

Report on the Common Good of the City of Edinburgh

April 2006

by Andy Wightman

andywightman@caledonia.org.uk

BACKGROUND TO REPORT

In November 2005, my colleague James Perman and I published a report on Common Good Land in Scotland (1). This revealed widespread concerns over the management of common good assets across Scotland. Following the publication of the report, I was alerted to a number of issues relating to the stewardship of the Common Good of the City of Edinburgh which, upon investigation and correspondence with Council officials, revealed serious concerns in my mind as to how such assets were being perceived, recorded, accounted for, and administered. Knowing that an Annual Report on the Common Good (2) was being presented to the Executive of the Council, I contacted my local Councillor, Mr Michael Dixon and drew his attention to my concerns.

This report represents a brief dossier of some evidence which has come to light which it is hoped will act as a catalyst to further detailed investigations with a view to achieving two outcomes namely,

- the restoration of the value of the City of Edinburgh Common Good Fund in terms of assets and income
- good governance of the Fund and promotion of its role to the citizens of the City of Edinburgh.

BACKGROUND TO THE COMMON GOOD

In the early history of the Royal Burgh of Edinburgh, the sole source of income for the Burgh was derived from the Common Good. This comprised essentially the grants of land conveyed by the various Royal Charters to the town. Over time other assets were acquired. The revenues from rents, feu duties and other charges sustained the administration of the Royal Burgh. Rampant corruption by the Council and its officials in the 17th and 18th century reduced the Common Good Fund assets considerably and led the town to the point of insolvency on occasions (3). Further gifts of land (e.g. for parks) in the 19th century expanded the asset base of the Common Good Fund.

As the statutory powers and functions of local Government developed, so the Common Good Fund became of less importance but it was nevertheless still a significant source of income. The Fund was to all intents frozen with the abolition of the Town Council in 1975 and the assets were transferred to the City of Edinburgh District Council under statutory safeguards regarding the disposal of property and the interests of the inhabitants of Edinburgh.

The assets of the Common Good Fund comprise all heritable and moveable property formerly owned by the Provost, Magistrates and Council prior to 1975 with the exception of those acquired using statutory powers or were held in a special Trust (4). The Fund should

thus comprise quite an extensive portfolio of assets generating substantial income for the common good of the citizens of Edinburgh.

THE COMMON GOOD FUND IN THE 20th CENTURY

The history of the Common Good Fund in the 20th century is a history of decline. In 1904 the annual income of the fund was £26,008 or £1,815,364 at 2004 prices (5). One hundred years later, in 2004, the income was a mere £177,000. In 1948 the value of the Fund was £420,159 or £9,931,648 at 2004 prices. In 2004 the value was £3,427,000.

Annex A provides a brief synopsis of the value of the Fund together with some commentary at key stages derived from the Notes to the Accounts. The present Balance of the Fund is indicated in the table below.

CITY OF EDINBURGH COMMON GOOD FUND 31 MARCH 2005		
Fixed Asset restatement reserve	£ 1,987,000	
Capital Financing reserve	- 15,000	
Common Good Fund	£ 1,443,000	
Disable Access Grants Reserve	£ 38,000	
BALANCE	£ 3,453,000	

The above figures are derived from the Unaudited Accounts for the year ending 31 March 2005.

By way of comparison, it is perhaps instructive to compare this with the Common Good Fund of another City, Aberdeen (see Annex B).

CITY OF ABERDEEN COMMON GOOD FUND 31 MARCH 2005		
Land and Property	£ 26,306,000	
Investments	£ 5,829,000	
Debtors/Creditors	- £ 254,000	
BALANCE	£ 31,881,000	

A City with half the population of Edinburgh has a Common Good Fund ten times the size. The poor state of the City of Edinburgh Common Good Fund is, I would suggest, due to

- assets not being recorded,
- assets which are underperforming,
- financial irregularities, and
- a lack of professional oversight and scrutiny that has allowed the Fund to wither and fade into almost obscurity.

What is the evidence for this?

MANAGEMENT OF ASSETS

In April 2005 I wrote to the City of Edinburgh Council to ask what Common Good Assets it held. I was provided with the list in Annex C.

Apart from the poor quality of this list, the first thing I noticed was that there were assets which should have been recorded which were not. Examples of these include

- The Meadows
- West Register House
- Lady Stairs House
- Parliament House
- Former garage/depot/market at East Market Street/Cranston Street
- City Chambers
- The Old Royal High School
- Any property in Portobello
- Canongate Council Chamber
- The streets of the old town and first New Town and of Leith and Portobello
- Moveable assets including the City Archives

In addition there appear to be a number of other properties (including some in the process of being sold) that, although appearing on other accounts of the Council, are in fact Common Good titles since they were acquired using Common Good Funds.

Three recent property deals in particular provide evidence that the Common Good Fund is in a state of crisis, namely East Market Street/Cranston Street, Waverley Market, and 7 Merchiston Park.

East Market St/Cranston St

This site is in the process of being sold as part of the Caltongate development and part (at least) of the site - the former garage/depot on East Market Street - is a Common Good asset. From the Reports to Council it is evident that this sale (and others) were embarked upon as part of a capital generation programme connected with the Fit for the Future Project. At no point does any strategic view appear to have been taken of this or other Common Good properties in terms of the prudential administration of the Common Good Fund. Indeed the Council does not have a Common Good Committee that would, in normal circumstances take such decisions.

The property was identified as a common good asset in 2002 (6) but by 2005 had disappeared from the Common Good asset register (as presented to me by the Council in July 2005 - See Annex C). At the meetings of the Council in June and November 2005 (at which the decision was taken to sell the land), no mention was made of the fact that part of the site was Common Good and it was reported to Council that the proceeds of the sale

would represent a "Capital Receipt" (7). This was misleading since a proportion of the sale proceeds belonged to the Common Good Fund.

Only after questioning in late 2005 did Council officials admit that the property was held on Common Good and that 35% of the proceeds would be credited to the Fund. It is worth noting that the sale of this one property will approximately double the value of the Common Good Fund. However, it has been decided to spend the proceeds on defraying the costs of the new Headquarters (8).

The Council has a fiduciary duty to steward the assets of the Common Good and to invest them wisely (9). Defraying costs of other capital projects returns nothing to the Common Good Fund. This decision is thus of doubtful probity and legality and appears to represent a poor investment decision. Indeed it appears to represent no investment at all since the capital receipt is to be used to defray costs rather than to be invested as part of the capital of the CGF and produce an annual revenue to the Fund. On the basis that the Common Good Fund will be credited with a sum of £1.82 million, one would expect an annual return to the Fund of £100,000 or so at a yield of around 5%.

Waverley Market

Waverley Market is a site of 1.68 acres on the south side of Princes Street. The old market was demolished in 1971 and the site then lay undeveloped until 1982 and was used as a Car Park by the Chamber of Commerce. In the period 1979 - 1982 the Council agreed to enter into a leaseback arrangement with a developer whereby the site would be leased for 125 years, the developer would construct a speciality shopping centre, and the Council would then lease back the Centre and sub lease the individual retail units. The Council would pay a rent calculated at 6.5% of the development cost and rental yields over and above this would be shared with the first £1.4 million accruing to the Council and income in excess shared between both parties.

Here are some of the comments made in the Council Annual Reports.

A major property owned by the Common Good Fund is the Waverley Market Site on Princes Street and since this is now being redeveloped as a speciality shopping centre there is no longer any rent income from its use as a temporary car park.

Notes to the Common Good Accounts, 1982

The new speciality shopping centre which is being erected on the prime site owned by the Council at Waverley Market on Princes Street is due for completion in 1984. This prestigious development is being wholly financed by the Reed Pension Fund and on completion will be leased to the Council for letting to the rental occupants.

Foreword to the 1984 Annual Report.

(Note that now, in 1984, the site of the Waverley Market is referred to as being owned by the Council and not, as in the 1982 quote above, by the Common Good Fund.)

The opening of the Waverley Market Speciality Shopping Centre has involved the Council in expenditure which has continued to grow with the anticipation that this will be reduced from future surpluses.

Notes to the Balance Sheet, 1986

One might assume that the Common Good Fund would receive a significant boost from the Princes Mall development. This, however, never happened. Instead the Common Good Fund lost both the revenue and the capital value inherent in perhaps its most valuable asset.

Prior to the development of Princes Mall, the annual revenue accruing to the Common Good Fund was £13,000 from car parking charges.

In March 1982, a 125 year lease was granted by the City of Edinburgh District Council to Reed Publishing Pension Trustees Ltd. and Reed Pension Trusts Ltd. (who were responsible for constructing the new shopping centre). In April 1988 the Council leased back the new shopping centre. In November 1989, the Council agreed to extend its 'head lease' from 125 years to 206 years (i.e. from 1982 to 2188).

Immediately afterwards, the Council terminated and sold its 1988 sub-lease interest to Letinvest plc and Speciality Shops plc who, at the same time acquired the Reed Pension Trusts' leasehold interest. The Council thus exited from the leaseback deal but the Common Good Fund remained the owner.

In 1998 the leasehold interest was sold for £21,300,000 to Scottish Metropolitan Property plc. In 2005 the leasehold interest was sold first for £40,500,000 to Continental Shelf 274 Ltd. and PM Limited Partnership and then for £37,600,000 to PPG Metro Ltd., a company owned by David Murray. The annual rental roll stood at £2.3 million.

In the Financial Appraisal prepared for the Council on 4 June 1981, the value attributable to the site is stated as 50% of the realisable development value. In other words, the Common Good Fund as the owners of the solum or site would, had things been organised differently, have received half of the £37.5 million paid for the leasehold interest by David Murray and be in line for some 50% or so of the annual rental income.

Instead, since 1982, the Common Good Fund of the City of Edinburgh has received the grand total of 23p for one of the most valuable pieces of real estate in Edinburgh since the site is let for a rent of 1p per year (if asked). If the penny rent was not indeed asked for then the Common Good Fund has received precisely nothing. By the end of the lease in 2188, the Common good Fund will have earned the princely sum of £2.60 (if asked) and precisely nothing of not asked.

In 1990, the Council reported in the Notes to the Balance Sheet that,

Following the sale of the Waverley Market Complex, the free proceeds after repayment of debt, were utilised by the Council in creating a Property Development Fund which, together with then interest thereon, amounted at the end of the year to £4,249,744.

None of this capital was credited to the Common Good Fund. The fate of the Property Development Fund is unknown.

7 Merchiston Park

This property formed part of the Common Good and was sold in April 2004 for £980,525. It formed part of the portfolio of "surplus properties" being sold as part of the Fit for the Future project.

The sale of a capital asset should result in a capital receipt to the Common Good Fund and be reflected in the Accounts of the Common Good Fund. In line with the fiduciary duties of the Council, a decision ought then to be made as to how that capital should be applied in order to achieve best value for the Fund.

The date of entry of the new owners of 7 Merchiston Park was 23 April 2004 and the property was registered in the Land Register on 14 May 2004. The capital receipt should therefore have been received by the council in April 2004 and be reflected in the Common Good Fund Accounts for the year ended 31 March 2005.

The 2005 accounts contain no record of a receipt and no movement in the fixed assets. There is no mention of the disposal in the Notes to the Accounts and the information on the number of fixed assets held shows no change. The £980,525 receipt has evidently been credited to some other account.

Following correspondence with the Director of Finance on this particular matter, I was informed in a letter of 7 April 2006 that the Common Good Accounts for 2005 would be amended.

What other aspects of Common Good Fund accounting might need amended and what role does internal and external auditing play in ensuring that Common Good assets are properly recorded and accounted for?

LEASES

In the Report prepared for the Executive of the Council on 28 February 2006, the lease agreements concluded in terms of the delegated powers of Chief Officials are presented (10). These included the following items.

2. Meadows Public Park	Recruiting Activity by the Royal Scots	£1 is asked
3. West Princes Street Gardens	Bungydome	£4000 + VAT
4. West Princes Street Gardens	Homeless World Cup	£1 if asked
5. West Princes Street Gardens	The Rat Race	£1 if asked
8. East Princes Street Gardens	Ove Arup on behalf of Network Rail	£1000 + VAT
10 Meadows Public Park	Urban Circus Ltd.	£6,750 + VAT
19. Calton Hill	Vodafone	£821.43
20. Calton Hill	Orange	£821.43

Of the leases referred to above only 2 (Calton Hill) are attributed to the Common Good Fund. The rest are allocated to Culture & Leisure and yet both Princes Street Gardens and

the Meadows are Common Good Land and this income should accrue to the Common Good Fund.

MOVES TO REMOVE ASSETS FROM THE CGF

On a number of occasions there is evidence of attempts to remove the common good status of certain assets.

The Edinburgh Corporation Order Confirmation Act 1967

Section 145 of the Edinburgh Corporation Order Confirmation Act 1967 states that,

The markets and the slaughterhouses shall cease to form part of the common good.

This bold and seemingly arbitrary measure, contained in private legislation promoted by the Council, resulted in the loss of around half the annual revenues of the Fund.

The Status of the Waverley Market

In 1982 there was internal correspondence between the Director of Finance and the Director of Administration as to the status of the Waverley Market as a Common Good asset (11). This was prompted by COSLA having notified Councils that the VAT element on common good transactions was not recoverable. It was suggested that the land be leased to another service in the Council so as to be able to recover VAT.

In the letter from the Director of Administration to the Director Finance, he notes Section 145 of the 1967 Act and the fact that, since Waverley Market had, since 1958, been designated as a *Public Hall* that it would not be affected by that Section. He goes on, however to suggest that, *since the site had been designated as a Public Hall in the 1958 Confirmation Act, that the implication could then be that it was transferred from common good to Recreation Account in 1958.* and goes on, *In order to avoid any doubt I would suggest that there be considered for inclusion in the new private legislation presently under consideration that following the transfer of Waverley Market to "Halls" it ceased to form part of the Common Good and came under Recreation Account."*

This never happened and Waverley Market remains part of the Common Good.

Accounting Changes

In 1989, the Notes to the Common Good Fund Accounts state that,

The operational use of a number of assets owned by the Common Good changed during the year. In accordance with the Code of Practice on local Authority Accounting, these assets are recorded on the Council s balance sheet. These changes in operational use do not affect the Common Good s legal title over them.

What are these properties, what happened to them and how much rental income has been derived from them?

CONCLUSION

The minimal evidence collated in this report suggests serious shortcomings in the administration, and financial management of the Common Good Fund.

Taken together, the East Market St/Cranston Street, Waverley Market and Merchiston sales all point to a systematic failure to administer the Common Good with the degree of probity and transparency that the citizens of Edinburgh have a right to expect

The situation has reached something of a crisis when a programme of disability grants has had to be terminated because of the parlous state of the Fund's finances. And yet there are millions pounds worth of asset sales taking place which could, with prudential management yield substantial dividends to support a programme of Common Good Grants.

Instead, these capital receipts have been earmarked to defray the costs (rent, furnishings etc.) of an HQ building that the Council will not even own. I question the probity and legality of deploying the capital of a Common Good Fund on the core administrative revenue costs of the Council. This is not what the Common Good Fund is for.

The Common Good Fund has been treated as a hinderance, an inconvenience and an anachronism and the assets have been systematically raided to shore up budget deficits elsewhere in the Council.

A major asset such as the Waverley Market site, has earned 23p whilst its true value is well over £1 million in annual revenue and £20 million as a capital asset.

RECOMMENDATION

It is recommended that an independent review be conducted of the Common Good Fund, its administration and future stewardship with a view to securing proper record keeping, recovering lost finances and developing a goal of securing a £50 million Fund by 2015.

Such a review should be conducted by an independent panel drawn from the beneficiaries who are the citizens of Edinburgh.

NOTES

- (1) Wightman and Perman, 2005. Common Good Land in Scotland. A Review and Critique. Caledonia Centre for Social Development, Inverness. Downloadable copies are available at <http://www.caledonia.org.uk/commonweal/commongood.html>
- (2) Annual Report on the City's Common Good Fund For the Year Ended 31 March 2005. Report No. E/438/05-06/CS presented to the Executive of the Council on 28 February 2006.
- (3) General Report of the Commissioners Appointed to Inquire into the State of Municipal Corporations in Scotland. HMSO, London, 1835. See Local reports Part I pp. 279-422 for an account of Edinburgh.
- (4) Magistrates of Banff and others v Ruthin Castle Ltd 1944 SC 36. Lord Wark at p.60.
- (5) Hunter and Paton, 1905. Report on the Common Good of the City of Edinburgh. Lord Provost, Magistrates and Council of the City of Edinburgh.
- (6) Rationalisation of Office Accommodation (ROA) - Progress Report. Report presented to the City of Edinburgh Council on 14 November 2002.
- (7) See

Rationalisation of Office Accommodation. Fit for Future Project. Waverley Valley Redevelopment: premises at East Market Street/Cranston Street. Report No. CEC/50/05-06/CD presented to the City of Edinburgh Council on 30 June 2005. and;

Fit for Future Project. Waverley Valley redevelopment: premises at East Market Street/Cranston Street. Report No. CEC/135/05-06/CD presented to the City of Edinburgh Council on 17 November 2005.
- (8) Minutes of the City of Edinburgh Council 14 November 2002.
- (9) *No doubt a fiduciary element arises in the administration of the common good, but the common good itself is the property of the citizens and the fiduciary element comes in because it is the duty of their elected representatives to administer it not for themselves but for their constituents.*

Lord Justice-Clerk Thomson in McDougal's Trustees v, Lord Advocate 1952 SC 260 at p.266.
- (10) Lease Details etc - Quarterly Report. Report No. E/439/05-06/CD presented to the Executive of the Council on 28 February 2006 Item No. 27.
- (11) Memorandum from Director of Finance to Director of Administration 28 November 1983 and reply from Director of Administration to Director of Finance dated 7 December 1983.

ANNEX A COMMON GOOD ACCOUNTS

YEAR	INCOME £	EXPENDITURE £	SURPLUS/ DEFICIT	BALANCE
1904	26,008 £ 1,815,364 at 2004 prices			
1948	40,752 £ 963,289 at 2004 prices			
1972	17,263	18,674	- 1,411	263,417
1973	18,854	25,905	- 7,051	285,854
1974	18,579	33,509	14,930	285,071
May 1975 Town Council abolished and replaced by City of Edinburgh District Council				
1980				253,490
1981	79,653	42,235	37,418	265,195
1982	71,075	105,515	- 34,440	257,701
1983	50,694	110,453	- 59,759	194,943
1984	51,562	38,471	13,091	206,998
1985	60,248	63,153	- 2,905	200,584
1986	63,248	21,447	41,801	263,958
A capital receipt in the year of £22,000 was obtained from sale of rights to erect a pedestrian bridge over a street, the solum of which is owned by the common good.				
1987	86,611	23,446	63,165	326,510
1988	86,551	11,508	75,043	369,341
In 1988 it was decided to award 50% of the annual surplus of the Common Good fund as grants to improve access to public buildings for people with disabilities.				
1989	94,609	20,575	74,034	443,270
1990	115,240	15,653	99,587	562,892
the sale of subjects in Greenside Place raised £20,000				
1991	136,737	16,790	119,737	646,787

YEAR	INCOME £	EXPENDITURE £	SURPLUS/ DEFICIT	BALANCE
1992	125,187	20,445	104,742	707,501
1993	104,579	47,824	56,755	720,164
Surplus was less due to expenditure incurred on Market Street Garage, one of the properties owned by the Fund.				
1994	96,731	62,932	33,799	780,508
1995	149,073	70,106	78,967	2,223,542
A revaluation of assets was carried out to accord with CIPFA Code of Practice on Local Authority accounting with effect from 1 April 1994.				
1996	159,326	81,006	78,320	2,419,636
1997	140,000	98,000	42,000	2,044,000
1998	223,000	152,000	71,000	2,087,000
1989	135,000	136,000	1,000	1,597,000
The operational use of a number of assets owned by the Common Good changed during the year. In accordance with the Code of Practice on local Authority Accounting, these assets are recorded on the Council's balance sheet. These changes in operational use do not affect the Common Good's legal title over them.				
2000	132,000	129,000	3,000	1,647,000
2001	136,000	29,000	107,000	2,070,000
2002	129,000	69,000	60,000	2,106,000
2003	116,000	125,000	- 9,000	3,417,000
Fixed Asset restatement reserve increased by £ 1,418,000				
2004	177,000	133,000	44,000	3,427,000
2005	192,000	136,000	56,000	3,453,000

ANNEX B ABERDEEN COMMON □ COMMON GOOD
GOOD ACCOUNTS 2005

The Common Good stands separate from other accounts and funds of the Council, and could be said to originate in the grant of freedom lands by King Robert the Bruce in 1319. The Common Good is corporate property and must be applied for the benefit of the community as the Council thinks fit. It is invested in land and buildings, such as Tullos and other industrial estates, and farms with any surplus being placed on cash deposit with other local authorities, building societies and the Council's own Loans Fund.

2003/04		2004/2005		
Net Cost		Gross Cost	Income	Net Cost
£'000	REVENUE ACCOUNT	£'000	£'000	£'000
(355)	General Properties	9	374	(365)
(1,604)	Industrial Estates	14	1,568	(1,554)
1	Green Market	8	4	4
14	Official Catering	17	-	17
134	Administration Costs	126	-	126
(276)	Investment Income	-	348	(348)
1,565	Donations, Grants, Contributions etc	1,020	-	1,020
462	Civic Hospitality	384	-	384
55	Upkeep of Civic Car	54	-	54
130	Funding of International Budget	114	-	114
179	Christmas Illuminations & Festivities	37	-	37
280	Civic Administration Unit	253	-	253
84	Other Projects	79	-	79
145	Miscellaneous Expenses	144	-	144
-	Freedom of the City - Mallard	54	-	54
(1,000)	Accord Card Refund	-	-	-
1	Queen's Golden Jubilee	-	-	-
30	Free at the Dee	-	-	-
155	Surplus (Deficit) for the year	-	19	(19)
-		<u>2,313</u>	<u>2,313</u>	<u>-</u>
	CAPITAL ACCOUNT			
(43)	Sale of assets	-	160	(160)
(252)	Revaluation Reserve	-	509	(509)
295	Surplus for Year	669	-	669
-		<u>669</u>	<u>669</u>	<u>-</u>
	BALANCE SHEET			
30,713	Value of Common Good at 1 April	31,163		
68	Reserve Fund	68		
<u>30,781</u>		<u>31,231</u>		
155	(Deficit)/ Surplus from Revenue Account	(19)		
43	Sale of Assets	160		
252	Revaluation Reserve	509		
<u>31,231</u>	Value of Common Good as at 31 March	<u>31,881</u>		
	REPRESENTED BY:			
25,907	Land & Property	26,306		
5,378	Investments	5,829		
462	Sundry Debtors	428		
<u>31,747</u>		<u>32,563</u>		
516	Less: Sundry Creditors	682		
<u>31,231</u>		<u>31,881</u>		



GORDON EDWARDS, MA, CPFA
Corporate Director for Finance & ICT
23 June 2005

ANNEX C EDINBURGH COMMON GOOD ASSETS

Value Date No	Street	Property Description	Value Basis	Value	Land Value	VALUED	per	OWNER	OCCUPIER	File Reference
01-Apr-02	STREET	PROPERTY DESCRIPTION	Value Basis	Value	Land Value	VALUED	per	OWNER	OCCUPIER	File Reference
01-Apr-02	STREET	PROPERTY DESCRIPTION	Value Basis	Value	Land Value	VALUED	per	OWNER	OCCUPIER	File Reference

Value Date No	Street	Property Description	Value Basis	Value	Land Value	VALUED	per	OWNER	OCCUPIER	File Reference
01-Apr-02	STREET	PROPERTY DESCRIPTION	Value Basis	Value	Land Value	VALUED	per <td>OWNER</td> <td>OCCUPIER</td> <td>File Reference</td>	OWNER	OCCUPIER	File Reference
01-Apr-02	STREET	PROPERTY DESCRIPTION	Value Basis	Value	Land Value	VALUED	per <td>OWNER</td> <td>OCCUPIER</td> <td>File Reference</td>	OWNER	OCCUPIER	File Reference

Value Date No	Street	Property Description	Value Basis	Value	Land Value	VALUED	per	OWNER	OCCUPIER	File Reference
01-Apr-02	STREET	PROPERTY DESCRIPTION	Value Basis	Value	Land Value	VALUED	per <td>OWNER</td> <td>OCCUPIER</td> <td>File Reference</td>	OWNER	OCCUPIER	File Reference
01-Apr-02	STREET	PROPERTY DESCRIPTION	Value Basis	Value	Land Value	VALUED	per <td>OWNER</td> <td>OCCUPIER</td> <td>File Reference</td>	OWNER	OCCUPIER	File Reference

748,179 00,000