of the General Fund. This will be through the General Fund being responsible for all costs associated with the operation of the building and a ground rent continuing to be paid to the Common Good Fund for the land.

5.8 There is a potential financial risk for the Common Good Funds if and when the General Fund determines that it no longer requires the building for operational purposes. To allow a decision to be taken by the Common Good on whether to take on such financial risk, it is proposed that the General Fund will continue to be responsible for revenue and capital costs for a period of one year (the "transfer period") following a building no longer being used operationally. The transfer period would commence when ceasing of operational use is reported to elected members. No rental would be payable by the General Fund for the land during the transfer period. The transfer period will provide time for consultation to be undertaken in accordance with the Community Empowerment (Scotland) Act 2015 and submission of a report to Council regarding the alternative use for the building and also the use of common good funds for any related costs that may be incurred. Alternatives uses are:-

- the determination is that the building should be demolished, the General Fund will meet these potentially significant costs.
- The determination is that the building should be sold, the Common Good Fund will receive the proceeds.
- The determination is that the building should be leased to another tenant, the Common Good Fund will receive the proceeds but will also then take on responsibility for the building into the future including the cost of e.g. demolition at some future point.
- No determination takes place following the transfer period, other than to retain the building then all financial responsibility for the asset will revert to the Common Good Fund e.g. running costs, demolition, court consent, etc.

5.9 In recognition of the financial liability commitment being given by the General Fund (here and in 3&4 below) the proposal is for no rental payment for the building itself to be payable by the General Fund.

5.10 The outcome of the proposed approach is that, moving forward, there is no significant change in the respective financial positions for either the Common Good Funds or General Fund except:-

- The transfer of the current net book value of the asset from the General Fund to the Common Good Fund Balance Sheet and, thereafter, increased depreciation charges.
- The potential financial liability for the Common Good Fund from ownership of the asset following the end of the transfer period.

3) General Fund existing building (**operational**) but reassessed as being Common Good Fund

5.11 Prior to the Court decision, all costs related to the buildings would be met by the General Fund and no rent applicable as these buildings were accounted for as a General Fund asset. The General Fund will have undertaken significant spend in preceding years to create, maintain and operate the asset. The net book value of the asset will now transfer from the General Fund Balance Sheet to the Common Good Fund Balance Sheet to reflect the change in ownership.

5.12 In these circumstances an identical policy position for this category is proposed to that noted in 2 above. For simplicity purposes the revised Common Good Policy (Appendix B) combines scenarios 2 and 3.

4) General Fund existing building (**non-operational**) but reassessed as being Common Good Fund

5.13 The circumstances for these assets are almost wholly identical to those noted in scenarios 2 and 3 above. The key difference is that ownership and financial responsibility for such assets should immediately transfer to the appropriate Common Good Fund in light of these not being used by the General Fund for operational purposes. To mitigate the impact of such an immediate transfer onto the Common Good Funds, it is proposed that a similar transfer period is applied to that detailed in 2 above and this is reflected in the revised Common Good Policy. The transfer period would commence from the point at which the reassessment is reported to elected members. In these circumstances it is proposed no rent payments would be made by the General Fund for the land.

5) Common Good Fund building reassessed as belonging to the General Fund.

5.14 It is proposed that the Council's existing accounting policy in this regard would apply. This will result in financial responsibility for such assets immediately transferring to the General Fund and net book value of the asset transferring between Balance Sheets in the preparation of the next annual accounts. This will take place in the financial year during which such reassessments are reported to elected members. Any lease payments by the General Fund would also conclude. It is not considered that any transfer period is necessary.

5.15 A matrix summarising the five scenarios noted above is attached at Appendix A. The matrix summarises how the policy would affect both the General Fund and the Common Good Funds in relation to questions as to ownership and financial responsibility and will be included as an Annex to the Revised Policy once approved.

(C) Third Party Interactions

5.16 The current arrangements, whereby leases to third parties by the council for Common Good Fund buildings are generally made on a commercial basis, are reflected in the revised Common Good Policy for future reference. Where Common Good Fund buildings are being used by the General Fund operationally, the term "sub-let" is used to indicate the asset use/payment relationship between the General Fund and the Third Party. Angus Alive has a licence to occupy certain Common Good Fund buildings for a licence fee of £1 a year (if asked) but this has no effect on the relationship between the Common Good Fund and General Fund set out in the Revised Policy.

(D) Other Amendments

5.17 The Common Good Policy has also been updated for the following matters:-

- Miscellaneous wording changes of a non-policy nature: to reflect amendments to officer designations, existing administration processes (e.g. in relation to external applications), additional wording to provide context regarding applicable accounting guidance and to reflect the applicability of the Community Empowerment (Scotland) Act 2015.
- Budget projections: addition of a requirement for indicative budget projections for years two and three to be provided when the Common Good Fund budgets for the forthcoming financial year are being approved, i.e. a 3 year budget will be provided in future rather than a 1 year budget.

(E) Revised Common Good Policy

- 5.18 The Common Good Policy has been revised to reflect the proposals detailed in sections B to D above and is attached at Appendix B for members consideration and approval.

(F) Transition Arrangements

- 5.19 Changes arising from additions and amendments to the Common Good Policy will apply from the point of its approval. It is proposed, however, that the commencement of the one year transfer period applies from the date of policy approval also rather than the date when any Fund reassessments were initially identified. This will only apply to Lochside Leisure Centre at the present time as this is the only example of this circumstance at present.

(G) Alternative Rental Approach

- 5.20 The main aspect of the revised Common Good Policy where an alternative approach could be deployed is in relation to building rental payments. In scenarios 2 and 3 above, no building rental payments will be made by the General Fund to the Common Good Funds. These could alternatively be undertaken with a land and building commercial rental payment. Such an approach would generate additional income for the Common Good Funds and an equivalent cost for the General Fund. It is, however, considered that the following further changes would be required if such an approach is taken to ensure the approach remains equitable to all stakeholders:-

- Lease payments: there would be no transfer period when the General Fund ceases operational use. Lease payments to the Common Good Fund would immediately cease.
- Running costs: there would be no transfer period when the General Fund ceases operational use. Running costs would transfer immediately to the Common Good Fund.
- Asset demobilisation: there would be no transfer period when the General Fund ceases operational use and financial responsibility would immediately fall to the Common Good Fund.

- 5.21 It is further noted that such an approach may impact onto future investment by the General Fund on Common Good Fund land. From a Best Value perspective, it will be challenging for the General Fund to justify entering into the capital expense of creating an asset where this will result in the new and additional expense of a commercial rental. In such circumstances there is the potential for the Common Good Funds to lose future income from land leases should alternative sites be chosen by the General Fund in light of this. For these reasons, this approach to rental has not been used in the revised Common Good Fund policy. It is considered unequitable for the General Fund to pay the cost of constructing buildings, maintaining them and then also pay the cost of renting such buildings. In a commercial setting such an arrangement would be governed by a ground lease where rent is only paid for the land.

6. RELATED MATTERS

(A) Balance Sheet Transfers

- 6.1 The Court decision will necessitate the transfer of net book valuations from the General Fund to the various Common Good Funds to reflect the change in ownership. It is highlighted that these valuations are those prevailing within the Council's asset register which have been undertaken in accordance with the CIPFA Accounting Code of Practice. The assets are subject to revaluation by the Council's retained valuation advisers on a five yearly basis. It is noted that no valuation will transfer where it can be demonstrated that this is as a result of tenant works by the General Fund in accordance with proper accounting practice – albeit this will not impact upon any reassessment of the asset to the Common Good Fund itself.
- 6.2 It is highlighted that the valuation transfers that have been identified are based upon the data that is readily available in relation to current rent for the ground arrangements and the Council's asset register. These transfers are detailed in Appendix C and summarised for each Common Good Fund below.

Common Good Fund	Transfer From GF to CGF £000
Arbroath	97
Brechin	1,051
Forfar	256
Kirriemuir	Not applicable
Montrose	12,244
Total	13,648

- 6.3 Further transfers in either direction may be required in future. As noted in the Audit Scotland Report to Members Action Plan (Report 291/20 refers), the Legal service will be undertaking a review in accordance with Part 8 of the Community Empowerment (Scotland) Act 2015 to prepare a register of Common Good assets. In the event that this review identifies further asset reassessment changes these will be dealt with in accordance with the revised Common Good Policy. The Scottish Government's guidance for local authorities on Part 8 mentions that the Common Good register will be a living document which will require to be updated if new property is identified or existing property is reclassified.

(B) Depreciation Statutory Adjustment

- 6.4 Audit Scotland's Report to Members, noted above, also highlighted the Council's use of depreciation statutory adjustments for the Common Good Funds through use of a Capital Adjustment Account held in the Unusable Reserves on the Balance Sheet. It was noted therein that such an approach was not applicable to the Common Good Funds (despite this being agreed with prior external auditors) and that an alternative accounting treatment would require to be introduced for the 2020/21 annual accounts onwards.

Current Accounting Approach

- 6.5 Depreciation charges are met by the Common Good Fund Income & Expenditure Accounts in order to write down the net book value of assets on the Common Good Fund Balance Sheet. These charges are included in their Net (surplus) / deficit reported for the year reducing the Usable Reserve.
- 6.6 A Capital Adjustment Account was created within the Unusable Reserves on the Common Good Fund Balance Sheet to represent the assets which have not yet been fully depreciated. Accounting entries are undertaken through the Capital Adjustment Account to recompense the Usable Reserve for the depreciation charge. However, the legislation which allows application of this to the General Fund does not cover Common Good Funds and External Audit have highlighted that the Capital Adjustment Account needs to be removed and an alternative approach introduced.

Alternative Accounting Approach

- 6.7 To address this issue the following alternative approach will be taken:-
- The depreciation charge will continue to be met by the Common Good Fund Income and Expenditure Accounts and be included in the Net (surplus) / deficit reported for the year.
 - The Capital Adjustment Account will be renamed "Usable Reserves – Funds tied up in Fixed Assets" and will be reported as a Usable Reserve on the face of the Balance Sheet.
 - The Net (surplus) / deficit on the Income & Expenditure Account will be transferred to the "Usable Reserve - Revenue Cash" in the Balance Sheet.
 - An entry will then be made from the "Usable Reserves – Funds tied up in Fixed Assets" Account to the "Usable Reserve - Revenue Cash" for the annual depreciation charge to reflect the consumption of fixed assets for the year.
- 6.8 It is noted that this is a very technical accounting matter. However, it is considered necessary to bring this change to members awareness ahead of completion of the draft accounts. As noted earlier, asset values will transfer to the Common Good Funds as part of the 2020/21 accounts following the Court decision and thus higher depreciation charges will arise for the Common Good Funds. It is worth noting therefore that the revised accounting approach will mean that there will be no detrimental impact onto the revenue cash balances available for use in the Common Good Funds. This approach will be subject of review by External Audit through their audit of the 2020/21 annual accounts.

(C) International Financial Reporting Standard 16 (Leases)

- 6.9 The Code of Practice under which the Council's accounts are prepared makes a distinction, at present, between operating and finance leases. These categories of leases are accounted for differently with only finance leases appearing on the lessee's Balance Sheet.
- 6.10 The Code of Practice will adopt IFRS16 from the 2022/23 accounts onwards. This removes the distinction between operating and finance leases. An assessment will require to be undertaken of all lease arrangements to determine the accounting approach for each under IFRS16. However, it should be noted that the general intention of IFRS16 is that all asset leases will now appear on the Balance Sheet of the lessee.
- 6.11 While there are no formal leases between the Common Good and General Fund, accounting practice is concerned with the substance of a transaction not merely the contractual nature. It is therefore considered likely that the General Fund will require to reflect on its Balance Sheet the value of all assets for which a rental is paid to the Common Good Fund. Only short term leases or those of low value will be exempt from this requirement. It is, however, not clear at present if this would require the equivalent asset value to be amended or removed from the Common Good Fund Balance Sheet.
- 6.12 The forthcoming adoption of IFRS16 is raised to highlight to elected members the possibility of further amendments in General Fund / Common Good Fund Balance Sheets due to changing accounting requirements. These accounting changes are not however expected to impact on the proposed Policy set out in this report for managing the financial relationship between the Common Good Funds and the General Fund.

7. FINANCIAL IMPLICATIONS

General

- 7.1 It is noted in the preceding sections that the revised Common Good Policy will have a generally neutral impact onto both the Common Good Fund and General Fund. The exception to this will be the transfer of asset valuations from the General Fund to the various Common Good Funds which as noted above will total £13.648 million.
- 7.2 Financial implications for the Common Good could arise when the General Fund vacates Common Good Fund buildings but as set out in section 5.8 above the decision on whether to retain a building being vacated would be for the Common Good to determine. This means the General Fund vacating a building does not of itself automatically create a financial implication for the Common Good other than the loss of ground rent.
- 7.3 Part H of the Revised Policy (Appendix B) allows for an extension of the 1 year transfer period under the policy where extension would be mutually beneficial to both the Common Good Fund and General Fund e.g. where there is the potential to avoid demolition and the related cost. This provides flexibility in managing the financial impact on both Funds where a building is no longer required operationally by the General Fund.

Lochside Leisure Centre

- 7.4 It is noted that consideration of the future of Lochside Leisure Centre is also on this Council agenda. In this regard paragraph 2F(iii) of the Revised Common Good Policy would apply i.e. "General Fund creates a new building on Common Good land or a building is reassessed as belonging to a Common Good Fund. The building is not used by the General Fund operationally". This would mean that the General Fund would maintain tenant financial responsibility e.g. running, demolition costs, etc. but no ground rent payment would be made. This position would remain for a one year transfer period and under the transition arrangement proposed earlier in this report this would commence on 13 May 2021, being the date that the new Policy applies from. Following this period all financial responsibility for the asset will revert to the Forfar Common Good Fund as asset owner.
- 7.5 It is of course possible that during the transition period this asset is sold, leased or subject to a Community Asset Transfer (CAT) sale or lease. The important point for members to be aware of is that once the transfer period expires responsibility for this asset will fall wholly on the Forfar Common

Good Fund and it is important for members to consider the risks that this will bring in any future use where the Common Good Fund would remain owner (lease or CAT lease).

8. EQUALITY IMPACT ASSESSMENT

8.1 An Equality Impact Assessment is attached.

9. CONSULTATION

9.1 It is noted that there is no requirement for public consultation with regard to the revised Common Good Policy under the Community Empowerment Act (Scotland) 2015, having had regard to the Act and the Scottish Government's Guidance for Local Authorities. There is no impact on the Common Good Fund in terms of current practice due to the Revised Policy. A consultation will be carried out on any future alternative uses outlined under paragraph 5.8 above. A copy of the draft policy and this report has been shared with the Council's external auditors.

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 291/20: Annual Accounts 2019/20 and Annual Audit Report to Members

REPORT AUTHOR: Steven Mill, Service Lead (Finance)

EMAIL DETAILS: finance@angus.gov.uk

List of Appendices:

Appendix A: Summary Guide to Revised Common Good Policy - Common Good Fund and General Fund Interaction

Appendix B: Common Good Funds – Policy Guidelines And Administrative Procedures (Revised May 2021)

Appendix C: Asset Net Book Values To Transfer From General Fund To Common Good Funds Balance Sheet