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PARTNERSHIP AND RESOURCES POLICY DEVELOPMENT AND SCRUTINY PANEL

ESTABLISHMENT OF A REGISTER OF COMMON GOOD

REPORT BY HEAD OF FINANCE AND PROPERTY SERVICES

A. PURPOSE OF REPORT

The purpose of this report is to provide the Panel with information on the work currently being undertaken by officers to establish a register of common good in accordance with the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015 and to confirm how officers intend to proceed to ensure the council is compliant with those statutory requirements.

B. RECOMMENDATION

It is recommended that the Panel:

1. Notes and considers the work currently being undertaken by officers to establish a register of common good in accordance with the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015.
2. Notes and considers how officers intend to proceed to ensure that the council is compliant with the requirements of Part 8 of the Community Empowerment (Scotland) Act 2015.

C. SUMMARY OF IMPLICATIONS

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

V	Relevance to Single Outcome Agreement	Outcome 8 - We make the most efficient and effective use of resources by minimising our impact on the built environment.
VI	Resources - (Financial, Staffing and Property)	The council will incur revenue costs in the region of £100,000 for legal work being undertaken by external solicitors that will support the establishment of a register of common good. Those costs will be split over the 2021/22 and 2022/23 financial years and will be met from existing revenue budgets.
VII	Consideration at PDSP	None.
VIII	Other consultations	Governance Manager, 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 .

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.” West Lothian Council does not currently have a common good register. The Act does not require a register to be in place by a specific date, but the absence of a common good register was noted as a breach of the law in the Monitoring Officer’s annual compliance statement and in the Corporate Governance 2020/21 – Annual Governance Statement that was reported to the Governance and Risk Committee on 14 June 2021. Officers provided assurances at that time that work was underway to rectify matters and an update report was provided on the matter to the Governance and Risk Committee at its meeting on 13 December 2021.

D.2 Community Consultation

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, and to consult with communities on that list for a minimum of twelve weeks. As part of that consultation, individuals, community councils and other community bodies have an opportunity to make a case for property to be included in or excluded from the register.

In accordance with the requirements of the Act, a consultation exercise was undertaken that ran for sixteen weeks from 8 June 2021 to 30 September 2021. Officers wrote individually to all community councils and to the Joint Forum of West Lothian Community Councils to encourage their participation. The consultation was widely publicised on the council’s website and social media platforms. Members of

the public were also able to view information in person at local council offices, council hubs and local libraries.

There was strong community participation in the consultation and, at its close on 30 September 2021, representations had been received from across our communities in the former burghs of Bathgate, Armadale and Linlithgow. No representations were received relating to the fourth former burgh in Whitburn.

As a result of representations received during the consultation exercise, officers are currently investigating and considering a total of 74 properties in relation to the common good register. A list of those properties and the representations received has been published online and responses to those representations will be issued and published once officers have completed their investigations.

D.3 Current Position

Officers from Property Services and Legal Services are now actively investigating 74 properties across the county to determine whether they should properly be included in the published register of common good at the end of the statutory process. Where any of the properties under investigation are linked to live council projects (e.g. the delivery of new-built council houses), the review of those properties has been prioritised.

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.

The council is required to have regard to statutory Guidance issued by the Scottish Government in terms of S103 and S105 of the Act. The Guidance issued recommends that the council should aim to publish its first version of its common good register within a maximum of six months from the end of the consultation. Whilst that timescale is not prescribed in the Act, and there is no penalty for failure to meet the timescale within the Guidance, officers are working to that recommended timeline and intend publishing the first version of the common good register by 31 March 2022. The Guidance indicates that publication of an incomplete register is possible, with an attached list of properties still under investigation.

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 (Anderson Strathern Solicitors) to assist in undertaking 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. Properties where investigations are complete.	15
2. Properties where investigations by Anderson Strathern Solicitors are ongoing (where no additional information has been requested by Anderson Strathern Solicitors).	28
3. Properties where Anderson Strathern Solicitors have requested additional research of the council's archive records (exercise being co-ordinated by Property Services).	22
4. Non-property assets (e.g. regalia, furniture, artworks).	9
TOTAL:	74

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 ongoing to determine whether these should properly be categorised as being common good.

A list of the 74 properties under investigation is included at Appendix 1 of this report.

D.4 The Next Steps

The exercise to investigate and consider each of the representations has been and continues to be resource intensive. Consideration of a single property may typically involve 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.

In light of the foregoing, the Chief Solicitor has confirmed that full consideration and determination of all 74 properties may not be complete by 31 March 2022 and it may be later in 2022 before that exercise concludes.

It is legally competent and indeed anticipated by published guidance, that the council could publish its first version of the common good register as at 31 March 2022 with any confirmed common good properties listed along with details of those properties still under review.

Officers intend providing a report to the Council Executive on 22 March 2022 on the work undertaken to date. That report will seek approval to publish the first version of the common good register by 31 March 2022. Once that register has been published, it will be updated and maintained by officers in accordance with the requirements of the Act.

Officers are also currently considering the management processes and governance arrangements that will be required to accompany and support the established common good register going forward. Those arrangements will ensure the council meets the continuing statutory duties to keep the register available for public inspection, to maintain it as an up-to-date record, to record changes and to review

the register periodically (guidance suggests at least every five years). Those proposed arrangements and processes will be reported to future meetings of the Panel and the Council Executive for consideration.

The progress made and steps still to be taken will be reported again through the annual reporting process on corporate governance for 2021/22.

E. CONCLUSION

The council has a duty under Part 8 of the Community Empowerment (Scotland) Act 2015 to establish and maintain a register of common good. Officers have undertaken a community consultation in accordance with the requirements of the Act and are now actively working towards the formal publication of the first version of the common good register by 31 March 2022.

Work will continue to fully consider all representations received and to develop suitable arrangements for the governance and management of assets held on the common good register.

F. BACKGROUND REFERENCES

Part 8 of the Community Empowerment (Scotland) Act 2015

Corporate Governance 2020/21 – Annual Governance Statement - Governance and Risk Committee 14 June 2021.

Common Good Register Update – Governance and Risk Committee 13 December 2021

Appendices/Attachments: Appendix 1: List of assets under investigation

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APPENDIX 1: LIST OF ASSETS UNDER INVESTIGATION**1. Property in Burgh of Armadale**

Property		
Name of Asset	Location	Description
1. Watson Park	Watson Park, Armadale	Open Space
2. Wood Park	Wood Park, Armadale	Open Space
3. The Black Moss, Including the Curling Pond	The Black Moss, Armadale	Open Space
4. The Former Council Offices On East Main Street/South Street (at the Cross)	East Main Street, Armadale	Commercial premises
5. Football park south of Greig Crescent	Greig Crescent, Armadale	Open Space
6. The Statue/Memorial That Stands on the South Side Pavement on West Main Street at the Cross	West Main Street, Armadale	Memorial
7. Old war memorial	TBC	Memorial
8. Kerr memorial	TBC	Memorial
9. St Anthony's Park	St. Anthony's Park, Armadale	Open Space
10. Armadale swimming pool (Jim Sibbald)	North Street, Armadale	Swimming Pool
11. The Town Council chamber furniture (chairs still used at the Gala Day)	N/A	Furniture
12. Site of former library site	West Main Street, Armadale	Vacant land

2. Property in the Burgh of Bathgate

Property		
Name of Asset	Location	Description
13. The Knock Hill	Bathgate Hills, Bathgate	Open space
14. The Burgh Muir	Muir Road, Bathgate	Open space
15. Kirkton Park	Edinburgh Road, Bathgate	Open space
16. Meadow Park	Glasgow Road, Bathgate	Open space
17. Site of the former baths	Mid Street, Bathgate	Development site
18. Boghead Cemetery	Hardhill Road, Bathgate	Operational cemetery
19. Little Boghead Nature Park	Littleboghead (off Whitburn Road, Bathgate)	Nature reserve
20. The Showpark	Glasgow Road, Bathgate	Open space
21. Bathgate Cemetery	Glasgow Road, Bathgate	Operational cemetery

Property		
22. Park land/former railway track to Balbardie Colliery	Millburn Road Turner Street (to the rear of houses on Cochrane Street and Lothian Street)	Open space
23. Standhill Football Park	Standhill, Bathgate (off the A7066)	Open space
24. Land that council buildings are sited on	South Bridge Street, Bathgate	Site of operational buildings
25. Land on which the John Newland Memorial Stands	Main Street, Bathgate	Open space
26. Land on which Bathgate High Church is sited	Gideon Street, Bathgate	Site of church
27. Former community centre site	Marjorybanks Street, Bathgate	Development site
28. Land behind Guildiehaugh Depot (formerly used as playing fields for St. Mary's Academy)	Between Bathgate Golf Course and the railway line, Blackburn Road, Bathgate	Open space
29. Simpson Memorial Garden	Marjorybanks Street, Bathgate	Open space
30. Land that formed part of the former Mid Street Primary School grounds	Marjorybanks Street / Mid Street, Bathgate	Open space
31. The grounds whereon the "Chapel Well" stands	Marjorybanks Street / Balbardie Road, Bathgate	Open space
32. Land upon which the War Memorial is sited	Mid Street, Bathgate	Open space
33. Land where the War Memorial was previously sited	Wallace Road, Bathgate	Open space
34. The McLagan Drinking Fountain	George Place, Bathgate	Public Area
35. The Provost's Lamp	Marjorybanks Street, Bathgate	Open Space
36. The Statue of Robert Burns	Bathgate Partnership Centre, Bathgate	Open Space
37. Acredale Car Park	Hopetoun Lane, Bathgate	Car Park
38. Mansefield Street Car Park	Mansefield Street, Bathgate	Car Park
39. The Lane that connects Marjorybank Street to Mid Street	Marjorybanks Street, Bathgate	Open Space
40. The Lane from Acredale Car Park to George Street	Engine Place, Bathgate	Open Space
41. The Area of Grass land/trees to the rear of the houses on Lothian Street and Dundas Street	Lothian Street, Bathgate	Open Space
42. Windyknowe Swing Park	Windyknowe Crescent, Bathgate	Public Park
43. Creamery Park, Hardhill Road	Hardhill Road, Bathgate	Sports Park
44. Old Bathgate Parish Church/Kirkton Church, Edinburgh Road.	Edinburgh Road, Bathgate	Derelict church yard

Property		
45. Guildiehaugh Depot, Blackburn Road	Blackburn Road, Bathfgate	Council Depot
46. Limefield Public Park and adjacent spare ground	Limefield Road, Bathgate	Public Space
47. Public Park at top of Marchwood Cres.	Marchwood Crescent, Bathgate	Public Space
48. Open Space adjacent to Bruce Road	Bruce Road, Bathgate	Public Space
49. Former Travellers site at Sibbalds Brae	Sibbald's Brae, Bathgate	Housing Site
50. Land opposite Tesco on Blackburn Road/Leyland Road	Blackburn Road, Bathgate	Open Space
51. Land and Path to the south of Tesco Store	Blackburn Road, Bathgate	Open Space
52. Playing Field at Marina Avenue	Marina Avenue, Bathgate	Public Space
53. Park and Land at Alexandra Drive	Alexandra Drive, Bathgate	Public Space
54. Land behind the former War Memorial Wallace Road	Wallace Road, Bathgate	Open Space
55. Open Space land between Whitburn Road and Meadow Park bound by the bog burn	Meadow Park, Bathgate	Public Space
56. Land and Woodland to the south of Morrisons Store bound by the Railway line and the Boghead Burn.	Whitburn Road, Bathgate	Open Space
57. Woodland and Land including the SUDs Ponds Wester Inch	Leyland Road, Bathgate	Open Space/Woodlands
58. Oil Painting titled Alexander Marjorybanks, First Provost of Bathgate (1824- 1827) and Trustee of John Newland by Artist John William Rattray	N/A	Art and Artefacts
59. Newlands Memorial Stone, formerly sited at Bathgate Academy and removed to Council Care at the Partnership Centre	N/A	Art and Artefacts
60. The Bathgate Provosts Chain of Office	N/A	Art and Artefacts
61. The Former Burgh Council Chambers "Chairs Of Office"	N/A	Art and Artefacts

3. Property in the Royal Burgh of Linlithgow

Property		
Name of Asset	Location	Description
62. Learmonth Gardens	Learmonth Gardens, Linlithgow	Open Space
63. Rosemount Park	Rosemount Park, Linlithgow	Open Space

Property		
64. Linlithgow Cemetery (Mains Road)	Mains Road, Linlithgow	Cemetery
65. Douglas Park (at corner of Mains Road and Moray Drive)	Douglas Park, Linlithgow	Open Space
66. Land on south side of West Port including Katie Wearie's tree	West Port, Linlithgow	Open Space
67. The central part of the Cross including the Cross Well	The Cross, Linlithgow	Open Space
68. Burgh Halls and associated land including the Green Man Statue	The Cross, Linlithgow	Burgh Halls
69. Garden area in front of Low Port Primary School	Blackness Road, Linlithgow	Open Space
70. Car Park in front of Longcroft Hall - the "Horsemarker?"	TBC	Car Park
71. Cemetery around St Michaels Church	The Cross, Linlithgow	Open Space
72. Annet House	High Street, Linlithgow	Offices
73. Tam Dalyell House (Linlithgow PC)	High Street, Linlithgow	Offices
74. 89 – 91 High St (County Buildings annex – previously British Linen Bank)	High Street, Linlithgow	Offices

4. Property in the Burgh of Whitburn

Property		
Name of Asset	Location	Description
NIL		

(END)