

## **Written submission from Scottish Borders Council**

I refer to your letter of the 16 December 2014 requesting information relating to the above. Below is the response of Scottish Borders Council to the bullet points in your letter. For ease of understanding I have included the wording of your bullet points:-

- **Does your authority have arrangements in place to hold some or all local authority assets in a separate land holding?**

**Answer** - No – to date there has been no reason for Scottish Borders Council to do so.

The Council however has entered into an NHT partnership with SFT to develop mid-market housing for rent, to help address the housing crisis. This housing is held in the NHT partnership.

Common Good fund property is held in the accounts of the relevant common good fund and managed separately.

- **When disposing of, or transferring assets how are those assets valued. To what degree is this purely a financial valuation?**

**Answer** - For sales of property to raise capital receipts to help support the Council's capital programme, properties are sold at market value. In these instances market value is the basis of valuation. These are an important source of finance for the Council and the imperative is to raise money to help fund public works and infrastructure such as schools, care facilities, affordable housing, roads, flood protection schemes and bridges.

For lets of the commercial estate the lettings are all at market value on the basis that all tenants are treated as commercial tenants. EU State Aids legislation prevents concessionary rents being given to commercial tenants, because to do so would be considered as illegal state aid. The commercial estate also generates around £1.3M per annum in income which the Council uses for public services.

For the transfer of properties for community asset transfer purposes, the usual basis is at a nominal sum of £1 or £1 per annum if demanded. Properties subject to community asset transfers usually don't have any commercial or residential market value and are suitable primarily for community use, hence the willingness of the Council to accept a nominal sum. The Council prefers to lease because it can retain the asset value in its accounts, which helps with its borrowing capacity.

For outright community asset transfers of property with potential development value, a claw back clause is usually agreed enabling the Council to recover the development value in the event that the community organisation ceases to operate and sells the property on at market value. With such clauses, there is usually a roll over provision whereby if the community group wishes to continue operating and sell the property for re-investment into a replacement premises, the claw back would attach to their replacement premises instead of them having to pay the development value. In this way, any development value is retained by the public for re-investment into public works.

For sales and lettings of properties held in the Common Good funds, these are managed separately through the relevant Common Good Fund Sub-Committee. For their commercial, residential and agricultural holdings, sales and rentals are usually at market value. Sales are very rare but open market lets are routine because historically one of the main roles of this property is to raise revenue to help fund community activity in the relevant towns.

Common Good facilities used for community purposes (such as parks) are sometimes subject to deeds of dedication in favour of community groups to enable them to undertake works and associated community activities that benefit the public, such as the creation of play parks and sports pitches. In these instances no consideration is sought, except sometimes for consideration in kind such as in the form of pitch maintenance.

**For common good properties used by the Council to deliver public services, there is an agreed protocol which is attached. The protocol also sets out the principles to be followed for disposals, transfers, rental income and capital expenditure on common good properties.**

- **What is the attitude of the authority to the disposal of assets? Does your authority have a policy to encourage the disposal of assets to community groups?**

**Answer** - Scottish Borders Council has a proactive property disposals policy and disposals fall into the following categories:-

- a) Market sales – These comprise properties with commercial and/or residential use or development value. The proceeds are an important source of funding for the Council's capital programme which in turn funds public works as explained above.

For larger development sites the opportunity is taken (within commercial parameters) to negotiate for the development of affordable housing. Some of this housing is bought by the Council for its NHT housing partnership.

The Council (within commercial parameters) also seeks to require developers to incorporate key commercial uses important for the economic development of the respective town within their schemes, such as for example the development of a hotel.

- b) Commercial leases – The Council has an estate of around 330 commercial properties let to commercial tenants as part of its economic development strategy. The occupancy rate runs at around 90% which is very high and indicates that Scottish Borders Council is providing key business infrastructure. The commercial estate comprises units at the affordable end of the market which are ideal for small businesses, which in turn form the life-blood of the Borders economy and a substantial level of local employment. It is very important for Scottish Borders Council to be able to continue with these commercial lets unhindered because it is the main provider of small commercial premises in the Borders. If these lets were to be frustrated through having to give community

groups first option to lease in preference to businesses, then substantial damage could be done to the fragile Borders economy.

- c) Community Asset Transfers – The Council has a portfolio of properties used primarily for community purposes or which don't have a readily realisable development value. In many cases these properties are already being used by the community. These include town halls, public halls, community centres, sports facilities (most sports activity is not commercially sustainable in the Borders), parks, open spaces and allotments.

The Council is very willing to enter into discussions with community groups for them to take on the running and management of the premises. **In this respect the Council has a community asset transfer policy which it developed in partnership with the Development Trusts Association Scotland, a copy of which is attached.**

In negotiating such transfers the Council is usually willing to agree to a rental of £1 per annum if demanded or a sale price of £1 if asked for. As explained before, the Council prefers to lease because this enables the Council to retain the asset value, which in turn helps its borrowing capacity. However if the occasion were to arise that a key non-Council funder of the community group were to insist upon an outright transfer, the Council would give this sympathetic consideration.

Generally, the vast majority of interest from community groups has been in this portfolio of property with the Council having transferred village halls, an arts centre, sports pitches, a community centre, a former gym and land for allotments, with a number of transfers currently in discussion.

For Common Good properties falling within this portfolio, the premises are usually inalienable – that is, it is unlawful to sell or lease them.

The “work around” is to grant deeds of dedication allowing community groups to proceed with developments that benefit the public, with the group having the benefit of block bookings of the facility at no charge. In some cases the group also assume liability for the maintenance of the facility. This has allowed the development of play parks and fully drained sports pitches.

- **What is your experience of disposal and what difficulties has the authority encountered.**

**Answer** – Disposals for community asset transfers form one of the Council's key pillars of its property disposals strategy. More importantly they are considered to be a key part of developing community resilience and Borders localities.

However a balance has to be struck between those properties that lend themselves well for community asset transfers and those that would be better sold off at market value, with the proceeds re-invested into public works such as schools, care facilities, affordable housing, roads, bridges and flood protection works. Furthermore, consideration needs to be had for commercial properties let to commercial tenants who are very important to the local economy for the creation of employment and

prosperity. This factor is all the more important given the fragile nature of the Borders economy.

Generally the community asset transfers that have taken place have all worked out well mainly because considerable effort was put in by all parties to ensure that each transfer has good long-term prospects of success.

Difficulties faced by the Council in negotiating transfers include:-

- Groups focusing on the property solution prematurely, making them ineligible for most sources of non-Council funding.
- Groups not heeding Council advice relating to 1, creating delays for their project.
- Ensuring groups undertake appropriate public consultation for their project.
- Groups developing viable business cases that create a credible source of income to cover premises running costs.
- Groups not having the skills and/or capacity to undertake their project both in the short-term and into the longer term.
- A shortage of specialist Council staff resources to assist community groups to develop their projects.
- All parties under-estimating the time required to put together a successful project and obtain all the necessary funder, Council and statutory approvals.
- For some projects, under-estimating the opposition to a proposed transfer, particularly at the planning permission stage.

However any difficulty is more than outweighed with the creation of a successful community asset transfer.

## **ANNEX 1**

### **Community Asset Transfer**

#### **Guidance for Community Organisations 2011**

#### **Produced in partnership with the Development Trusts Association (Scotland)**

#### **INTRODUCTION**

1. Community Asset Transfer is a process which results in communities taking on and managing their own assets – usually buildings and land. The process is built on a partnership between the Council and local communities where the Council agrees to the transfer of these assets from their management into local community management. That transfer can be made either through a leasing arrangement or outright with ownership going over to the community organisation. Community organisations come in different forms such as Trusts, Charities, Not For Profit organisations and social enterprises.

2. The Scottish Government has made a specific commitment to community ownership of assets. It says:

‘Communities owning their own land and buildings can have a huge impact on their empowerment. Asset ownership can have key impacts. It can provide revenue for

community organisations, making them more sustainable in the long term. It can give local people a renewed sense of pride in their communities, a real sense of a stake in the future of the places they live and work. For some community organisations, working towards asset ownership can be a fantastic catalyst for the group growing and maturing.'

3. Scottish Borders Council is similarly committed to community management of assets. We have produced this guidance to start a Community Asset Transfer programme. We are committed to Community Asset Transfer because we believe that this approach will help us achieve key outcomes – particularly our commitment to develop strong, resilient and supportive communities and improve the provision and accountability of services within communities. We believe that Community Asset Transfer can safeguard the network of buildings and facilities in local communities at a time when there is severe pressure on Council budgets and little opportunity to invest in growing services.

4. This guidance has been produced with the help of the Development Trusts Association Scotland which has been funded by the Scottish Government to promote a programme of Community Asset Transfer across Scotland.

5. The guidance is for community organisations that are investigating leasing or taking ownership of Council assets. We have started our Community Asset Transfer programme with a set of pilot projects involving Public Halls and Community Centres, where we know there is local interest in taking them on and running them under community management. But this guidance is a good start point for community organisations that might be interested in any of our assets, not just buildings and but also land.

## **THE PROCESS**

### ***Stage 1 (no less than three months)***

1. We recommend that you make contact with us at the earliest stage, at the point where you have just begun to explore the possibility of taking a Council asset into community management. You can contact the Council's Asset Transfer Team:

- by email [assettransfer@scotborders.gov.uk](mailto:assettransfer@scotborders.gov.uk)
- by phone 01835 8\*\*\*\*\*
- via our website [www.scotborders.gov.uk/assettransfer](http://www.scotborders.gov.uk/assettransfer)

We will assign someone from our Asset Transfer Team to work with you.

2. Once we have confirmed that the building you have targeted is one of our assets and within the asset transfer programme, we will provide you with the background information you need to determine whether the building is suitable for your needs:

- condition data and assessments
- building plans and layout
- title information and appraisal
- usage data (raw and analysed)

- running costs including support costs and lifecycle costs

3. We can also provide you with demographic, social, economic and planning data to help you build up a community profile and demonstrate local community need for your proposal.

4. At the end of this exploratory stage we will support you to produce a business case for your proposal. In the business case we expect you to present the reason for transfer, based on your assessment of community needs. An options appraisal should be included, which demonstrates why transfer of the targeted building is the best of the available options; how it will achieve your organisation's aims and objectives. The business case should also include an initial assessment of financial viability. We think it is particularly important at this stage, especially if you want to bid for funding to support your project, that you demonstrate community need and demand in the business case.

5. In exceptional circumstances, other community organisations may express an interest in the building you have targeted. Where there is conflicting demand, we will make our decision about which project to support based on how well the business case demonstrates the viability of the project and the community benefits it will deliver.

### ***Stage 2 no less than six months***

1. When we reach agreement that the business case is made, we will proceed with you to produce a full business plan for the transfer.

2. The business plan will include an operational plan, which demonstrates how you will manage the building and deliver your project, and a financial plan which shows what your running costs will be and how you will meet them, along with any investment proposals you have for the building.

3. We will draft a management agreement or lease for you, or, if we have agreed that outright transfer is a better option, we will prepare the documentation for transfer. Where our caretaking staff become part of the transfer will manage this process with you.

4. Where we believe that the transfer is particularly complex or contentious we may initiate a public consultation to ensure that there is a public consensus for the preferred way ahead.

5. When we have agreed a business plan and management agreement or lease or outright transfer with you and all documentation is in place, we will seek approval for the transfer. We will either go direct to the Council's Executive for approval, or, if the building is held as Common Good or in Trust, we will first approach the local Common Good Working Group or trust representatives for their support and then go to the Council (acting as trustees) for approval.

6. With Executive or Council (acting as trustees) approval, we will complete the transfer of the building to you.

## **ANNEX 2**

### **SCOTTISH BORDERS COUNCIL ITEM 9**

**29 SEPTEMBER 2011**

#### **REPORT BY DIRECTOR OF RESOURCES**

#### **MANAGEMENT OF COUNCIL OCCUPIED COMMON GOOD ASSETS**

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### **1 PURPOSE OF REPORT**

- 1.1 To establish principles which should apply in respect of Council occupation of common good heritable (land and buildings) assets and associated financial issues arising from the ongoing review of these assets.**

### **2 BACKGROUND AND HISTORY**

- 2.1 The history and legal position relating to Common Good is set out in Appendix 1 to this report.**

### **3 COMMON GOOD HERITABLE ASSETS**

- 3.1 In view of the current review of Common Good heritable assets, it is necessary to establish a number of principles which should apply in respect of their management and use by the Council, to reflect current legal requirements and accounting principles.**
- 3.2 The Council is required, in terms of these accounting principles, to maintain a list of all Common Good assets and it is the heritable list which is currently being reviewed through examination of all the assets of each of the former Burghs in the Borders, with the work scheduled to complete in the spring of 2012.**
- 3.3 Common Good heritable assets can be regarded, for operational purposes, as falling into any of the following four categories:-**
- 1. 'Dignity of the Burgh' property, which is a property necessary for the administration of the burgh or for the convenience of its inhabitants.**
  - 2. Properties used for local authority services.**
  - 3. Property used to generate income directly for the relevant Common Good fund.**
  - 4. Other Common Good property.**

## **4 'DIGNITY OF THE BURGH' ASSETS**

### **4.1 These break down into three categories:-**

#### **4.1.1. Common Good Assets Irrevocably Dedicated to Specific Local Authority**

**Services** – Examples may include public parks, public halls and administrative offices.

**4.1.2. Historical Assets Held On The Common Good Account** – These comprise historical buildings held on the common good account that the Council deliver services from, in which the history of the premises is a key part of that service. Examples may include houses, former court rooms and jails from which museum services are delivered in which the buildings themselves have a significant relevance to the service.

**4.1.3. Ceremonial Assets Held On The Common Good Account** – These comprise common good heritable assets that are primarily used for ceremonial occasions and which also form part of the cultural fabric of the town. Examples include town clocks, war memorials, council chambers used for formal ceremonial occasions, provost's offices and marriage rooms.

### **4.2 The basis of the Council's use of 'dignity of the Burgh' assets for the delivery of local authority services is detailed in Appendix 2.**

## **5 COMMON GOOD PROPERTIES USED FOR LOCAL AUTHORITY SERVICES**

### **5.1 These comprise properties held in a common good fund that are not necessary to sustain the 'dignity of the Burgh' but which are occupied by the Council to deliver local authority services.**

### **5.2 The basis of the Council's use of such properties for the delivery of local authority services is detailed in Appendix 2.**

## **6 COMMON GOOD PROPERTIES USED TO GENERATE INCOME**

### **6.1 These comprise properties held on the common good which are not required to sustain the 'dignity of the Burgh', and which are available to lease to third parties.**

### **6.2 The management arrangements for such property are outwith the scope of this report.**

## **7 OTHER COMMON GOOD PROPERTY**

### **7.1 This comprises residual vacant pockets of land held on the common good account that do not require to be separately identified as assets for accounting purposes.**



- 7.2 The management arrangements for such properties are outwith the scope of this report.

## **8 DISPOSALS, TRANSFERS, RENTAL INCOME, AND CAPITAL EXPENDITURE**

- 8.1 While the Council has a wide discretion in its administration of the common good assets, there is one area in which the law is more restrictive than that applying to other Council-owned properties (in that some common good assets may not be freely sold or leased) – as explained in Appendix 1 paragraphs 2.5 and 2.6.
- 8.2 The principles to be adopted for transfers, disposals rental income and capital expenditure for common good properties, including the treatment of adjustments between general fund and common good funds in relation to properties discovered to be common good assets which had not been previously known as such, are set out in Appendix 3.

## **9 INSURANCE ARRANGEMENTS**

- 9.1 All heritable property in the Council's portfolio, including all common good properties, is insured under the Council's block insurance policy. The costs of insuring common good properties are recharged pro-rata to the relevant common good funds.

## **10 FINANCIAL IMPLICATIONS**

- 10.1 This report sets out the principles for the accounting treatment of common good assets and the Council's use of them. However, it is not possible to determine the full financial implications until the ongoing review of common good heritable properties is complete. Once complete a full analysis of the financial implications will be undertaken and the outcome together with recommendations on the way forward financially will be brought forward in a future report to Council.
- 10.2 The revenue costs of each common good property used by the Council for service/administration delivery will have to be recorded individually to ensure that income and expenditure is correctly accounted for between the respective common good funds and the general fund.
- 10.3 All adjustments made between the general fund and common good funds would be reflected in their respective balance sheets.

## **11 CONSULTATION**

- 11.1 Finance, the Heads of Audit & Risk, Legal & Democratic Services and Property & Facilities Management, and the Clerk to the Council were consulted and their comments are incorporated into the report.
- 11.2 External Audit was consulted and their comments are incorporated into this report.

## 12 EQUALITY

- 12.1 It is anticipated there will be no adverse impact due to race, disability, gender, age, sexual orientation or religion/belief arising from the proposals contained in this report.

## 13 ENVIRONMENT

- 13.1 There are no environmental issues directly associated with this report.

## 14 RISK COMMENTARY

- 14.1 There is a financial and legal risk to the general fund and the common good fund if common good property and its use by the Council for delivering local authority services is not correctly accounted for. The adoption of the principles above will assist in mitigating that risk.

## 15 SUMMARY

- 15.1 This report establishes principles which will apply in respect of Council occupation of common good heritable (land and buildings) assets and their use by the Council to establish principles which should apply in respect of Council occupation of common good heritable (land and buildings) assets and associated issues arising from the ongoing review of these assets.

## 16 RECOMMENDATIONS

- 16.1 It is recommended that Council:-
- (a) **Adopts the principles for the future management of the common good heritable** assets and the Council's use of them as detailed in Sections 4 to 7 (inclusive) and Appendix 2.
  - (b) Adopts the principles for the treatment of adjustments between general fund and common good funds in relation to properties discovered to be common good assets which had not previously been known to be such together with the treatment of future capital expenditure set out in Appendix 3.
  - (c) Agrees that the Director of Resources provides a further report to Council once the review of common good premises has been completed, detailing the financial implications and the recommended way forward in light of them.

Approved by

Name	Designation	Signature
Tracey Logan	Director of Resources	

Author(s)

Name	Designation
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Background Papers:

Previous Minute Reference:

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Democratic Services can also give information on other language translations as well as providing additional copies.

Contact us at Democratic Services, Scottish Borders Council, Newton St Boswells, MELROSE, Scottish Borders, TD6 0SA tel 01835 824000, fax 01835 825071, e-mail [lmcgeoach@scotborders.gov.uk](mailto:lmcgeoach@scotborders.gov.uk)

## **APPENDIX 1**

### **COMMON GOOD PROPERTIES – BACKGROUND, HISTORY AND LEGAL POSITION OF THE COUNCIL AND COUNCILLORS**

#### **1 BACKGROUND AND HISTORY**

- 1.1 The history of Common Good can be traced back to the 12th Century when in an effort to develop Scotland economically, the Crown or local feudal barons granted lands to Burghs, to enable the Burghs to generate income and capital. Monies raised through renting or selling the land off in small parcels were added to tolls and market fees etc recovered by the Burghs, and used primarily for the payment of taxes. Any surpluses were customarily redeployed for the general benefit of the burghs, hence the expression for the “common good” of their inhabitants.
- 1.2 Regulation and reform of municipal authorities and the way in which they operated began in earnest in the early to mid 19th century and with statutory discretions and obligations created in tandem, came the right to levy rates. This meant that, for the first time, money came from a non traditional route, in the form of taxes payable by inhabitants of the burghs simply by virtue of their residence as opposed to income and capital derived from the burgh’s land holdings alone. This new stream of income was not regarded as part of the common good as it had to be spent on the provision of the particular services for which it was assessed rather than being used for the general purposes of the burgh (which was the essence of common good).
- 1.3 Over time, as the town councils’ statutory obligations and powers increased, a greater and greater proportion of the burghs’ income was derived from rates (and more latterly from the rates support grant provided by central government). This income had to be spent on statutory local authority services and their supporting assets and consequently had to be accounted for separately from the common good income and assets.
- 1.4 While the town councils remained in existence, the ratepayers and the inhabitants of the burghs were essentially one and the same. This led, in some cases, to some blurring of the lines. A town council’s powers in the administration and deployment of the common good funds were much less

restrictive than in relation to the statutory local authority funds and it was (and remains) competent for common good monies to be utilised in the provision of a statutory local authority service, provided it was done in the general interests of the town's inhabitants. So, for example, when the rates monies available for maintenance of a public library were insufficient (at one time the library rate was subject to a statutory cap of 1d in the pound), they could be topped up with funds from the common good. Similarly, properties being bought to fulfil a statutory local authority function could be paid for from common good funds. Notwithstanding this however, the common good funds and the general rates funds still had to be kept apart and separately accounted for.

- 1.5 At local government re-organisation in 1975, the Local Government (Scotland) Act 1973 provided for the transfer of property which was held as part of the Common Good to island or district councils and in administering that Common Good property, these Councils were to "have regard to the interest of the inhabitants of the area to which the Common Good formally related".
- 1.6 The Local Government etc. (Scotland) Act 1994 in turn transferred and vested Common Good property in the new Unitary Authorities, including Scottish Borders Council.

## **2 LEGAL POSITION OF THE COUNCIL AND COUNCILLORS**

- 2.1 The title to all common good properties rest with the Council though they are legally deemed to be held on the behalf of the relevant communities.
- 2.2 There is a misconception that the question of whether or not a property is part of the common good should be determined by reference to the title deeds alone. In fact, the answer can only be found after considering other evidence, such as that available from burgh records.
- 2.3 The key issues, in the case of property which had been owned by a burgh council are as to whether the property is held under a "special trust", or whether it has been acquired through statutory powers. If the answer to both of these questions is no, then that will indicate the property is common good. However, it needs to be borne in mind that the way in which the case law has developed suggests that property may in certain circumstances be deemed to be held under a 'special trust' in the context of determining whether or not it forms part of the common good, even although all of the normal legal requirements for constitution of a trust may not have been met.
- 2.4 In addition, the acquisition of property 'under statutory powers' need not always mean property appropriated by, or under threat of, compulsory purchase procedures. Rather, this can include any property acquired for the delivery of a local authority service for which rates could be levied - including, in some cases, properties gifted for such purposes.
- 2.5 One facet which sets certain common good properties apart from the rest of the assets in the Council's portfolio is that some common good properties are deemed inalienable and thus may not be sold or leased without the approval

of the court (which will generally only be granted when the Council has demonstrated that the disposal is appropriate and of benefit to the inhabitants of the relevant town).

2.6 This concept of inalienability arises by operation of law and exists purely to protect underlying rights of the inhabitants of the former burghs to have and use certain properties for certain purposes. These rights either arise from the terms of the original grants of land to the burghs or have been established by usage of land as of right for a particular purpose (or for general purposes) 'from time immemorial'. The inalienable properties are therefore generally restricted to:-

- Places of customary public resort (recreation grounds, market places etc) normally held under the ancient titles.
- Original administrative buildings/places necessary to sustain the 'Dignity of the Burgh'(public halls, clock towers etc).

However, any such inalienable property will become alienable if a suitable replacement facility is provided, or if the need for the property to be used for a particular function has otherwise now disappeared. In these circumstances court approval is not required.

2.7 The relationship between the Councillors (acting as a whole), the common good and the residents of the relevant towns is not dissimilar in many respects to that which exists between trustees, trust estates and beneficiaries but is not identical, not least because the "trustees" and the "beneficiaries" in the common good context were considered to be one and the same (i.e. the inhabitants of the burgh), which cannot be the case under a proper trust. The Council therefore holds the assets not as trustees in the full legal sense, meaning that the Trusts (Scotland) Acts do not apply, but as custodians for the benefit of residents in the former burghs.

2.8 The duties of Councillors in their dealings with each of the common good funds are less exacting than that of trustees in formal trusts because there are no clearly defined trust purposes or objectives. Instead S.15 (4) of the Local Government etc (Scotland) Act 1994 simply provides that the Council in its dealings with any common good fund must "have regard to the interests of the inhabitants" of the relevant former burgh.

2.9 However, each town's common good holding must be treated separately, though the Councillors acting as a whole has overall responsibility for each common good fund. In the Scottish Borders each town with a common good fund has a common good working group comprising the local Councillors, acting under the Scheme of Administration.

### COMMON GOOD PROPERTIES – USE FOR THE DELIVERY OF LOCAL AUTHORITY SERVICES

#### 1 INTRODUCTION

- 1.1 This appendix sets out the basis for the use of common good property for the delivery of local authority services.
- 1.2 Each former burgh's common good fund must be treated separately. The Council, acting as a whole, has overall responsibility for each common good fund. The Funds may comprise heritable properties (land and buildings) and/or moveable items, including money and investments. In the Scottish Borders each former burgh with a common good fund has a common good working group comprising the local Councillors, and governed by the Scheme of Administration.
- 1.3 It should be borne in mind that common good assets are held in the individual common good funds for each of the former Burgh districts, and that local authority services are funded from the general fund. As a matter of law, all property is vested in the Council. Consequently, it is not legally possible for one fund to lease property to the other, because it would amount to the Council leasing property to itself, which is not legally possible in Scot's law.
- 1.4 Therefore, it is proposed that the Council now regularises the financial basis for its use of common good assets to deliver local authority services as set out in this document.

#### 2 BASIS OF OCCUPATION BY THE COUNCIL

##### 2.1 'Dignity of the Burgh' Properties.

- 2.1.1 **Maintenance** – The costs of day-to-day maintenance, which comprises all works that would not be treated as capital expenditure are met from the general fund. So for example, this would include replacement of slipped and missing slates, but not the replacement of whole roof coverings, boiler repairs but not the replacement of the boiler itself, wiring repairs but not the complete replacement of the wiring system. Maintenance would also exclude capital investment required to tackle obsolescence such as the complete replacement of toilets and kitchens which have reached the end of their useful lives or are otherwise no longer compliant with current regulations for new facilities. The Council acting under the War Memorials (Local Authorities Powers) Act 1923 as extended by S.133 (3) of the Local Government Act 1948 often undertakes the day to day maintenance of war memorials through the general fund.
- 2.1.2 **Energy/Utility Usage** – The costs of all energy/utility usage including electricity, gas, water, phone and oil would be paid from the general fund.

- 2.1.3 Rates** – All rates arising out of the Council's occupation and use of the premises would be paid from the general fund.
- 2.1.4 Income** – For premises used for the provision of services that generate an income, such as public halls for example, the income goes firstly to help offset the running costs of the premises and if there is a surplus after running costs have been deducted, the surplus is credited to the relevant common good fund at or following the end of the financial year.
- 2.1.5 Staffing and other service delivery costs** – The costs of all staffing and other service delivery costs such as provision of books, stationery, IT equipment, furniture etc. would be paid from the general fund.
- 2.1.6 Capital Works** – Where the relevant common good working group and the Council acting as a whole are in agreement to the provision of local authority services from a common good asset for a period of 20 years or more, the Council may invest general fund capital into the asset to make it fit for purpose to deliver the general fund services. Any capital spend by the general fund would be made through the normal general fund budgetary approval process.

Where the Council is likely to use the premises for less than 20 years the common good fund would bear the cost of any capital works to the premises. If the Council then occupies the property for a period, it will make an annual contribution (in arrears) to the relevant common good fund for each year that it does so, equivalent to the extent to which the relative capital expenditure by the common good fund is written down in that same year.

- 2.1.7 Termination** - Should the relevant common good working group not wish the Council to deliver the local authority services from a dignity of the burgh common good property, they could formally ask the Council to cease doing so. In such cases provided there is agreement by the Council acting as a whole the Council would work with the relevant common good working group to either hand the premises over to a new management arrangement or alternatively cease delivering the services altogether, to enable the premises to be put to an alternative use or disposed of for the benefit of the common good. In these circumstances, the common good fund would pay suitable compensation to the general fund to cover the cost of capital expenditure previously incurred by the general fund on the premises.

Should the Council wish to cease delivering the local authority services from a dignity of the burgh common good premises it would formally notify the relevant common good working group. In such case the Council would either work with the relevant common good working group to hand the premises and services delivered from them over to a new management arrangement should this prove viable, or alternatively vacate the premises to enable the premises to be put to an alternative use or be disposed of for the benefit of the common good. In this circumstance, the relevant common good fund would not be expected to pay any compensation to cover previous capital expenditure from the general fund.

Should a common good fund incur capital expenditure on the basis that the Council remains in occupation for an agreed period to deliver local authority services and the Council terminates the arrangement before the agreed period has expired, the relevant common good fund would be suitably compensated from the general fund to ensure the relevant common good fund is not disadvantaged. Compensation however would not be payable from the general fund if the relevant common good working group initiates the termination of the arrangement.

## **2.2 Common Good Properties Used for Local Authority Services – Long-term occupation (20 years plus)**

**2.2.1 Rent –** The relevant common good fund would be credited annually in arrears, from the general fund, with a rent for the premises based upon the market rent for the premises for its existing use and condition, less rentalised capital charges for any general fund capital expenditure that would otherwise have been the liability of the common good fund (i.e. but for the fact that the property was occupied for the provision of a local authority service). For properties where such rentalised capital charges exceed the market rent the rental shall be nil.

**2.2.2 Maintenance –** The costs of day-to-day maintenance, which comprises works that would not be treated as capital expenditure, would be paid for from the general fund. So for example, this would include replacement of slipped and missing slates, but not the replacement of whole roof coverings, boiler repairs but not the replacement of the boiler itself, wiring repairs but not the complete replacement of the wiring system. Maintenance in this context would also exclude capital investment required to tackle obsolescence such as the complete replacement of obsolete toilets and kitchens with new facilities.

**2.2.3 Energy/Utility Usage –** The costs of all energy/utility usage by the Council including electricity, gas, water, phone and oil would be paid from the general fund.

**2.2.4 Rates –** All rates arising out of the Council's occupation and use of the premises would be paid from the general fund.

**2.2.5 Capital Works –** The Council may invest general fund capital into the asset to make it fit for purpose to deliver local authority services. Any capital spend from the general fund would be made through the normal general fund budgetary approval process.

**2.2.6 Termination -** Should the relevant common good working group wish to take the premises back for an alternative use and the Council as a whole agree to that; the Council should be given a reasonable period in which to find suitable alternative accommodation and vacate the common good premises. In these circumstances, the common good fund would pay suitable compensation to the general fund to cover the cost of capital expenditure previously incurred by the general fund on the premises.



Should the Council no longer wish to continue occupying the common good premises for the delivery of local authority services, it should give the relevant common good working group a reasonable period of notice prior to vacating the property. In this circumstance, the common good fund would not be expected to pay any compensation to the general fund to cover previous capital expenditure by the general fund.

Should the relevant common good fund incur capital expenditure on the basis that the Council remains in occupation to deliver local authority services for an agreed period that is more than 20 years and the Council terminates the arrangement before the agreed period has expired, suitable compensation would be paid from the general fund to the common good fund to ensure the relevant common good fund is not disadvantaged. Compensation however would not be payable from the general fund if the relevant common good working group initiates the termination of the arrangement.

### **Short-term Occupation (less than 20 years)**

2.2.7. General – The basis of short-term occupation would be the same as for long-term occupation except for the terms below.

2.2.8 Rent - The relevant common good fund would be credited from the general fund, annually in arrears with a rent for the premises based upon the greater of the market rent for the premises for its existing use and condition or the rentalised capital charges for any capital expenditure incurred by the common good on the premises.

2.2.9 Capital Works – Where the Council is likely to use the premises to deliver local authority services for less than 20 years the relevant common good fund would bear the cost of any capital works to the premises.

2.2.10 Termination - Should the relevant common good working group wish to take the premises back for an alternative use and the Council acting as a whole agree to that; the Council should be given a reasonable period in which to find suitable alternative accommodation and vacate the common good premises.

Should the Council no longer wish to continue occupying the common good premises for the delivery of local authority services, the Council should give the relevant common good working group a reasonable period of notice prior to vacating the property.

Should the relevant common good fund incur capital expenditure on the basis that the Council remains in occupation to deliver local authority services for an agreed period that is less than 20 years and the Council terminates the arrangement before the agreed period has expired, suitable compensation would be paid to the relevant common good fund to ensure the relevant common good fund is not disadvantaged. Compensation however would not be payable to the relevant common good fund if the relevant common good working group initiates the termination of the arrangement.

**COMMON GOOD PROPERTIES - DISPOSALS, TRANSFERS, RENTAL INCOME AND CAPITAL EXPENDITURE**

**1 INTRODUCTION**

- 1.1 This appendix sets out the principles to be adopted for disposals, transfers, rental income and capital expenditure affecting common good property, including adjustments between the general fund and common good funds in relation to properties discovered to be common good assets which have not been previously known to be such.

**2 DISPOSALS, TRANSFERS AND RENTAL INCOME**

- 2.1 When a common good asset is sold the net proceeds should be credited to the relevant common good fund.
- 2.2 Where it is discovered that in the past the sale proceeds of a heritable common good asset have been credited to the general fund, then arrangements would be made to credit the net proceeds of that sale to the relevant common good fund, along with interest at appropriate rates such that the common good fund is not disadvantaged.
- 2.3 In determining the net sale proceeds the general fund's costs of management and landlord's obligations would be deducted.
- 2.4 Where it is discovered that rental from a common good asset, previously not recognised as such, has been credited to the general fund then following deduction of costs incurred by the general fund in:-
- (a) making the property fit for letting,
  - (b) management of the property and fulfilment of landlord obligations, arrangements would be made to credit the appropriate common good fund net rental plus interest at appropriate rates such that the common good fund is not disadvantaged and vice versa.
- 2.5 For clarity, any adjustments between the general fund and common good fund required in terms of this Section 2 would also take account of any restitution appropriate in terms of Section 3 below and this would be reflected in their respective balance sheets.

**3 CAPITAL EXPENDITURE**

- 3.1 Capital expenditure comprises investment in major works for renewals, refurbishments, replacements and extensions that go beyond the usual day-to-day maintenance and repair costs. For accounting purposes, because common good and general fund expenditure must be kept separate, the general fund should not normally be used to fund capital works on common good assets, with the result that each common good fund has to fund its capital expenditure from its own resources.

- 3.2 This is an onerous liability for the common good funds because many of their properties comprise old buildings in which major components such as roof coverings, electrical installations, toilet and kitchen facilities and heating systems are nearing the end of their working life with substantial capital works required to renew them. In addition many properties may be at risk of becoming functionally obsolete. Substantial capital works may be required to bring them up to modern standards.
- 3.3 In some cases, the general fund has been used to fund capital works to common good properties in good faith (in the belief, at the time, that they were not common good assets) in support of the local authority services that the Council delivers from them. This has often occurred where the Council has inherited services from a district council delivered from a common good property, but has been unaware that the property is common good because of an insufficiency of records and subsequent local government reorganisations. According to accounting principles, capital expenditure by the general fund should be treated as donations to the relevant common good fund.
- 3.4 However, the accounting principles proceed on the assumption that the 'ownership' of the asset is known at the time the decision to incur the expenditure is made. In these instances, where the fact that a particular property is a common good asset was not known at the time the expenditure was incurred, it is considered appropriate where practicable to offset any capital expenditure incurred by the general fund against any sums due to the relevant common good fund in terms of Section 2 above.
- 3.5 For example, Rosebank Quarry at Selkirk was believed to be a general fund property when it was sold in 2005 for £83,000. It was also believed that Victoria Hall, Selkirk was a general fund property and since 2007 £178,000 of general fund capital money has been spent on the property. However, as part of the ongoing review of the common good estate it came to light that both properties are part of the common good. Consequently both the £83,000 capital receipt and the £178,000 of capital expenditure should have been attributed to the common good fund and the £178,000 should be offset against the £83,000, potentially putting the common good fund into a deficit position. However, in this example, because it would be counter-productive to put a common good fund into a deficit position because it too was unaware of the status of the property when the decision to incur the expenditure was made, any capital expenditure above £83,000 would be treated as a donation to the fund.
- 3.6 To summarise the assets transferring from general fund to common good fund would do so at current book value, which would reflect any capital expenditure and asset sales. There would be no compensation for asset sales unless they exceeded the value of capital work.
- 3.7 In future, where common good properties need capital investment the general fund should not normally be used and instead, the relevant common good fund should look to its own resources to carry out the required works.

- 3.8 However, in future, where the Council is delivering local authority services from a common good property and capital investment is required to make the premises fit for delivering the services then, provided there is a reasonable prospect of the premises being required and available for the delivery of the local authority services for the medium to long term (20 years plus), the Council may use general fund capital expenditure for such works. As part of the arrangements, it would need to be agreed that the Council would be entitled to continue with delivery of the local authority services from the premises for a minimum of 20 years, or until the Council no longer needs the premises. This is reflected in Appendix 2. Any capital spend using the general fund would be made through the normal general fund budgetary approval process.