

ANGUS COUNCIL

POLICY AND RESOURCES COMMITTEE – 30 APRIL 2024

COMMON GOOD REGISTER - FORFAR

REPORT BY THE DIRECTOR OF LEGAL, GOVERNANCE AND CHANGE

1. ABSTRACT

This report provides an update on the progress with compiling a publicly available register of Common Good property assets for the former Royal Burgh of Forfar. It also seeks approval for the Council to consult on a draft Register of the relevant Forfar Properties in implementation of section 102 of the Community Empowerment (Scotland) Act 2015 as amplified by Statutory Guidance subsequently issued by the Scottish Government in July 2018.

2. ALIGNMENT TO THE COUNCIL PLAN AND COUNCIL POLICIES

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. RECOMMENDATIONS

It is recommended that the Committee:

- (i) Notes and approves the content of the Consultative draft List of Land and Buildings of the Common Good Register for the former burgh of Forfar as detailed in Appendix 1;
- (ii) Agrees that the Consultative draft List is publicly consulted upon and duly published as required by the legislation;
- (iii) Notes that following completion of the period for consultation and publicity the Director of Legal, Governance and Change will bring a report back to Committee on the representations received and the responses to them, inviting the Committee to approve for publication the final List of Land and Buildings of the Common Good Register for the former burgh of Forfar;
- (iv) Notes progress with the compilation of, and consultation on, a publicly accessible register of Common Good property assets for the remaining Angus burghs of Brechin, Montrose and Kirriemuir; along with Monifieth and Carnoustie;
- (v) Approves funding from the Common Good Fund as set out in section 7 for the extension of the 1.0 FTE Solicitor's post for a further period of 6 months to 2 January 2025 to allow the work in relation to the Common Good Register to be completed; and
- (vi) Approves funding from the Common Good Fund as set out in section 7 to partially fund the Paralegal (Title Deeds) post from July 1 2024 until 31st March 2025 at 0.6 FTE to allow the work in relation to the Common Good Register to be completed.

4. BACKGROUND

Report 190/21 considered by the Policy and Resources Committee on 8 June 2021 approved inter alia the following recommendations: -

- (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) Delegates authority to the Director of Legal and Democratic Services, or her nominated representative, to consider and respond to all representations, in terms of the legal position, and publish the representations and responses;
- (iii) 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 Forfar;
- (iv) Agrees to follow the same procedure for the other Common Good burghs in due course;
- (v) 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;
- (vi) Approves funding from the Common Good Fund 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.

The report before members today is the next stage in this matter in relation to the Common Good Register for the former burgh of Forfar.

5. CURRENT POSITION

- 5.1 Prior to the Community Empowerment (Scotland) Act 2015 coming into effect on 27 June 2018 the Council already had its own detailed asset register of Common Good assets covering relevant burghs holding Common Good assets. That register formed the basis for specific separately required identification of Common Good assets and has been used by the Council for many years for accounting purposes. The work undertaken and being undertaken to comply with current legislation has involved detailed investigation, not only of historic title deeds, but also related supporting documents including the Burgh Charters; other information held in historic Council Minutes and Archives; and operational processes. The purpose of this is to confirm the continuing accuracy of the existing Common Good asset registers held by the Council, to adjust or update the registers as necessary and to take account of the publication and recording requirements of the current legislation.
- 5.2 On 24 October 2023, Policy & Resources Committee agreed to adopt the List of Land and Buildings detailed in Appendix 2 to that report as the assets of the Common Good of the former Royal Burgh of Arbroath and to publish it in accordance with the legislation and the Statutory Guidance. This has now been done.
- 5.3 On 5 December 2023, Policy & Resources Committee agreed that the Consultative draft List of Land and Buildings for the former burgh of Brechin as detailed in Appendix 1 to that report would be publicly consulted upon and duly published as required by the legislation. The consultation on Brechin Common Good register was published on 30 January 2024 and the consultation period will end on 25 April 2024. Representations will be assessed and reported to Committee as soon as possible thereafter, with the Council's proposed response. The timing of this report shall depend on the volume of representations received in the consultation.
- 5.4 This report now seeks Committee approval to go out to consult on the draft list for the former Royal Burgh of Forfar. Meanwhile work is proceeding on the Consultative draft List for Montrose with a view to a further report being submitted to Committee in June cycle. The existing Register for Kirriemuir contains only one Common Good property and there are no existing Registers for either Carnoustie or Monifieth. Although there are no current registers for Monifieth and Carnoustie, and only one asset on the list for Kirriemuir, as they are all former burghs, the title deeds require to be checked to ensure that the review currently being progressed is both complete and robust.
- 5.5 As noted above at 3(iv), Report 190/21 sought approval for common good funds to be used for the appointment of 1.0 FTE Solicitor for a period of 2 years to undertake work to ensure that the proposed list for each burgh is robust prior to publication, as required by statutory guidance. The funding for this solicitor post is due to end on 3 July 2024. Report 190/21 acknowledged that it was challenging to estimate the resource requirement for the solicitor post accurately, but an estimate was given based on the time taken to complete the initial audit of Arbroath common good (carried out around 2012/13). Unfortunately, this was unachievable as it became apparent that incorrect criteria had been applied to the original Arbroath audit, meaning significant time had to be spent reconsidering the original list. Members are also aware that once each public consultation has been completed, a further report must be prepared to allow Committee to give due consideration to the responses received from the consultation. Thereafter the final common good list for that burgh is published. Whilst excellent

progress has been made to date, several reasons can be given for the 2 year timescale no longer being achievable. As noted above, the solicitor has had to spend significant time on the Arbroath Register, which was not originally anticipated. It has also become clear that the timescales for preparing committee reports, committee cycles and the 12 week statutory consultation for each register, along with consideration of the consultation responses had not been properly factored into the original 2 year estimate. It is therefore anticipated that the solicitor's work on the Common Good Register will not be completed until the end of this year. There is no capacity within the legal team to pick up the remaining work required to complete the CG register after the current post funding ends in July.

- 5.6 Covid funding was secured to recruit to a 1-year paralegal post to lead on digitising our paper title deed records, allowing them to be easily and readily accessible to the legal team who now work agilely. The funding for this post is due to end on 30 June 2024. As part of their duties involving digitising our title deed, the Paralegal has been assisting and supporting the Solicitor with the ongoing work in respect of the titles for the Common Good Register. Whilst it is anticipated that work undertaken by the Solicitor will be completed by December 2024, the Paralegal post requires to be extended until 31 March 2025. This is to allow sufficient time, alongside their other duties, for our title deed records to be updated following the Common Good lists being approved for publication by Committee. It is also anticipated that the Paralegal will liaise with colleagues from Finance, Property and IT in respect of publishing the Common Good Register so it is publicly available as required by the legislation and statutory guidance. It is anticipated that the Paralegal will require to spend 3 days a week on Common Good work and funding is sought in that regard.

6. STATUTORY CONSULTATION

- 6.1 If approved by Committee, the updated List of Common Good land and buildings for Forfar attached at Appendix 1 will be published for a period of twelve weeks for public comment. Additionally formal Notice and the accompanying Consultative draft List will be available online on Engage Angus (the Council's consultation platform) and on the Tellmescotland government website as well as being available in paper form during normal opening hours at Angus House, Orchardbank Business Park, Forfar.
- 6.2 Following publication of the List, local elected members for Forfar, Forfar Community Council and relevant Community bodies will be contacted and given the opportunity to comment on the draft List and lodge any representations if desired.
- 6.3 In accordance with the approach taken for the Arbroath and Brechin lists, and as explained in Report No. 190/21, the published Consultation List includes any properties previously included in the existing Common Good asset registers which no longer, or following the investigations undertaken have been determined not to, form part of the Common Good. These will be marked as such. This is to allow for full transparency.

7. PROPOSALS

Subject to the approval sought by this report, the Consultative draft List will be published in a robust manner as soon as possible and, in accordance with Scottish Government Statutory Guidance to which local authorities must have regard, consult on it for at least 12 weeks with the public and local elected members for Forfar, Forfar Community Council and local community bodies, inviting representations. The Council then requires to consider and respond to all representations received. The Council must publish the representations and its responses to them. A report will be brought to Committee detailing any adjustments to the Register occasioned by the consultation and seeking approval to publish the Common good register for Forfar in its final form. The Guidance requires that this should be done as soon as practicable and in any case within six months of the end of the consultation.

8. FINANCIAL IMPLICATIONS

- 8.1 The Financial Implications section of Report 190/21 considered by the Policy & Resources Committee on 8 June 2021 provided details of the anticipated cost to each Common Good Fund. As stated in that report, the approach taken has been as follows: - "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 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.

8.2 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). It is proposed that the same approach is taken in relation to funding for the proposed extension to these posts, if approved by Committee.

8.3 The actual costs pertaining to each Fund have been included in monitoring / accounting reports to relevant Committees and can be summarised as follows:

The costs recharged to the Common Good for 2022-2023 for 1 FTE solicitor	
Arbroath	£21,799
Brechin	£5,945
Forfar	£1,189
Montrose	£793

8.4 Given the significant work already undertaken in respect of the Common Good Registers for each Burgh noted at section 4, the tables below give an indicative cost to each Common Good Fund in relation to the extension of the Solicitor post for a further 6-month period and the 0.6 FTE Paralegal post for a further 9 months to undertake the aforementioned work:

Cost to the Common Good funds				
Post Number	Role	Full Time Equivalent	Length	Cost (including oncosts)
185422	Solicitor	1.0	6 months	£28,297 (1.0 FTE)
185423	Paralegal	0.6	9 months	£18,425 (0.6 FTE)

Indicative cost per Burgh					
Post Number	Role	Total Cost (including oncost)	Brechin	Forfar	Montrose
185422	Solicitor	£28,297 (1.0 FTE)	£2,829.70	£8,489.10	£16,978.20
185423	Paralegal	£18,425 (0.6 FTE)	£1,842.50	£5,527.50	£11,055.00
Total		£46,722	£4,672.20	£14,016.60	£28,033.20

The table above gives an indicative cost to each Common Good Fund in relation to the partial funding of 60% towards the Paralegal post for the period from 1 July 2024 to 31 March 2025 to undertake the aforementioned work.

9. OTHER IMPLICATIONS/RISKS

If additional short-term common good funding is not approved for the temporary Solicitor and Paralegal posts detailed above work on finalising the Registers for Forfar, Montrose and Kirriemuir will have to cease as there is no capacity within the legal team to pick up the remaining work required to complete the CG registers. The Common Good Register for Angus will remain incomplete, and we will therefore not be able to meet our statutory duties under the 2015 Act. A complete and robust Common Good Register is required also to satisfy the requirements within the Local Authority (Scotland) Accounts Advisory Committee's "Accounting for the Common Good Fund: Guidance for Practitioners".

10. EQUALITY IMPACT ASSESSMENT, HUMAN RIGHTS AND FAIRER SCOTLAND DUTY

No new Equality Impact Assessment is required. An Equality Impact Assessment was carried out and attached as Appendix 3 to Report No 190/21.

11. CONSULTATION

Director of Finance has been consulted on the proposals contained in this report.

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 315/18 submitted to Policy and Resources Committee on 9 October 2018
- Report No 190/21 submitted to Policy and Resources Committee on 8 June 2021.
- Report No. 222/22 submitted to Policy and Resources Committee on 30 August 2022

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List of Appendices:

Appendix 1 Consultative draft list for Common Good Register for the former burgh of Forfar