

Resource Management and Audit Scrutiny Panel

Review of Common Good in Edinburgh

12th October 2006

1 Purpose of the Report

This report advises the Panel on:

- the conditions under which the Council administers the assets of the Common Good;
- the current arrangements in place for management of and accounting for the land and property holdings of the Common Good Fund;
- responds to questions regarding specific properties;
- the current financial position of the Fund.

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 Trustees 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.

3.2 **Current Practice**

3.2.1 **Current Property Management**

The properties held by the Common Good Fund are managed as part of the overall Council property portfolio. It should be noted that the Council has a duty to manage all of its assets in the interests of the inhabitants of Edinburgh and so this distinction may not be as significant as it may first appear.

Capital development works on these properties are subject to the same asset management and capital planning procedures as all other Council properties. The position of the Common Good Fund is reported annually to the Council's Executive.

The Council's asset register was interrogated to produce a full list of properties held on the Common Good account, irrespective of use. This list was reviewed and the following discrepancies found:

- The sale proceeds totalling £69,900 between 1996 and 2003 for properties at Granton Road had been paid into the HRA, which will be repaid to the Common Good in the current financial year.
- The site of the public convenience in East Princes Street Gardens has been transferred to the National Museums of Scotland in exchange for solum of areas of the Mound. There was no cash consideration in this transaction. This addition has been included on the asset list but the disposed site has not been removed.

In addition, the inclusion of property and lands at Dalmeny is currently being reviewed by City Development.

Appendix 1 shows the list of property and lands which are held by the Council on behalf of the Common Good.

3.2.2 **Current Accounting Practice**

The accounts of the Common Good Fund, along with the Council's own accounts, are maintained in accordance with the Code of Practice on Local Authority Accounting in Great Britain, Statement of Recommended Practice.

The 2004/05 Council's balance sheet was prepared on the basis that it included all capital assets held by the Council on behalf of the Common Good which are used operationally for Council services. This has been amended for 2005/06. There is no direct or notional charge by the Common Good Fund against the Council for use of Common Good assets. However, capital charges for depreciation and interest are charged against the Service Department as is all expenditure and income attributable to the land or property, both for capital and revenue purposes.

The remaining asset holdings of the Common Good are reflected in the Fund balance sheet. Capital charges, capital and revenue income and expenditure associated with these properties are accounted for within the Common Good Fund accounts.

3.3 Alternative Practices

3.3.1 Property Management

As noted in 3.2.1 above, the property holdings of the Common Good Fund are managed as part of the overall Council property portfolio.

The assets of the Common Good could be separately managed, similarly to properties held by the Pension Fund. This would require the setting of strategic objectives for the Common Good Fund, by the Council as trustees of the Fund. These should be considered in light of the legal position of the Common Good but also with a view to any impact on Council services.

3.3.2 Accounting Practice

Within the guidance of the SORP, noted in 3.2.2 above, it is considered preferable that all of the assets of the Common Good Fund should be included on the balance sheet of the Fund.

The SORP does not require depreciation to be charged on investment properties or community assets. The SORP however requires that the accounts reflect the cost of the use of capital assets by the Service using that asset. This may be achieved by creating a notional lease arrangement between the Common Good and the Council or service department for the use of the asset.

The Finance Department are continuing to explore the arrangements required to formalise the Council's use of Common Good assets to:

- properly account for the cost of capital
- facilitate capital investment on such assets.

3.3.3 Reporting

The annual report to the Council on the Common Good Fund will be enhanced in future years to include performance against strategic targets set by the Council.

4 Specific Property Queries

Mr. Wightman's report on the Common Good in the City of Edinburgh identified a number of properties which he felt should have been included on the Common Good Fund asset list supplied to him by the Council. The Asset Register listing which supported the Common Good Fund Balance Sheet, as explained in 3.2.2 above, was intended to represent those properties owned by the Common Good Fund but which were not used operationally by the Council. The circumstances of the properties which Mr. Wightman specifically identified are outlined below.

- **Waverley Market**

Waverley Market is not an asset of the Common Good and its inclusion on the asset register and balance sheet of the Fund in 2005 is an error. The property should have been shown as an asset of the former Edinburgh Corporation, then subsequently the City of Edinburgh Council, following the transfer of the Fruit and Vegetable market from Waverley Market to East Market Street subsequent to the Acts of Council in 1937

and 1938. The Council provided substituted premises at East Market Street, as noted below, to which the Common Good status of Waverley Market was transferred.

- **The Meadows**

As noted above, the Meadows was not included on the original list supplied as it is used operationally by the Culture and Leisure Department of the Council. It can be confirmed that the Meadows is an asset of the Common Good account.

- **West Register House, 17a Charlotte Square**

This property was formerly the St. George's West Church owned by the Church of Scotland. It was acquired from the Church by Edinburgh Corporation on 28 January 1965 for the price of £32,500, and held by the Corporation on Planning General Improvements Account. It is currently owned by the City of Edinburgh Council and held on City Development Account. The building has been leased out from the same date to the Scottish Record Office and is used as a public records office. This property is not an asset of the Common Good Account.

- **Lady Stairs House**

This property is used operationally by Culture and Leisure Department as the Writers Museum. This property was acquired from The Earl of Rosebery on 14th October 1907, and was held on Museums & Art Galleries Account by Edinburgh Corporation. It is currently held on Culture and Leisure Account. There is a restriction of use in the title deed that states that the property must only be used for the purpose of a municipal gallery or other public purpose. It is not an asset of the Common Good Account.

- **Parliament House/The Old Royal High School**

This property was originally among lands contained in a Royal Charter granted by His Majesty King George I in favour of the Provost, Magistrates and Councillors of the City of Edinburgh and registered in the Register of the Great Seal on 28/06/1725 and Instrument of Sasine registered in The Particular Register of Sasine for Edinburgh on 19/08/1725. It was sold by The City of Edinburgh District Council to The Secretary Of State for the Environment in 1977, proposed to be used by them for the devolved Scottish Parliament planned at the time. Devolution did not take place at this time and the property was reacquired by the District Council from The Secretary Of State for The Environment on 30 March 1994. It was held on Economic Development & Estates Account. It is currently held on City Development Account by The City of Edinburgh Council and is not an asset of the Common Good account.

- **East Market Street/Cranston Street - former garage/depot/market**

This property until recently has been used operationally by the City Development Department. Reports to the Council on the Fit for Future project acknowledges that the property is as asset of the Common Good account. The property amounts to approximately 35% of the total area to be sold to Mountgrange and accordingly 35% of the capital receipt from this sale will be credited to the Common Good Fund and then transferred to the Fit for Future project. Opinion of Senior Counsel has been sought,

which confirms that that this is an appropriate use of Common Good funds.

- **City Chambers**

This property was formerly the Royal Exchange and was acquired in stages from various parties and was held on Central/Admin Services Account. Part of the property was acquired under the George II Act 1753 - "An Act for erecting several public buildings in the City of Edinburgh". Part, including Writers Court, was acquired under the Edinburgh Improvement Municipal and Police Act 1893 (Act of Council 2 of 15/12/1890 – approved Bill, and part, including 6-16 Cockburn Street was acquired under the Edinburgh Improvement and Tramways Act 1896 (Area A). The Alexander and Bucephalus statue erected in the courtyard is a category A listed building, ref 193. The 1905 report on Common Good identifies the lands in which the City Chambers are located as being received in gift from the Crown and held under a series of Royal Charters, the general terms of which "are measured and interpreted by the possession and use which followed upon them.". Parts of the property are definitely Common Good assets, but further legal work is required to confirm the ownership of whole City Chambers complex.

- **Property in Portobello**

Superiority acquired from The Trustees of Thomas Hepburn and Caledonian Insurance Company, recorded GRS Midlothian 20/01/1960, 18/02/1960 and 4/09/1962. The subjects here were acquired on Housing account and formed 69, 71, 75, 77 Portobello High Street; 0.02 acre of ground on south west side of High Street and whole right, title and interest in Leadworks Lane. These properties are not assets of the Common Good account.

- **Canongate Council Chamber**

Legal Services and City Development are currently reviewing the legal ownership of the Canongate Council Chamber.

- **Streets of the Old Town and first New Town and of Leith and Portobello**

Old Town - Lands in the Original Royal Burgh or Ancient Royalty, held by the Corporation from the Crown, the lands being received in gift from the Crown and held under a series of Royal Charters.

New Town - The extended Royalty or New Town held of the Governors of George Heriot's Hospital – they were acquired by the City from the feuars of the Hospital with the exception of part of the Lands of Broughton (George Street, Thistle Street, Hill Street, Queen Street, and the northern parts of St Andrew Square, St David Street, Hanover Street, Frederick Street, Castle Street, Clyde Street and Elder Street) which were feued by the City from the Hospital.

Leith - Lands acquired by the Corporation and held by them of the Crown acquired from private parties. The Town and Links of Leith consists of eight parcels acquired at various times. The Town of Leith was acquired by Charter from King Henry and Queen Mary of 4th October 1565. The Charter was in *ex facie* terms, though was really in security of an advance

of a sum, repayment of which (in a specified time) the land were redeemable. The sum was never paid and in 1604 the City of Edinburgh purchased the right of reversion from Lord Thirlestane, heir of the Lord Chancellor. The Corporation's title was duly made up to absolute ownership of the lands.

These streets are considered to be assets of the Common Good account but by definition are an operational part of the road network.

For clarification, references to superiority titles are obsolete. In terms of the abolition of Feudal Tenure (Scotland) Act 2000, all former vassal titles were converted to ownership (subject to any subordinate real rights) and other encumbrances e.g. standard securities, charges etc. All other feudal estates, including superiorities, were extinguished.

5 Financial Position

5.1 Current Financial Position

The balance of the Common Good Fund as at 31 March 2006 is £1.5m which has increased from a balance of £0.88m inherited from Edinburgh District Council on 1st April 1996.

Apart from the set aside of half of the annual surplus of the Fund for Disabled Access grants, there has been no significant expenditure. In addition to the property holdings, the Fund has cash resources of £1.7m of which £217k is earmarked for approved grants. The cash balance is deposited within the Council's Loans Fund, on which it receives interest of approximately £60,000 per annum.

The Common Good Fund is not anticipated to operate a significant surplus in 2006/07 as the East Market Street garage is now untenanted and is not being used operationally by the Council. The Common Good Fund will therefore incur property costs in the region of £50,000 per annum without any income to defray these, until the sale of the property is completed.

5.2 Operational Properties Accounted for Within Council Accounts

All expenditure and income attributable to property used operationally by the Council is currently accounted for against the relevant department. The following costs and income attributable to Common Good owned property has been identified for 2005/2006. It has not been possible to identify the expenditure and income directly attributable to the Common Good parts of the City Chambers nor the streets noted in 4 above. It should also be noted that there are legislative restrictions, under the Road Traffic Regulation Act 1984, on the application of income from parking which would prevent the retention of such sums within the Common Good Fund. There may also be other expenditure incurred and charged against the Council's accounts which can not be identified to a specific location.

	Bruntsfield Links	Meadows	Princes St Gardens	Calton Hill	Total
	£	£	£	£	£
Employee Costs	17,746	11,290	273,359	33,869	336,264
Property Costs	42,885	80,346	10,553	0	133,784
Transport Costs	0	0	18,063	0	18,063
Supplies and Services	0	0	6,546	0	6,546
Capital	0	3,410	54,678	794	58,882
Total Expenditure	60,631	95,046	363,199	34,663	553,539
Income	0	(13,875)	(121,891)	(8,901)	(144,667)
Net Expenditure	60,631	81,171	241,308	25,762	408,872

Thus, the Council incurs net expenditure in excess of £0.4m on Common Good operational properties.

5.3 Non Operational Properties

The following expenditure and income on non operational properties was also identified in the Council's accounts in 2005/2006 in error, rather than being recorded against the Common Good.

	Properties at Scotland Street Lane East	South Queensferry Harbour	Properties at 153 Granton Rd	Total
	£	£	£	£
Property Costs	0	0	1,148	1,148
Income	(1,460)	(200)	0	(1,660)
	(1,460)	(200)	1,148	(512)

5.4 Uses of Common Good Funds

5.4.1 The following are the types of applications to which Common Good Funds have traditionally been used in other Scottish Authorities:

- grants;
- public buildings;
- maintenance of the civic dignity;
- civic hospitality;
- purchase of museum exhibits.

In allocating common good funds in future, the Council will need to consider in each case the primary purpose of any particular decision to determine whether it is reached for the benefit of the community as a whole and not otherwise illegal.

5.4.2 Disabled Access Grants

The scheme of grants to improve access to public buildings for people with disabilities, which was funded from 50% of the annual surplus from the Common

Good Fund, was suspended at the Executive of the Council meeting on 15th February 2005 pending consideration of funding sources.

5.5 Strategic Review

There is currently no strategic overview as to the objectives of the Common Good Fund which could direct this consideration.

The use of cumulative Fund balance should be reviewed separately from the potential application of any annual surpluses which accrue to the Fund.

Subject to 3.1 above, the capital resources of the Fund could be used as a vehicle to:

- generate an annual revenue return, by way of financial or property investment;
- generate longer term return, by way of financial or property investment; or
- purchase or enhance Common Good community assets.

6 Conclusions

- The management of the Common Good Fund currently lacks a strategic approach and any performance targets;
- The fixed assets in the Common Good accounts currently exclude the value of property and land used operationally by Departments of the Council;
- The receipts, totalling £69,900 for the sale of properties at Granton Road, were incorrectly credited to the Housing Revenue Account;
- The accounting principles for the charging for depreciation and notional interest are in accordance with the SORP;
- Errors in accounting for revenue expenditure and income are not material (net income of £512) and will be corrected in the current financial year,

7 Proposed Changes

7.1 Property Management

The following proposals are made in respect of the management of the Common Good Fund:

- **Strategic Consideration**
A report is considered by the Executive of the Council on 31st December 2006 on the strategic objectives of the Common Good Fund and to set performance targets for achievement of these aims.
- **Property Management**
The following changes will be made to property managements:
 - The management of the property portfolio is considered in light of the strategic objectives determined by the Council.
 - The arrangements required to formalise the Council's use of the Common Good assets are explored.

7.2 Accounting Practice

The following changes will be made to accounting practice from the financial year 2005/2006:

- the value of all properties and land owned by the Common Good will be included in the fixed assets on the balance sheet;

The following accounting practice will be operated from the financial year 2006/2007:

- capital charges will be charged to the Common Good account, which will be funded from the Asset Management Revenue Account where relevant.
- There will be a nominal charge against the department which is making use of those assets,
- revenue income and expenditure will be accounted for within the account which has operational use of the asset;
- capital receipts from the disposal of any Common Good property will be credited to the Common Good account;
- the application of any capital receipts will be subject to the Council's Executive approval and accounted for accordingly,

7.3 Reporting

The annual report to the Council on the Common Good Fund will be enhanced from 2006/07 to include performance against strategic targets set by the Council

8 Recommendations

It is recommended that:

- 8.1 A report is put before the Council's Executive considering the strategic objectives of the Common Good Fund,
- 8.2 The Scrutiny Panel note:
 - the content of this report;
 - the proposed changes in the management and accounting principles governing the Common Good Fund.

**K Kelly,
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Appendices	1
Contact/tel	Mrs. D. Pryde: 0131 469 3195
Wards affected	All
Background Papers	Annual Report on the City's Common Good Fund for the Year Ended 31 March 2005 Departmental Working Papers

**COMMON GOOD ACCOUNT
LIST OF PROPERTY HOLDINGS**

STREET NUMBER	STREET NAME	ESTABLISHMENT NAME
20	BALLANTYNE ROAD	AMENITY GROUND
	BRUNTSFIELD LINKS	BRUNTSFIELD LINKS PUBLIC PARK
(34)	CALTON HILL	CALTON HILL
32	CALTON HILL	HOUSE AT NELSON'S MONUMENT
38	CALTON HILL	CITY OBSERVATORY
40	CALTON HILL	HOUSE AT CITY OBSERVATORY (JAMES CRAIG HOUSE)
20A	CALTON HILL	GARDEN GROUND
(13A)	CALTON ROAD	GROUND AT REAR OF ST ANDREWS HOUSE
(14/1)	EAST MARKET STREET	EAST MARKET STREET GARAGE
153(1F3)	GRANTON ROAD	HOUSE
153(3F2)	GRANTON ROAD	HOUSE
(114)	GRASSMARKET	COVENANTER'S MEMORIAL (MARTYR'S CROSS)
(C)	HEAD OF HARBOUR	SOUTH QUEENSFERRY HARBOUR
132	HIGH STREET	SOLUM OF STEVENLAW'S CLOSE
	THE MEADOWS	MEADOWS PUBLIC PARK
4/1	MID TERRACE, SOUTH QUEENSFERRY	CELLARS BELOW MID TERRACE
	PRINCES STREET	PRINCES STREET GARDENS
(4A)	PRINCES STREET	SCOTT MONUMENT
(8)	REGENT ROAD	ROBERT BURNS MONUMENT
6/1	REGENT ROAD	GROUND AT CALTON CRAGS
(1)	ROXBURGH CLOSE (341 HIGH STREET)	WAYLEAVE (GANGWAY OVER ROXBURGH CLOSE)
(4)	SCOTLAND STREET LANE EAST	SITE OF GARAGE
(3)	SCOTLAND STREET LANE EAST	SCOTLAND STREET LANE EAST ALLOTMENTS
(1)	SCOTLAND STREET LANE EAST	GROUND FOR TENNIS COURTS AND PAVILION (0.542 ACRE)
*	SESSION HOUSE	SESSION HOUSE 1.396AC
*	-	DALMENY SESSION LANDS 6.455AC
(5)	ST JAMES PLACE	GROUND AT ST JAMES PLACE
	THE MOUND	NATIONAL GALLERIES OF SCOTLAND

* Subject to review by City Development Department

ID	REGISTRY FILE REF	STREET NUMBER STREET NAME	ESTABLISHMENT NAME	ACCO UNT	ACCOUN T NAME OCCUPIER	ASSET VALUE	CG Balance Sheet
343914512/1	-	SESSION HOUSE	SESSION HOUSE 1.396AC	GSDP	DALMENTHE FACTOR OF THE EARL OF ROSEB	£1.00y	
8914512	-	-	DALMENY SESSION LANDS 6.455AC	GSDP	DALMENTHE FACTOR OF THE EARL OF ROSEB	£1,000.00y2	