

Finance and Resources Committee

10.00am, Thursday, 23 February 2017

Common Good Register

Item number	7.13
Report number	
Executive	
Ward	City Wide

Executive Summary

Part 8 of the Community Empowerment (Scotland) Act 2015 obliges local authorities to establish and maintain a register of property which is held by the authority as part of the common good. The Act received Royal Assent on 25 July 2015; some provisions of Part 8 came into force on 13 November 2015 and the remaining provisions are likely to come into force during the latter part of 2017.

The Capital Coalition budget motion, approved by Council on 21 January 2016, included an instruction to the Chief Executive to allocate a budget to develop and maintain a Common Good Asset Register.

This report provides an update on the current position.

Links

Coalition Pledges	P40
Council Priorities	CP9 , CP12
Single Outcome Agreement	SO4

Common Good Register

1. Recommendations

- 1.1 That Committee:
 - 1.1.1 notes the content of this report; and
 - 1.1.2 notes that further reports will be brought to Committee on a bi-annual basis.

2. Background

- 2.1 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 administer it having regard to interests of all the inhabitants of the City.
- 2.2 Section 102 of Part 8 of the Community Empowerment (Scotland) Act 2015 (the “Act”) obliges local authorities to establish and maintain a register of property which is held by the authority as part of the common good. The Act received Royal Assent on 25 July 2015; some provisions of Part 8 came into force on 13 November 2015 and the remaining provisions are likely to come into force during the latter part of 2017/18.
- 2.3 The Capital Coalition budget motion, approved by the Council on 21 January 2016 included, inter alia, an instruction to the Chief Executive to allocate £100,000 in 2016/17 to develop and maintain a Common Good Asset Register, and to deliver a report to the Council in June 2016 detailing progress. Further indicative funding was allocated for the subsequent three financial years.
- 2.4 An update report was provided in June 2016, followed by the Common Good Annual Performance 2015/16 report to the Finance and Resources Committee on 18 August 2016, which noted that updates on the register will be provided to the Finance and Resources Committee on a bi-annual basis.
- 2.5 This report provides the first of the bi-annual updates.

3. Main report

- 3.1 The Scottish Government is currently drafting guidance which will provide information about the procedures to be followed when creating common good registers and on the management and use of common good property. Before final

guidance is issued, the Act specifies that Scottish Ministers must consult with local authorities, community councils and other community bodies.

- 3.2 The Scottish Government aims to publish draft guidance for consultation soon after the May 2017 Council elections. The intention is to publish final guidance and bring the remaining provisions of Part 8 of the Act (with regard to common good registers and the disposal of common good property) into force at the same time. Sections of the Act 103, 105 and 106, with regard to Scottish Government guidance and interpretation of the Act already came into force on 13 November 2015. The exact timing of the final guidance publication will depend upon the volume and nature of the responses to the consultation.
- 3.3 Before establishing a common good register, the Act requires a local authority to publish a list of property that it proposes to include in the register, notify community councils and other community bodies, and invite those bodies to make representations in relation to whether the property proposed is part of the common good, or identify other property which may be part of the common good. The local authority must have regard to the representations made by those community bodies and other persons.
- 3.4 During the current financial year Council staff have begun to collate information with regard to those properties historically considered by the Council to be common good, specifically those included on the common good register of assets for accounting purposes, relevant parks and other assets with a public function. Work has also been progressed on developing a methodology for assessing a property for its common good status, taking into account the relevant legal tests.
- 3.5 Progress is being accelerated by seconding a solicitor from an external legal firm to Legal Services to release a Council solicitor to work on the project and additional administrative support is also being obtained.
- 3.6 As further progress is made, officers will explore possible innovative ways of involving higher education establishments, historical societies and other community groups in contributing to completing the task, in accordance with Scottish Government guidance, when available. An organisation or group's involvement in the exercise will only be considered where appropriate, depending upon the relevant legal complexities and sensitivities and will be considered on a property by property basis as the project progresses.

4. Measures of success

- 4.1 A fully updated Common Good Register and a review process that will ensure that common good assets are monitored and protected, and that controls aimed at protecting them from misuse or disposal are adhered to.

5. Financial impact

- 5.1 There is an approved budget allocation for this work stream of £100,000 for 2016/17 rising to £250,000 in total in 2017/18 and this continues into 2018/19 and 2019/20.

6. Risk, policy, compliance and governance impact

- 6.1 There is a risk that some properties are not identified as common good and are not included on the register. The Common Good Register could therefore be incomplete. The opportunity to review representations made by community councils, community bodies and other persons will assist with the development of a comprehensive register.
- 6.2 Pending the Register being fully updated, the risk that a common good property is unlawfully used or disposed of, is mitigated by a review being undertaken of any property identified for disposal or change of use, in terms of section 77 of the Land Reform (Scotland) Act 2016, to assess whether it is common good. This approach was agreed by the Finance and Resources Committee in June 2008.

7. Equalities impact

- 7.1 Fully updating the register of common good assets will potentially enhance the right to legal security for the citizens of the city of Edinburgh. The interim approach whereby the status of a property is reviewed prior to disposal will ensure that existing rights are maintained.

8. Sustainability impact

- 8.1 As the report recommends that Committee notes the content of the report and future reporting there is no impact in relation to the three elements of the Public Bodies Duties in the Climate Change (Scotland) Act 2009.

9. Consultation and engagement

- 9.1 N/A

10. Background reading/external references

- 10.1 Capital Coalition budget motion
http://www.edinburgh.gov.uk/download/meetings/id/49614/capital_coalition_budget_motion_version_2

10.2 Common Good Annual Performance 2015-16

[Finance and Resources Committee Report - 18 August 2016](#)

10.3 Common Good Asset Register Report

[The City of Edinburgh Council - 2 June 2016](#)

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11. Links

Coalition Pledges	P40 – Work with Edinburgh World Heritage Trust and other stakeholders to conserve the city’s built heritage.
Council Priorities	CP9 – An attractive city. CP12 – A built environment to match our ambition.
Single Outcome Agreement	SO4 – Edinburgh’s communities are safer and have improved physical and social fabric.
Appendices	