

DATA LABEL: Public



## **COUNCIL EXECUTIVE**

### **REGISTER OF COMMON GOOD UPDATE**

#### **REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES**

##### **A. PURPOSE OF REPORT**

The purpose of this report is to provide Council Executive with an update on work undertaken by officers to further develop the council's Register of Common Good in accordance with the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015.

##### **B. RECOMMENDATION**

It is recommended that Council Executive:

1. Notes the work undertaken by officers to further develop the council's Register of Common Good in accordance with the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015.
2. Notes that work is ongoing to fully consider the remaining representations received during the mandatory community consultation exercise and to engage further with the Whitburn community to consider potential common good property in the former Burgh of Whitburn.
3. Agrees that officers will present a further update to Council Executive by September 2023.

##### **C. SUMMARY OF IMPLICATIONS**

- |                                                                                                                       |                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>I Council Values</b>                                                                                               | <ul style="list-style-type: none"> <li>• Focusing on our customers' needs.</li> <li>• Being honest, open and accountable.</li> <li>• Providing equality of opportunities.</li> <li>• Making best use of our resources.</li> <li>• Working in partnership.</li> </ul> |
| <b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b> | <p>The work undertaken by officers ensures the council is compliant with the statutory requirements of Part 8 of the Community Empowerment (Scotland) Act 2015.</p>                                                                                                  |
| <b>III Implications for Scheme of Delegations to Officers</b>                                                         | <p>None.</p>                                                                                                                                                                                                                                                         |

<b>IV</b>	<b>Impact on performance and performance Indicators</b>	None.
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	Outcome 8 - We make the most efficient and effective use of resources by minimising our impact on the built environment.
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	The council will incur revenue costs in the region of £100,000 in 2022/23 and 2023/24 for legal work being undertaken by external solicitors to support the establishment and updating of the Register of Common Good. The costs are being met from existing revenue budgets.
<b>VII</b>	<b>Consideration at PDSP</b>	The then Partnership and Resources PDSP on 4 February 2022,
<b>VIII</b>	<b>Other consultations</b>	Legal Services.

## **D. TERMS OF REPORT**

### **D.1 Background**

Common good is property owned by a local authority which has been passed down, through local government reorganisation, from former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, and moveable items such as furniture and art. It may include cash where property has been sold and income received from the leasing of common good property.

There is no formal, statutory definition of common good. It is not a separate legal entity and property is not “owned by the common good”. The property is owned by the local authority. The local authority may however be legally restricted in the uses to which it can put such property, or whether it can dispose of it, if the property is considered to be common good. It does not automatically follow that all council owned property in the former burghs is common good. For example, if a property was originally acquired by the former burgh council for a specific statutory purpose, then potentially it may not be common good.

The Community Empowerment (Scotland) Act 2015 (the Act) imposes duties on local authorities in relation to common good property. Part 8 of the Act seeks to increase transparency about the existence of common good assets and to ensure there is community involvement in decisions taken about their identification, use and disposal.

Section 102 of the Act places a duty on local authorities to “establish and maintain a register of property which is held by the authority as part of the common good.” Council Executive at its meeting on 22 March 2022 approved the publication of the first version of the council's Register of Common Good and noted that officers were continuing their work to fully consider all representations received during the mandatory community consultation exercise. Council Executive was provided with an update report on 25 October 2022, at which time further additions to the Register of Common Good were approved.

The Act provides that once the council has fully considered a representation, its decision is final, unless significant new information comes to light or a court decides otherwise by way of judicial review. There is no appeals process written into the legislation or guidance.

The purpose of this report is to provide Council Executive with an update on the work by officers to date to further develop the council's Register of Common Good in accordance with the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015.

## D.2 Current Position

Officers from Property Services and Legal Services have been investigating 74 properties across the county to determine whether they should properly be included in the published Register of Common Good in accordance with statutory requirements.

In determining whether or not a property should be considered as common good, it is necessary to examine the title deed(s) for that property, to consider how the property was acquired by the council and how it has been used since it was acquired. As a result of the time and resource intensive nature of the title reviews required for each of the properties identified during the consultation, the Chief Solicitor procured the services of external solicitors to assist in this exercise.

Progress to date in determining the representations received is summarised in Table 1 below.

Table 1: Summary of progress in determining representations

Status	Number of Properties
1. Where investigations are complete and the legal advice is that the property should be regarded as common good.	14
2. Where investigations are complete and the legal advice is that the property should not be regarded as common good.	10
3. Where the council's Property Services team has confirmed that the property is not owned by the council and the property has not been included in the common good considerations.	12
4. Properties where the legal work is ongoing and supplementary information has been requested or is being considered by legal advisors	29
5. Non-property assets (e.g. regalia, furniture, artworks).	9
<b>TOTAL:</b>	<b>74</b>

As set out in Table 1 above, nine of the representations received via the consultation exercise relate to non-property assets such as regalia, furniture and artworks.

A review of those non-property assets is being undertaken in consultation with the council's Museum's Officer as part of an ongoing, wider review of the council's movable heritage assets. In light of investigations to date and in the absence of information to the contrary, officers consider it likely that the council's moveable heritage assets will ultimately be recommended for approval as common good property going forward.

### **D.3 Updated Register of Common Good**

The exercise to investigate and consider each of the representations has been and continues to be very resource intensive. Consideration of a single property typically involves the identification and analysis of multiple historic title deeds and collaboration with the council's Archive Manager to research historic committee minutes dating from the former Burgh Councils in an attempt to identify key information around the circumstances under which individual properties were acquired.

As a result of the work undertaken to date by officers and their appointed external solicitors, a considered legal position has now been reached on 24 properties. A further 12 properties which are not owned by the council have not been included in the legal title examination. Of those 24 properties, 14 have been confirmed as common good and were previously approved by Council Executive for inclusion in the Register of Common Good and 10 were confirmed as not being common good.

Tangible progress has been made in working towards a considered legal opinion on every one of the outstanding properties. Due to the ongoing complexities of the work involved and conflicting time-critical workload pressures on officers, it has been possible at this stage to reach a final legal opinion on one additional property since the matter was last reported to Council Executive on 25 October 2022.

The aforementioned property, where a final legal position has been reached, is "Open space land between Whitburn Road and Meadowpark in Bathgate". The legal advice provided is that this property should not be considered as common good and as such there is no requirement to further update the existing Register of Common Good at this juncture.

It is intended to bring this ongoing exercise to a close at the earliest possible opportunity and resources will be prioritised with the objective of providing Council Executive with a further substantive update in September 2023.

### **D.4 Further consultation in the former Burgh of Whitburn**

At the then Partnership and Resources PDSP on 4 February 2022, the Panel noted that no representations had been received from the community in relation to the former Burgh of Whitburn. The Panel suggested that further engagement take place. Officers confirmed that the register would be a live document that must, by law, be under continuous review. Officers agreed that further engagement with the Whitburn community would take place once all the original consultation representations had been considered. Given the passage of time and the desire to see this exercise concluded as soon as possible, officers have commenced engagement with the Whitburn community.

Officers have begun engagement with representatives from Whitburn Community Council and Whitburn Community Development Trust and sought representations from these organisations on properties in the former Burgh of Whitburn that the community consider could potentially qualify as common good. Officers are seeking to have a consolidated list of properties from the community by 31 May 2023 and are aiming to have investigations on those suggested properties complete during 2023/24.

## **E. CONCLUSION**

Council Executive is recommended to note the ongoing work undertaken by officers to further develop the council's Register of Common Good in accordance with the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015 and to engage further with the Whitburn community to consider potential common good properties in the former Burgh of Whitburn.

Officers will bring this ongoing exercise to a close at the earliest possible opportunity and have undertaken to prioritise resources with a view to providing Council Executive with a further substantive update in September 2023.

## **F. BACKGROUND REFERENCES**

Establishment of a Register of Common Good - Partnership and Resources PDSP  
4 February 2022

Establishment of a Register of Common Good – Council Executive 22 March 2022

Register of Common Good Update – Council Executive 25 October 2022

Appendices/Attachments: None

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**21 March 2023**