

ANGUS COUNCIL

POLICY AND RESOURCES COMMITTEE – 8 JUNE 2021

COMMON GOOD REGISTER

REPORT BY THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

This report seeks approval of proposals for the compilation of, and consultation on, a publicly accessible register of Common Good property assets for the burghs in Angus. This publicly accessible register and associated consultation are required under Part 8 of the Community Empowerment (Scotland) Act 2015. It also seeks approval to publish, by October 2021, a list of properties which are proposed to be included in the common good register for Arbroath, to consult on the list and to respond to representations. It also seeks approval of funding to appoint a solicitor to undertake the necessary checks in relation to the common good burghs to ensure that a robust list of all burghs is compiled prior to publication.

1. RECOMMENDATIONS

It is recommended that the Committee: -

- (i) approves the proposals for the compilation of, and consultation on, a publicly accessible register of Common Good property assets for each burgh, as detailed in this report;
- (ii) approves the publication, by October 2021, of a list of properties which are proposed to be included in the common good register for Arbroath for consultation with the public, local elected members for Arbroath, community councils and community bodies, inviting representations;
- (iii) notes that these timescales are dependent upon Covid-19 restrictions continuing to be eased and staff being able to access the necessary records;
- (iv) delegates authority to the Director of Legal and Democratic Services to consider and respond to all representations, in terms of the legal position, and publish the representations and responses;
- (v) notes that the Director of Legal and Democratic Services will then bring a report to Committee seeking approval to publish the common good register for Arbroath;
- (vi) agrees to follow the same procedure for the other common good burghs in due course;
- (vii) notes that the Director of Legal and Democratic Services will bring a report to Committee seeking approval of a draft list to be consulted on before taking the steps outlined above for each of the other common good burghs;
- (viii) approves funding from the Common Good Funds as set out in Section 6 for the appointment of 1 FTE solicitor for a period of 2 years to undertake work in relation to the other common good burghs to ensure that the proposed list for each burgh is robust prior to publication, as required by statutory guidance;
- (ix) approves the publication, with the list for Arbroath, of a note of any properties which have been considered in relation to the Council's common good estate, but have been legally determined not to form part of the common good of Arbroath, namely Arbroath Library;
- (x) and agrees that the Council will undertake a public consultation before any future proposals to sell or lease Arbroath Library.

2. ALIGNMENT TO THE COUNCIL PLAN

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; and that we support and equip our citizens to deliver on their local aspirations.

3. BACKGROUND

Report 315/18 considered by the Policy and Resources Committee on 9 October 2018 detailed the requirement under Section 102 of the Community Empowerment (Scotland) Act 2015 to: -

- (a) establish and maintain a common good register, and
- (b) publish first a proposed list of property to be included in the register and consult on this.

The short-life officers' working group mentioned in that report looked at the implications of the legislation. Following on from this, officers considered all relevant property in Arbroath in terms of the requisite common good criteria. This took a substantial amount of work equivalent to 9 months work of 1 FTE Solicitor. Those properties that appear to meet the criteria based on the information examined by officers are listed in Appendix 1. Some further work is still required to validate this list and it is proposed that this will be completed and a list for Arbroath published for consultation by October 2021. Work has also been started to produce a list for Brechin but that is still incomplete and work on lists for the other burghs that hold heritable property (Forfar and Montrose) has still to be commenced. It is estimated that it would take 1 FTE solicitor around 2 years to complete this work.

To be clear the Council already has a detailed asset register of Common Good assets covering every burgh and that has been used for many years for accounting purposes. The work proposed in this report is about undertaking detailed investigations of title deeds and other information to confirm, or otherwise, the accuracy of the existing Common Good asset registers held by the Council. The statutory guidance, under Section 103 of the 2015 Act, states that there is no requirement on councils to check titles before including properties on the list, so long as they are satisfied that the information held on these properties is "robust".

Please note that Arbroath Library does not meet the necessary legal criteria to be part of the common good estate but there is an appreciation that local inhabitants would like to be consulted prior to any future proposals to sell or lease. The Council can undertake to do this even although it is not common good. The status of Arbroath Library has already been before elected members for consideration. Report 400/13, to full council on 20 June 2013 (resubmitted on 12 September 2013), recommended that Arbroath Library be confirmed as part of the General Fund rather than the common good, following receipt of counsel's opinion. Members instead resolved to submit a petition to the Scottish Parliament to try to change legislation and, in the meantime, to continue to treat the library as common good. Report 506/13 to Angus Council on 12 September 2013 sought approval for the wording of the petition. It asked the Scottish Parliament to legislate that any asset regarded as common good for 50 years without challenge be treated for all legal purposes as common good. The petition was not successful and Report 315/18 to this Committee on 9 October 2018 reported in the Background section that: "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." Despite efforts by officers to ask for a change to the common good rules through legislative means at a national level these were not successful. Based on the current legal rules, Arbroath library cannot be regarded as falling within the Common Good. Members can, however, agree that, like Common Good property, the public will be consulted in terms of any future proposal to sell or lease Arbroath Library and this is proposed by recommendation (x) above. Committee may of course decide to re-consider this so that prior consultation is not required for Arbroath Library.

4. CURRENT POSITION

There has been a delay in publishing the proposed list for Arbroath for consultation due to the Covid pandemic. The legislation requires that when a list is published for consultation, representations can be made to the Council which have to be investigated and responded to within certain timescales. In order for this to happen, access is required to the Council's Title Deeds located at Angus House and Archives located at Restenneth. This has not been possible whilst Covid restrictions have been in place. With restrictions now easing and the Archives now being available to a limited extent, it is proposed that the Council undertake some final checks and then publish the list for Arbroath by October 2021. These timescales are dependent upon restrictions continuing to be eased and staff being able to access the necessary records.

In accordance with the Scottish Government Guidance which local authorities must have regard to, the Council would then consult on this list for at least 12 weeks inviting representations from the public, local elected members for Arbroath, community councils and community bodies. The Council requires to consider and respond to all representations and publish the representations and responses. A report will then be brought to Committee seeking approval to publish the common good register for Arbroath. The Guidance states that this should be done as soon as possible and, in any case, within 6 months following the end of the consultation. Again, the ability to do this will be dependent upon restrictions continuing to be eased and staff being able to access the necessary records.

To assist with clarity on the consultation on the list for each burgh, it is proposed that the Council will also publish, at the same time, a note of properties which have been considered in relation to the Council's common good estate for that burgh, but have been determined not to form part of the common good but where the Council wish to consult the public in terms of any proposal to sell or lease. As noted above, in relation to Arbroath this applies only to Arbroath Library.

5. PROPOSALS

Members are asked to approve the proposals for the compilation of, and consultation on, a publicly accessible register of Common Good property assets for each burgh, as detailed in this report.

Members are asked to approve publication of the list for Arbroath by October 2021, with the public, local elected members for Arbroath, community councils and community bodies, inviting representations.

Members are asked to delegate to the Director of Legal and Democratic Services authority to thereafter consider and respond to all representations, in terms of the legal position, and publish the representations and responses.

Members are asked to note that the Director of Legal and Democratic Services will then bring a report to Committee seeking approval to publish the common good register for Arbroath.

Members are asked to agree to follow the same procedure for the other common good burghs in due course.

Members are asked to note that the Director of Legal and Democratic Services will bring a report to Committee seeking approval before taking the steps outlined above for each of the other common good burghs.

Members are asked to agree that the council will undertake a public consultation before any proposals to sell or lease Arbroath Library.

Members are also asked to approve funding for the appointment of 1 FTE solicitor for a period of 2 years to undertake work in relation to the other common good burghs to ensure that the proposed list for each burgh is robust prior to publication, as is required by legislation and guidance.

6. FINANCIAL IMPLICATIONS

The most significant financial implication is officer time. This applies in relation to the consultation on the proposed list for Arbroath, considering representations and responding to them, particularly if there are a large number or they cover complex issues, which may take a considerable amount of time to consider and respond to alongside other work demands. It may also require engaging expert external legal advice as common good law can be complicated. It is difficult to anticipate at this stage the impact on existing resources of this statutory requirement. That may need to be considered further once the consultation takes place and the number and complexity of representations becomes clear. Officer time is also required to undertake the work in relation to all of the other burghs and to produce lists for these that are robust and meet the requirements of the legislation and guidance. It is challenging to estimate the resource requirement accurately, but based on the time taken to complete the initial audit of Arbroath, an estimate is that it would take 1 FTE solicitor around 2 years to complete this work and approval of funding for this is sought from the relevant Common Good Funds per Table 1 below. The total cost for this post for a 24-month duration is £88,490. Should the work

take longer than the estimated 2 years a further report on resourcing will be brought forward for members' consideration.

There will also be costs involved in carrying out searches in the Register of Sasines and Land Register of Scotland for investigations in relation to representations on the list. This will include Legal Reports (£76 plus vat), checking Scottlis (£3 per check), obtaining quick copies (£38 plus vat) and, in some cases, instructing Registers of Scotland or private Searchers to carry out a search (around £300 plus vat). No specific budget provision exists for such costs which will need to be met from existing Common Good and Council budgets as appropriate. Compliance with the legislation in this area is not optional but officers will seek to keep the burden of costs to a minimum.

Given that some work has already been undertaken regarding the review and consultation of some Arbroath and Brechin Common Good Funds assets and the estimated number of assets, the table below gives an indicative cost to each Common Good Fund in relation to the Solicitor's time for a two-year period to undertake the aforementioned work:

Table 1

Funding Source	2021/22 - 6 months (£)	2022/23 - full year (£)	2023/24 - 6 months (£)	Total (£)
Arbroath CGF	8,697	0	0	8,697
Brechin CGF	13,045	0	0	13,045
Forfar CGF	0	33,620	0	33,620
Montrose CGF	0	10,433	22,695	33,128
Total (£)	21,742	44,053	22,695	88,490

The final cost to each Common Good Fund will be based on actual time spent compiling the register for that burgh. Should the work identify assets which should be classified as belonging to the General Fund, the work will be chargeable to the General Fund rather than the Common Good Fund. General Fund costs will be met through the Other Services revenue budget. When the exact cost / split between each Common Good Fund is known from timesheet analysis of the new Solicitor post, the actual costs pertaining to each Fund shall be included in monitoring / accounting reports to relevant Committees. The uncommitted revenue balances on the Common Good Funds are sufficient to meet these costs and will be factored into the Common Good budgets for the relevant years.

There will be financial implications for both the General Fund and Common Good Fund should there require to be any re-classification of property between the two funds and in this event the recently agreed revised Common Good Policy will apply (Report 138/21 refers).

7. PROPERTY IMPLICATIONS

As set out in Report 315/18, changes in classification have property implications. Common good land can be subject to restriction on its disposal or change of use. If properties are removed from the common good such restriction, where applicable, disappears. Likewise, the Council's ability to deal with land transferred to the common good may be affected if a sale, transfer of title or change of use is restricted.

8. EQUALITY IMPACT ASSESSMENT

An Equality Impact Assessment has been carried out and is attached as Appendix 2.

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 722/12 submitted to Angus Council on 13 December 2012
- Report No 400/13 submitted to Angus Council on 20 June 2013 and resubmitted on 12 September 2013
- Report No 506/13 submitted to Angus Council on 12 September 2013
- Report No 315/18 submitted to Policy and Resources Committee on 9 October 2018

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List of Appendices:

Appendix 1: List of property proposed to be included in the common good register.
Appendix 2: Equality Impact Assessment