



Glasgow City Council

Finance and Audit Scrutiny Committee

Report by Director of Governance and Solicitor to the Council

Contact: Elaine Galletly Ext: 74653

Item 6

13th February 2019

Statutory Register of Common Good Property

Purpose of Report:

To notify Committee of the requirements for the Council's statutory Common Good Register under S.102 of the Community Empowerment (Scotland) Act 2015, and to advise on progress.

Recommendations:

It is recommended that Committee notes:

- i) the requirement under S.102 of the Community Empowerment (Scotland) Act 2015 ('the Act') to establish a statutory Common Good Register ("the Register");
- ii) the proposed list of properties to be included in the Register;
- iii) the proposed actions and timetable to publish and consult upon the Register as required by the Act ;
- iv) the strategy for the ongoing review of the Register and
- v) the requirements under s.104 for consultation in respect of proposals for changes of use or disposals of common good property.

Ward No(s):

Citywide: ✓

Local member(s) advised: Yes No consulted: Yes No

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Statutory Common Good Asset Register

1. Introduction

- 1.1 On February 2015 the Council approved a Common Good Policy (“the Policy”) [\(Common Good Policy\)](#).
- 1.2 The Policy defines the Council’s views in relation to:
 - The definition of the Common Good
 - The purpose of the Common Good
 - The assets of the Common Good
 - The financial management of the Common Good
- 1.3 In line with the Policy, the Council publishes a list of Common Good assets on its website together with copies of the annual accounts for the Common Good fund. [\(Common Good Asset Register and Accounts\)](#).
- 1.4 The Community Empowerment (Scotland) Act 2015 (**‘the Act’**) was passed by the Scottish Parliament in 2015 with the aim of helping to empower community bodies through the ownership of land and buildings, and by strengthening their voices in decisions that affect them. The Act seeks to achieve this in a number of different ways, such as extending the community right to buy and making it simpler for community groups to take over public buildings. In relation to Common Good, the Act aims to “*increase transparency about Common Good assets and community involvement in decisions taken about their identification, use and disposal*” (Consultation on Community Empowerment (Scotland) Bill, para 44).
- 1.5 The two principal ways in which this is achieved is by the publication of, and consultation on a common good register, and the requirement for public consultation before the disposal or change of use of a common good property.
- 1.6 Whilst the Council voluntarily publishes a list on its website of the assets included in the Common Good Fund as noted above, s.102 of the Act places a duty on Local Authorities to establish, after consultation, a statutory register of its Common Good property (“the Register”).
- 1.7 The statutory guidance published by the Scottish Government sets out the procedure for establishing the register, and this is outlined in Appendix 1.
- 1.8 The purpose of this report is to update members on: the establishment of the Register; the consultation process; the ongoing development of the Register in line with the Policy; and the new requirements for public consultation where there is a proposal to dispose of or change the use of common good property.

2. Assessment of Assets

- 2.1 The Council has in the region of 22,000 title bundles (each of which often containing multiple deeds) and as such it is not feasible to carry out a comprehensive review of all of the titles from within the existing resources of the Council's Legal Services.
- 2.2 The strategy set out in the Policy is that titles will be examined in the course of on-going property transactions. In addition, over time a planned comprehensive review of all title deeds will be undertaken. This process is supported by a number of legal "interns" employed over the summer months to assess individual title deeds.
- 2.3 The work which has been carried out so far has been targeted at those assets currently identified as belonging to the Common Good and then to particular types of property where a question of common good is more likely to arise, in line with the approved Policy on Common Good. To date, around 5% of title bundles have been reviewed over a four year period.

3. Developing the Statutory Common Good Register

Existing list of Common Good Assets

- 3.1 The review of the existing list of common good assets has identified two types of properties; those properties which are Common Good due to the manner in which they have been acquired or subsequently used, and those which are not 'Common Good' in the true sense but have been transferred to the Common Good account for the purpose of generating income for the Common Good fund. A table is attached at Appendix 2 explaining how the properties on the existing list of assets are classified.
- 3.2 As a result of this review, it is considered that all of the properties on the existing list should be included in the new Register.

Ongoing Review of Titles

- 3.3 In line with the Policy, the Council has initiated the review of property titles initially focused on major parks within the City and other prominent public spaces.
- 3.4 It is recommended that the properties listed in the table at Appendix 3 should be classed as Common Good assets and added to the Register.

City Property Review of Titles

- 3.5 As part on the ongoing work to clarify the title position of the City Property Glasgow (Investments) LLP portfolio it has been identified that a number of properties were erroneously included in investment property portfolio transferred to City Property in 2010. The Council has remained owner of these properties

during this time, but under the arrangement between the council and City Property, the income (and costs) associated with these properties were assigned to City Property.

- 3.6 These properties are identified at Appendix 4. Any financial implications associated with implementing these changes will be considered as part of the closure of the annual accounts of both the common good and the council in line with the financial arrangements outlined in paragraph 4.

New Common Good Register

- 3.7 The combined list of properties which will be included in the new Register is annexed at Appendix 5. It is proposed that this list will form the basis of the draft register to be published in terms of s.102 of the Act and that the consultation on this will follow the procedure outlined above and will commence no later than the end of February 2019.

4. Accounting and Financial Implications

- 4.1 The common good policy identifies the council as “managing agent” for common good assets. In this capacity, the council continues to use and account for common good assets in an operational capacity while still recognising these assets as being part of the common good portfolio.
- 4.2 All income and expenditure associated with these assets are charged through the council’s accounts, and only if a net income results from the operation of these assets, is this transferred to the common good fund. Common good assets (other than investment assets) are held and valued in the common good asset register and balance sheet as community assets. The council’s balance sheet reflects values for these assets in line with proper accounting practice.
- 4.3 Those assets transferring to the Common Good as part of this and future exercises will be reflected within the accounts of the Council’s and Common Good accounts in line with this procedure.

5. Ongoing Assessment of Titles

- 5.1 The ongoing assessment of titles may identify further properties that require to be transferred from the Council’s to the Common Good balance sheet in line with the consultation and accounting arrangements outlined above. Such transfers will be reported as part of the annual Common Good budget in the last quarter of each financial year.

6. Consultation on proposals to dispose of or change the use of common property

- 6.1 In terms of s. 104 of the Act, the Council is obliged to consult with the local community when it is planning to dispose of or change the use of common good property. In these circumstances the Council must publish details of the proposal

and notify and invite representations from community councils and community bodies.

7. Policy and resource Implications

Resource Implications:

<i>Financial:</i>	Financial implications are outlined in the paragraphs above
<i>Legal:</i>	Legal implications are outlined in the paragraphs above
<i>Personnel:</i>	No personnel implications
<i>Procurement:</i>	No procurement implications
Council Strategic Plan:	Common Good impacts positively on the ‘A Vibrant City’; ‘Resilient and Empowered Neighbourhoods’ and a ‘Well Governed City that Listens and Responds’ cross cutting themes in the Council Strategic Plan 2017 to 2022. Of particular significance are its role in supporting; our history, heritage and culture as part of the Vibrant City theme; and enabling citizens and neighbourhoods to influence service delivery and be involved in local decision making as part of the Resilient and Empowered Neighbourhoods and Well Governed City that Listens and Responds themes.

Equality and Socio-Economic Impacts:

<i>Does the proposal support the Council’s Equality Outcomes 2017-2022</i>	Yes – this proposal supports the Council’s Equality Outcomes 2017 – 2022 by supporting the principle of community engagement and empowerment in decisions about property and assets.
<i>What are the potential equality impacts as a result of this report?</i>	The proposals will have a positive impact by ensuring wider engagement with the community.
<i>Please highlight if the policy/proposal</i>	

will help address socio-economic disadvantage.

Sustainability Impacts:

Environmental: No direct impact

Social, including Article 19 opportunities: No direct impact

Economic: No direct impact

Privacy and Data Protection Impacts: No direct impact

8. Recommendations

It is recommended that Committee notes:

- i) the requirement under S.102 of the Community Empowerment (Scotland) Act 2015 ('the Act') to establish a statutory Common Good Register ("the Register");
- ii) the proposed list of properties to be included in the Register;
- iii) the proposed actions and timetable to publish and consult upon the Register as required by the Act ;
- iv) the strategy for the ongoing review of the Register; and
- v) the requirements under s.104 for consultation in respect of proposals for changes of use or disposals of common good property.

Appendix 1

Procedure for establishing a register of common good property

Key elements of the process as set out in the Scottish Government's statutory guidance

- The Council is obliged to publish, what is in effect, a draft common good register and to hold a public consultation on that;
- There is no deadline for publication;
- It is up to the Council how and where the draft register is published, but it must be available for the public to inspect free of charge, and be accessible electronically, including through the Council's website;
- The draft register also has to be made available through local council offices, council hubs and local libraries, either in paper form or electronically; and be available in alternative languages and formats;
- The Council has to notify community councils and 'community bodies' of the consultation and invite them to give their views on the draft register, and consider whether other groups or bodies, such as local business groups or regional heritage networks should also be consulted; 'community bodies' are defined by S.106 of the Act as *'bodies, whether or not formally constituted, established for the purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the areas of the local authority'*; the guidance suggests that councils may wish to use the National Standards for Community Engagement to identify appropriate groups;
- The Council can choose to advertise in a local newspaper, but that is not compulsory;
- The consultation period has to be at least 12 weeks long;
- Representations must be made in writing, and will be published, as will the Council's responses to those;
- The Council should aim to respond to representations within 12 weeks;
- The Council's decision on a representation will be final, unless significant new information comes to light, or a court decides otherwise;
- The final register is to be published as soon as practicable after the end of the 12 week period for council responses, and in any case, no later than 6 months after the end of the consultation period;

- The published register will be available in the same formats and from the same places as the draft;
- The register can be published even if some representations have not been resolved by the publication deadline; these will be noted on the published register and the register updated when they are resolved;
- The register is to be maintained on an ongoing basis and has to be reviewed at least once every 5 years.

Appendix 2

Existing Common Good Operational Assets

Property	Why it is treated as Common Good:
Citizens Theatre – 119a – 123 Gorbals Street	Although part of the property was acquired using statutory powers, the main part of the building was acquired using funds from the Common Good fund with the intention that it would be treated as part of the Common Good. Notwithstanding, the Citizens Theatre has been leased since its acquisition and is therefore considered to be alienable.
Humbie Farm	Humbie Farm was acquired by the Corporation in 1944 by way of a Disposition by the Union Bank of Scotland. It was not acquired using statutory powers and there is nothing in the title to indicate that it is to be held as Common Good, however there are minutes from a meeting of the Sub Committee on Properties from 20 th November 1944 in which it is stated that it belongs to the Common Good fund. Therefore, it appears to have been dedicated to the Common Good by the Council's predecessors. Again, Humbie Farm has been leased and, as such, is considered to be alienable.
Pollok Country Park and Pollok House	These properties are held by the Council under the same title. The title makes reference to the Glasgow Corporation Acts 1855 to 1967 but there is no reference to a specific statutory purpose or provision so it is not clear that they were acquired for a specific statutory purpose. The title states the park is feued for the enjoyment of the Nation and the citizens of Glasgow. Some areas within, and on the edge of, the park have been leased and as such certain areas are considered to be alienable. This includes Pollok House which has been leased to the National Trust for Scotland.
Cathkin Braes Country Park	This property has been treated as Common Good since 2009 following title investigations carried out in connection with the installation of a wind turbine at the park.

Appendix 2 (cont'd)

Existing Common Good Investment Assets

Property	Why asset appears in the Common Good asset list:
Range of Shops – 53-67 Byres Road	At the meeting of the Municipal Transport Committee on 21 st February 1945 a decision was taken to transfer numerous properties owned and factored by the Transport Department which were not essential to the operation of the Transport Undertaking to the Common Good Fund. These included properties in the line of the underground tunnels, sections of tramway not essential to the operation and areas in the proximity of the underground tunnels which were not actually used.
Range of Shops – 4-6 Dowanhill Street	Former transport property as per above
Range of Shops – 174-182 Dumbarton Road	Former transport property as per above
Range of Shops – 407-439 Great Western Road	Former transport property as per above
Range of Shops – 33-37 Riverford Road	No information has been located regarding these properties however they comprise commercial units so it is likely they were added to the Common Good fund as investment properties.
Range of Shops 254 – 290 Sauchiehall Street	These properties have always been used as shops and have never had a public/common good type use and as such are considered to be 'alienable' Common Good.
Bowling Green – 1240-1284 Dumbarton Road	Former transport property as per above
120 Woodville Street	Former transport property as per above

Appendix 3

Recommended additions to the statutory Common Good Register

Property		Why property should appear in the Common Good register :
1.	Glasgow Green	<p>Glasgow Green is ancient Burgh land acquired in the 17th and 18th centuries which has been used by the public since time 'immemorial'.</p> <p>Several parts of Glasgow Green are considered to be 'alienable' Common Good and are occupied by tenants under leases e.g. the People's Palace is leased to Glasgow Life, as is the Hockey centre and the Football pitches at Fleshers' Haugh; the boathouses are leased to rowing clubs; and a cycling charity, Free Wheel North, occupy an area within the park under a long lease.</p>
2.	Newlands Park	Newlands Park was acquired to be held as a public park or pleasure ground for the benefit of the Community. It was not acquired using statutory powers or for a statutory purpose.
3.	George Square	George Square is former Burgh Land acquired in 1772. The land was not acquired using statutory powers or for a statutory purpose. The Land was acquired for the 'use and behoof' of the community, and has had a public use over a long period of time since then.
4.	Hogganfield Park	Hogganfield Park was acquired incrementally since the 17 th century. The Loch itself was acquired by the former Burgh in 1667. The surrounding land was acquired in numerous stages – many of these were acquired by the former Burgh without the use of statutory powers. The land has been held for the benefit of the public since it was acquired. A number of the later acquisitions of land surrounding the Loch do make reference to statutory powers – and potentially would be excluded from the Common Good if viewed in isolation – but it is proposed that the entire park is treated in the same way. The Loch – and its surrounding woodlands, marshes and grasslands – was declared a Local Nature reserve in 1998.

Property	Why property should appear in the Common Good register :
5. Elder Park (excluding the Library)	<p>Elder Park was gifted to the Council's predecessors by Mrs Isabella Ure or Elder to be held as a public park for the benefit of the inhabitants of Govan. A number of 'fundamental' conditions were attached to the gift: the park could not be alienated (i.e. sold or leased); it was to be used and occupied as a public park; the Council could not, by regulation or byelaw, vary any of the fundamental conditions.</p> <p>Note: The Library building at Elder Park is held under a Declaration of Trust granted by Mrs Isabella Ure or Elder in 1901. As the Library is held under a Trust, it does not form part of the Common Good. The Trust deed contains a number of restrictions on the use of the property.</p>
6. Glenconner Park	<p>Glenconner Park was gifted to the Corporation by Lord Tennant, Baron Glenconner, in 1915. The deed states that the Corporation is acting under the Parks Acts 1878 to 1912 but it is specifically stated the statutory control is only in so far as the same is not inconsistent with the conditions of the gift. The gift conditions state the land is to be held and used exclusively as a public park and recreation ground for the enjoyment of the inhabitants of Glasgow; there is a prohibition on the sale; and there are restrictions on the type of buildings which can be erected.</p> <p>Part of Glenconner Park is leased to Glasgow Life</p>
7. Kelvingrove Park (in Part – as shown on the plan at Appendix 6)	<p>In the early 1850s land was acquired with the intention of creating a park in the west end of the city. Much of the land was used for housing, however an area was set aside for use as a park. The original land was not acquired using statutory powers – it pre-dates the Parks Acts coming into force – and since acquisition it has been used by the public continuously. It is this area which is considered to be part of the Common Good. The park subsequently expanded, however the land added later was acquired using statutory powers and is not considered to form part of the Common Good.</p>

Property	Why property should appear in the Common Good register :
	Leases have been granted in respect of two former toilet buildings located within the park, for use as cafés.
8. Botanic Gardens (in Part – as shown on the plan at Appendix 6)	<p>The Botanic Gardens were founded at its present site by the Royal Botanic Institution in 1842 and were a private undertaking up until the 1890s. In the 1870s and 1880s the Gardens ran into debt and financial assistance was provided by the Town Council. The Gardens' indebtedness to the Council increased to the extent that in 1891 a special Act was passed – the City of Glasgow Act 1891 – whereby the Council acquired the land. A condition of the acquisition was that the Gardens would be open to the public. The Act stated that the land would be <i>“kept open, preserved and maintained in all time coming as a public park, botanic gardens and place of recreation for the use of the inhabitants of the city”</i>. The powers of sale contained in the Glasgow Public Park Acts were specifically excluded in relation to the Botanic Gardens. While the Botanic Gardens were acquired using statutory powers, the Council's view is that the circumstances here distinguish the Gardens from other parks acquired under statutory powers on the basis that the statute itself dedicates the land to a common good type use and the power of sale is disapplied.</p> <p>The part of the Gardens which is considered to be Common Good is the area which was originally acquired from the Royal Botanic Institution in 1891.</p>
9. Balloch Country Park	<p>Balloch Park was acquired in 1915 as part of the larger Balloch Estate, by way of a special order, the Glasgow Corporation (Parks Harbour Tunnel Gas &c) Order Confirmation Act 1915, which empowered the Town Council to acquire an estate outwith Glasgow primarily for the use of residents of Glasgow. Statutory authority for the purchase was obtained by way of an Act of Parliament, which stated: <i>“The Corporation on completion of the purchase shall apply the funds of the Common Good in payment of the purchase price of the state which shall thereon form part of the Common Good”</i>.</p>

Property	Why property should appear in the Common Good register :
	Balloch Country Park is currently leased to West Dunbartonshire Council, which is responsible for maintenance and upkeep of the park.
10. Rouken Glen Park (in part as shown on Plan in Appendix 6)	<p>Rouken Glen Park (excluding Deaconsbank Golf Course and the David Lloyd sports facility) was gifted to Glasgow Corporation in 1906 by Archibald Cameron Corbett with a condition that it be <i>held and maintained in perpetuity as a place of resort for the community and inhabitants of the city of Glasgow.</i></p> <p>Rouken Glen Park is leased to East Renfrewshire Council, together with Deaconsbank Golf Course and the site of the David Lloyd sports facility. Under the terms of the lease East Renfrewshire Council is responsible for maintenance and upkeep of the park.</p>

Appendix 4

Assets Subject to Transfer from City Property Glasgow (Investments) LLP

Description	Definition
Pollokshaws Road / Haggs Road (Pollok Park)	Leases of ground and 2 cottages
Balloch Park	Lease to West Dunbartonshire Council
East Boathouse, and West Boathouse, Glasgow Green	leases to rowing clubs of both Boathouses, and SEPA monitoring station at West Boathouse
Kelvingrove Park	Leases of café in eastern side of the park

Proposed Statutory Common Good Asset Register

Core Assets

- Citizens Theatre – 119a – 123 Gorbals Street
- Humbie Farm
- Pollok Country Park and Pollok House
- Cathkin Braes Country Park
- Glasgow Green
- Newlands Park
- George Square
- Hogganfield Park
- Elder Park (excluding the Library)
- Glenconner Park
- Kelvingrove Park (in Part – as shown on the plan at Appendix 6)
- Botanic Gardens (in Part – as shown on the plan at Appendix 6)
- Balloch Country Park
- Rouken Glen Park (In Part – as shown on the plan at Appendix 6)

Investment Assets

- Range of Shops – 53-67 Byres Road
- Range of Shops – 4-6 Dowanhill St
- Range of Shops – 174-182 Dumbarton Road
- Range of Shops – 407-439 Gt Western Road
- Range of Shops – 33-37 Riverford Road
- Range of Shops – 254-290 Sauchiehall St
- Bowling Green – 1240-1284 Dumbarton Road
- Vacant Land – 120 Woodville St