

## Review of Common Good in Edinburgh

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### Executive of the Council

12th December 2006

#### 1 Purpose of the Report

This report advises the Executive on:

- the progress of the review of the Common Good called for by the Resource Management and Audit Scrutiny Panel;
- an action plan to take the review to conclusion.

#### 2 Background

- 2.1 The report on the City's Common Good Fund for the year ended 31st March 2005 to the Executive of the Council on 28th February 2006 was called into the Resource Management and Audit Scrutiny Panel of 27th April 2006. The Scrutiny Panel considered this along with tabled papers on Common Good Funds in Scotland and Edinburgh, prepared by Mr. Wightman, Director of the Caledonian Centre for Social Development.
- 2.2 The Scrutiny Panel called for a report on the development, stewardship and record keeping of the Common Good Fund.

#### 3 Main Report

##### 3.1 Legal Position

The City of Edinburgh Council has a statutory obligation under the Local Government etc., (Scotland) Act 1994, Section 15(4)(b) in administering property held as part of the common good to have regard to the interests of all of the inhabitants of the City. In effect the Council holds the Common Good Fund in a similar manner to managers to administer for the benefit of the City as a whole. Although any surplus generated may be applied to purposes outwith statutory duties, the objects upon which the expenditure has been made must be for the benefit of the City generally and not for any particular or limited class. A wide discretion is vested in the Council in its administration of the common good. Case law indicates that the courts will only interfere with that discretion where it can be shown to be ultra vires, contrary to the general interests and welfare of the community as a whole and the like. It is accordingly necessary in any particular case to look at the primary purpose of a particular decision to determine whether it is reached for the benefit of the community as a whole and is not otherwise illegal.

### 3.2 Property Ownership

Case law indicates all former royal burgh property is common good except where it was acquired under statutory powers or is held under special Trust. Further detailed research is currently being carried out to investigate the individual circumstances of the acquisition and use of the properties specifically identified in Mr Wightman's report, some of which date back centuries.

### 3.3 Action Plan

The following action plan is proposed to properly establish the circumstances of the acquisition and use of each property:

- continue the detailed research into the history of the acquisition of the properties identified in Mr Wightman's report;
- carry out further research into the acquisition of other assets;
- take the findings of the above research to Queen's Counsel for review and opinion.

The substantive report on the review of the common good in Edinburgh will be referred to the Resource Management and Audit Scrutiny Panel.

## 4 Conclusions

- The classification of common good property is complex and uncertain;
- The Council after undertaking preliminary research requires external assistance to take forward its review of Edinburgh's common good.

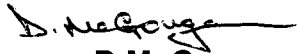
## 5 Financial Implications

Funding of up to £30,000 is required to take forward the research and seek Queen's Counsel opinion on the common good.

## 6 Recommendations

It is recommended that the Executive:

- (i) note the action plan outlined in 3.3 above;
- (ii) approve the funding required to take forward the Review, from the Council's reserves in the first instance;
- (iii) approach COSLA regarding a contribution to the costs as issues raised will have implications for other Scottish local authorities.

  
**D McGougan,**  
**Director of Finance**  
*5th December 2006.*

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<b>Appendices</b>	None
<b>Contact/tel</b>	Mrs. D. Pryde: 0131 469 3195
<b>Wards affected</b>	All
<b>Background Papers</b>	Annual Report on the City's Common Good Fund for the Year Ended 31 March 2005 Departmental Working Papers

**Agenda Item:****Report title: Review of Common Good in Edinburgh**

In accordance with the Council's Standing Orders, the contents of this report have been noted by the appropriate Executive Member.

Without prejudice to the integrity of the report, and the recommendations contained within it, the Executive Member expresses his/her own views as follows:

**Signed:** *Maurice M. Child* **Date:** 28/11/06

**For Information** – Standing Order 57(1) states:

"Heads of Department will prepare reports, with professional advice and recommendations, on matters requiring decisions by the Executive:

- a report seeking decisions on matters of corporate strategy, corporate policy and corporate projects will be submitted direct to the Executive
- a report seeking decisions on matters relating to the special responsibilities allocated to an individual member of the Executive will be submitted, in the first instance, to that member. The member will add his or her own recommendation to it before submission to the Executive. Where the Executive member disagrees with the advice and the recommendation of the officers, the Executive member will also state his or her reasons."