ABSTRACT
This report advises members of the outcome of the Common Good Audit of properties within Arbroath and the next steps to be applied.

1. RECOMMENDATIONS

It is recommended that the Council:-

(i) note the findings of the Arbroath Common Good Audit as detailed in this report;

(ii) agree that a public consultation exercise be conducted to share the findings outlined in the report with the local community to allow the public to examine the findings and submit any evidence they are aware of to either support or contest the findings;

(iii) note that in particular assistance is sought to help determine whether any individual(s) may hold or be aware of any evidence that can prove that the Arbroath Library property should be classified as Common Good;

(iv) note that the outcome of the public consultation exercise will be reported back to the Council at which time the future accounting arrangements for the assets covered by the audit of common good assets will require to be concluded; and

(v) note that the Head of Law and Administration will factor in the audit of Brechin Common Good properties and report to members in the future.

2. BACKGROUND

Reference is made to a letter sent to all members on 21 October 2010 from the Director of Corporate Services (Appendix 1). This letter advised that an audit by the Head of Law and Administration had commenced of Common Good Properties in Arbroath. This report advises members of the findings of this audit.

3. RESULT OF THE AUDIT

3.1.1 At the commencement of the audit, local members were sent a list of the properties which were to be reviewed. These were assets currently thought to belong to the Common Good or were assets deemed to have a community purpose and therefore could potentially be Common Good. The case law pertaining to the classification of common good properties sets out the tests for determining whether a property should be classified as common good, as follows:-

- it was gifted for behoof of the community;
- it was purchased with common good funds; and
- it was not acquired for statutory purposes.

3.1.2 Therefore one of the principal indicators in determining whether a property is intended to form part of the common good is the wording within the title deeds. In particular, it is important to note if there is a reference to a statutory purpose within the titles or whether the land is held on behalf of the community. In addition to the title deeds, it is necessary to check extraneous documentation or records from the time of the acquisition. Based on the foregoing, following a title examination of these properties, and a check of archived Arbroath Town Council and the Angus District Council minutes (where appropriate), the following categorisation of properties is proposed.
3.1.3 After review the assets listed below are confirmed to form part of the Arbroath Common Good.

**Common Good Assets:-**
- Abbey Green Park
- Abbey Bowling Green
- Abbey Burial Grounds
- Boulzie Hill (part of Springfield Park)
- Carnegie Park (also known as Hayswell Park)
- Elliot Links (part)
- Ground at East Grimsby (currently leased)
- High Common/Low Common/Cannon Common
- Keptie Park and Pond
- Lochlands Bowling Green
- MacDonald Park
- NOSWA underground storage tanks (Inchcape Park)
- Old Parish Church, Access Office
- Provost's Lamp, High Street
- Springfield Park, Hill Terrace
- Tennis Courts, West Links
- Victoria Park
- War Memorial (High Common)
- Webster Memorial Theatre
- Office at Gravesend
- West Common (also known as Cricket Common, Dundee Road)
- West Links & Salmon Fishings

It is considered that following the review, the assets below should be transferred to the Common Good, from General Fund accounts, see Appendix 2 for details):

**Assets to be transferred to Arbroath Common Good:-**
- Elliot Golf Links (part)
- Inchcape Park, Ladyloan
- Rest Gardens, Cairnie Loan
- Ruxton Memorial at Eradour Gardens (land on which memorial stands)

It is considered that following the review, the assets below should be transferred from the Common Good to General Fund accounts. See Appendix 3 for details;

**Assets to be transferred from Common Good:-**
- Arbroath Library
- Offices at Gravesend, 1 Market Place
- Queen’s Drive Recreation Area

The remaining assets detailed below were included on the list of assets to be reviewed and have been deemed not to be Common Good

**Not Common Good Properties**
- Allotment, Brechin Road
- Allotment, The Elms
- Annesley Rest Garden, Arbirlot Road
- Beacon Green
- Bloomfield Road Park
- Brechin Road Park
- Brothock Valley, Wardmill Road
- Cairnie Park
- Eastern Cemetery
- Football Ground, Cliffburn – No title found
- Gayfield Park
- Hercules Den
- Keptie Water Tower
- Landscaped area, Burnside Drive
- Landscaped Area, Wardmill Road
- Old Coup Land, Cairnie Loan
- Ogilvy Park
3.2.1 Assessment of Analysis of Risks
This report is now in the public domain and the initial conclusions from the audit of assets will be publicised to the wider public to allow a six week public consultation exercise to be undertaken and separately made available to the Council’s auditors. The public consultation exercise will provide the local community with the opportunity to make their views known to the Council if they do not agree with the conclusions from the audit. In particular, given the materiality of the consequence of declaring that the Arbroath Library is as a result of the findings of the review not considered to be a Common Good property, it is proposed to specifically highlight this property as part of the public consultation exercise to help determine whether any individual(s) may hold or be aware of any evidence that can prove that the Arbroath Library property should continue to be classified as Common Good.

3.2.2 There is a risk of challenge/qualification to the Council’s Accounts from the Council’s external auditors if the results of the audit of common good assets are not reflected in the Council’s accounts following the consultation process. This would be on the basis that there are material errors in either the Council and/or Common Good accounting statements. Members are advised that appropriate justification is required to categorise an asset as common good or not and the evidence provided by the audit would require to be superseded by alternative evidence for the existing accounting treatment to continue to apply.

3.3 Property Implications
The transfer between accounts has property implications. Case law has established that some types of Common Good land may be subject to some form of restriction on its disposal. These are considered to be land and buildings which, by use by the public for time immemorial have acquired an inalienable characteristic; buildings dedicated to some form of public purpose by the burgh itself; and deeds of gift by benefactors in which the land is expressly dedicated to a Common Good purpose. The disposal of this type of land is governed by Section 75 of the Local Government (Scotland) Act 1973. The authority (Council) can apply to the Court of Session or the Sheriff to authorise the disposal of the land “on which a question arises as the right of the authority to alienate”. Consequently, if properties are removed from the ambit of Common Good, there shall be no such restriction on disposal other than the requirement to abide by the rules of disposal of Council property as set out in Financial Regulations. Likewise, the authority’s ability to deal with the land that is transferred to the Common Good may be compromised if it is to be treated as Common Good land.

4. FINANCIAL IMPLICATIONS
To allow the consistent application of accounting practice, committee report 337/10 approved the Angus Council accounting policy for reclassification of assets between the common good and the general fund (and vice versa). This has now been incorporated within the Council’s “statement of accounting policies” within the draft 2010/11 accounts.

The approved policy provides that any assessment process be undertaken on a case by case basis with a view to focusing on current and future costs and valuations. In particular the policy aims to only consider retrospectively where adjustments would be material and the avoidance of such adjustments would cause significant distortions.

Notably the policy invokes that any current year transfers between funds will be made at the point that it is formally approved by committee and any accounting adjustment, if required, will be made on that date. Where an actual transfer occurred in a previous year but has not been identified until a later date the financial adjustment will be made on the 1st April in the year the asset transfer is identified. It is viewed that the application of the policy will maintain a true and fair view position for both the common good funds and the general fund.

The following paragraphs highlight the main financial implications for both the General Fund and Arbroath Common Good Fund arising from the initial conclusions following the audit of Common Good assets. These financial implications will however require to be confirmed following the recommended public consultation and any changes which might arise from that process. Confirmation of the full and final financial implications will therefore form part of the update report to the Council following the consultation period.
Assets to be transferred to Common Good from General Fund:

The audit of asset ownership in Arbroath identified four properties (Appendix 2) that are currently held on the General Fund account which it is proposed be transferred to Arbroath Common Good fund. Each of these properties Inchcape Park (Ladyloan), Elliot Links (part), Rest Gardens (Carnie Loan) and Ruxton Memorial currently have a “nil” (net) asset value on the General Fund Balance Sheet. Such assets are all valued at nil for accounting purposes on the balance sheet as a result of their classification as either a “community asset” or “historic building”.

It will be necessary to fully assess the true value of these assets prior to any transfer taking place and this will be carried out in tandem with the public consultation process. The small size of the land parcels associated with the Rest Garden and Ruxton Memorial and the maintenance liabilities associated with these suggest transfer at nil value would be appropriate. Although the areas of land proposed to transfer at Elliot Links and Inchcape Park are more significant there are maintenance burdens and development restrictions to take into account in assessing land value. These matters will be dealt with as part of the follow up report following the public consultation.

There will also be ongoing revenue budget implications associated with the transfer of such assets to the Common Good which will need to be taken into account. At this stage the only significant revenue implication would be the ongoing maintenance liability of the entire Inchcape Park area of approximately £4,600 p.a. which currently is met in full by Neighbourhood Services. The maintenance arrangements to be adopted in future will also be dealt with as part of the follow up report.

Assets to be transferred from Common Good to General Fund:

The audit of asset ownership in Arbroath identified three properties (Appendix 3) that are currently held on the Arbroath Common Good account that require to be transferred to the General Fund. Within the balance sheet of the Common Good, Gravesend offices and Queens Drive recreational area have a “nil” (net) asset value. Transferring these assets from the Common Good to the General Fund will thus not affect the asset values of either balance sheet. Arbroath Library however has a net value (after depreciation) of £836,000 as at 31/03/2011. If this transfer is subsequently approved, appropriate accounting adjustments would be required to move the asset from the Common Good balance sheet to the General Fund balance sheet, resulting in a reduction in the value of the Common Good assets and an increase in the Council's.

<table>
<thead>
<tr>
<th>Property</th>
<th>Asset Value as at 31/3/11 (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbroath Library</td>
<td>836,000</td>
</tr>
<tr>
<td>Gravesend Offices</td>
<td>0</td>
</tr>
<tr>
<td>Queen’s Drive, Recreation Area</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>836,000</strong></td>
</tr>
</tbody>
</table>

In addition there are also ongoing revenue budget implications associated with the transfers of assets from the Common Good:

<table>
<thead>
<tr>
<th>Net annual (saving) / cost</th>
<th>Common Good</th>
<th>General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbroath Library - rental</td>
<td>£24,700</td>
<td>(£24,700)</td>
</tr>
<tr>
<td>Arbroath Library – depreciation</td>
<td>(£32,000)</td>
<td>£32,000</td>
</tr>
<tr>
<td>Gravesend Office – rental (AC dept.)</td>
<td>£7,800</td>
<td>(£7,800)</td>
</tr>
<tr>
<td>Gravesend Office – rental (third party)</td>
<td>£9,500</td>
<td>(£9,500)</td>
</tr>
<tr>
<td>Gravesend Office – maintenance</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Queens Drive, Recreation area - rental</td>
<td>£440</td>
<td>(£440)</td>
</tr>
<tr>
<td>Queens Drive, Recreation area – mtce.</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Net (saving) / cost per annum</strong></td>
<td><strong>£10,440</strong></td>
<td>(£10,440)</td>
</tr>
</tbody>
</table>
As illustrated above the transfer from Common Good will result in a net saving in expenditure to the General Fund of £10,440 per annum (Neighbourhood Services £940 and Other Services; Corporate Properties £9,500) and consequently an annual increase in net expenditure to the Common Good revenue account of £10,440.

There has been no significant capital spend funded by the Common Good on any of the assets proposed to be transferred to the General Fund which would require adjustment to the overall balance sheet positions. There are no material financial issues regarding any prior year capital spend transactions which would need to be addressed as part of the transfer process for any of the assets proposed to transfer from or to the Common Good.

However, report 337/10 which proposed (and was subsequently approved) the accounting treatment policy to be applied for the reclassification of assets from/to the Common Good states, “prior year financial adjustments will only be made if they are considered material” and “the aim of the policy is to allow the accounts of both the Common Good and the General Fund to show a true and fair view”. With regard to the properties which require to be transferred from the Common Good to the General Fund; Arbroath Public Library, Offices at Gravesend & Queens Drive Recreation Area; the issue of rental income received by the Common Good in prior years will need to be considered once the proposed public consultation has been completed.

5. HUMAN RIGHTS IMPLICATIONS

There are no Human Rights implications arising from this report.

6. EQUALITIES IMPLICATIONS

The issues contained in the report fall within an approved category and it has been confirmed as exempt from an equalities perspective.

7. CONSULTATION

The Chief Executive, Director of Neighbourhood Services, Director of Infrastructure Services, Head of Law and Administration, Head of Property and Head of Finance have been consulted in the preparation of this report.

8. CONCLUSION

The purpose of this report is to advise members of the findings of the Audit of the Common Good properties located within Arbroath. The report concludes that certain properties are held on incorrect accounts and should be transferred to the appropriate account. This conclusion has been reached on the basis of a careful examination of title deeds and archive minutes together with extraneous evidence provided by officers and former officers of the Council. The process applied also incorporates a public consultation exercise which will offer the public an opportunity to produce additional evidence not available to council officials.

COLIN McMAHON
DIRECTOR OF CORPORATE SERVICES

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above Report.

L&A/SCH/AEG
On the basis of research, it is concluded that the following properties should be transferred to the Arbroath Common Good account from their present holding accounts:

**Inchcape Park, Ladyloan**

The land comprised within the park was acquired in three separate transactions. A plan is attached to this note showing the three areas (Plan 1 attached). The area coloured yellow was purchased under The Housing (Scotland) Acts 1925 and 1930 and although this area should be treated as HRA land, it has always been considered as Common Good. It is proposed that a letter is sent to Scottish Ministers confirming the position. The areas coloured red and blue were also acquired for statutory purposes, namely the Burgh Police (Sc) Act 1892 to 1911. Again, these areas have always been considered to be common good land.

It is proposed that the Council take the necessary steps to re-categorise the component parts of Inchcape Park in order that the holding department corresponds to the current use on the basis that the land has never been used for the statutory purpose for which it was required and to that end, the following transfers would be required:-

- Area (1) coloured blue transfers from Housing to Common Good
- Area (2) coloured blue transfers from Housing to Infrastructure Services (Roads)
- Area (3) coloured blue transfers from Housing to Roads
- Area coloured red transfers from Housing to Neighbourhood Services
- Area coloured yellow transfers from Housing to Common Good
- Area coloured grey transfers from Infrastructure Services (Roads) to Common Good

The area coloured brown was clearly intended as a gift to the Common Good but does not benefit from a recorded title. Law and Administration will work to rectify this.

**Elliot Links**

The bulk of the golf course (96.71 acres) was disposed by the Provost etc in 1906 to be held “in trust for behoof of the community of the said burgh” and thus is held on the Common Good account and Neighbourhood Services pays a rental of £10,000 per annum. However, a further area at Elliot Links of 46.85 acres was acquired in 1971 and is held on the Neighbourhood Services account. This additional land has been used for a number of purposes (including an area for the A92 dualling project) but part of the ground is used for the golf course and it is proposed that this area alone (extending to approximately 2.3 acres) should be transferred to the Common Good in order that all of the golf course is held on Common Good. Plan 2 (attached) shows the full extent of the golf course with the area proposed for transfer shown by hatching.

**Rest Gardens, Cairnie Loan**

This area was acquired as a public rest garden and was paid for by Arbroath Improvement Trust; which it is understood had similar purposes/objectives to the Common Good. Given this position it is proposed that the Council transfer this area to Arbroath Common Good.

**Ruxton Memorial**

Although the wording on the Memorial would indicate that it is a Common Good asset, it is presently located on land that is not Common Good. It was moved to its current location (shown on Plan 3 attached) in 1926 from Kirk Square. This land was acquired in 1937 but is not held on Common Good, the bulk of which was sold for housing to Buddon Limited in 1996. It is proposed that the area of land on which the memorial sits is listed as Common Good to ensure that the Memorial is treated as a Common Good asset.
On the basis of research, it is concluded that the following properties should be transferred from Arbroath Common Good to a departmental account of the Council’s General Fund:-

Arbroath Library

The building was acquired by virtue of a Disposition and Deed of Gift by David Corsar in favour of the Magistrates and Town Council of Arbroath recorded GRS Aberbrothock 10/10/1898 for behoof of the community but on condition that the Town Council applied for a library under the Public Libraries Consolidation (Scotland) Act 1887. Therefore, the property was acquired for a statutory purpose and has been used for such ever since acquisition (thus different to the Inchcape Park). Minute 611/47 deals with the contribution by the Town Council to the running cost of the library. No trace has been found in archived minutes of Common Good in connection with the library although it has been treated as Common Good property for more than fifty years. It is proposed that the Library be transferred to Neighbourhood Services as the department responsible for library provision within Angus. This proposal would result in a net annual saving to the Arbroath Common Good revenue account of £7,300 per annum. This is due to a reduction in rental income of £24,700 which is offset by a reduction in depreciation charges to the Common Good of £32,000 per annum.

Offices at Gravesend, 1 Market Place

The offices at Gravesend were formerly the Arbroath police station and cells with adjoining garage and fire station. The building was acquired by the Clerk to the Commissioners of Police of the burgh of Arbroath in 1871 and 1878 (part of which was disponed by the Provost etc). By the 1970s, the police had moved out to alternative premises and the building was occupied by WVS and Tay River Purification Board and consequently it is considered that title will have passed to Angus District Council and subsequently, Angus Council by virtue of reorganisation (the title deeds were obtained from Tayside Police). A variety of departments and groups have used the offices over the years. In 1987, the rent by the District Council’s Tourism Service was credited to the General Administration Account. No trace has been found of an appropriation to common good. In more recent years (since 2006), the building has been treated as common good and has attracted rental income. At present the first floor is used by Neighbourhood Services whilst the ground floor is rented out to a third party. The transfer to the General Fund would result in a loss of income of £17,300 per annum to the Common Good and a commensurate benefit to the Council’s General Fund. This property has been utilised by a number of departments in recent years, it is proposed that the asset once transferred to the General Fund is treated as a Corporate Property (Other Services), with the third party annual rental @ £9,500 per annum being credited to the Other Services budget.

Queen’s Drive Recreation Area

The whole of this area including the former Seaforth Hotel was acquired in 1933 for £2,784 and therefore was not a gift. The hotel was sold the following year by public roup. Part of the site comprising the former outdoor pool was sold in 1982 to the Trustees of the firm of Smokeys. The sale proceeds of £60,000 were credited to Common Good. In 1992, the ADC bought back part of the building from Hynd Brothers (Entertainment) Ltd. Minute 934/92 indicates that the costs from demolition were to be met from the planning budget. The Common Good fund did not pay the purchase price of £10,000. Five years later, Angus Council sold the bowling alley to MC Leisure (Arbroath) Ltd who had been leasing the property since 1994. ACGF was not credited with the sale price of £50,000. After investigation it is concluded that this area is currently incorrectly held on the Common Good account and should be transferred to an appropriate departmental budget, namely Neighbourhood Services. Given the time lapsed, it is not intended that the £60,000 benefit received by the Common Good in 1982 be reversed and returned to the General Fund. If transferred, the Common Good will suffer a loss of rental income of £440 per annum.