

# Common Good – a potted history

- Common Good (CG) & Trusts are mutually exclusive
- Circa 1200s onward - Crown Grants/Burgh Charter to administer Burgh and create Crown Revenue
- Surplus to common fund = CG (owned by Burgh)
- Burghs reformed from 1830s & abolished under Local Government (Scotland) Act 1973
- CG transferred to District Council and later TMC
- TMC has a statutory duty when administering CG to have regard to the interests of the inhabitants of the area to which the common good related prior to 16th May 1975

# Common Good – what does it look like?

- No statutory definition – sources include
  - i) Burgh Charters – Mosset Park
  - ii) Assets of former civic use – Dufftown Clock Tower
  - iii) Assets used from time immemorial for public purposes – various parks
  - iv) Gifts by philanthropists – Forres Golf Course

# Continued

- Alienable v Inalienable
- Inalienable requires court consent after 'due regard'
- Low income yet high admin costs
- Soon to be a statutory list of CG assets
- Used for non statutory 'nice to haves'
- Only former Burghs can have CG Assets  
Aberlour, Buckie, Burghead, Cullen, Dufftown  
Elgin, Findochty, Forres, Keith, Lossiemouth,  
Portknockie, Rothes

## **Common Good myths**

- CG owned by former Burgh
- All former Burgh property is CG
- Can't sell it
- New CG assets can be created
- Former CG assets can be revert to CG status

## **Common Good truths**

- Due regard
- Separate accounting
- CG can be subject to CAT

# What is a Trust?

## **The Cast**

Truster - Person who constituted the Trust

Trustee – Person with legal title to the Trust Property

Beneficiary – Person who benefits from Trust

## **The Props**

Assets – the stuff

Trust Deed – the paperwork

Trust Purposes – the rules

# **The Essentials**

Assets

Trustees

Beneficiary

Purposes

If any of the 4 essentials are missing then either

- The trust never was, or
- The trust has ceased to be

## **Recent Examples**

9 former Trusts including Duff of Dipple Bequest and The Falconer Museum Trust have been de-registered by OSCR as they were 'wound-up' due to having no assets

# Public v Charitable

- all Trusts involving the Moray Council are Public Trusts, and
- most are also Charitable Trusts

*because*

- they benefit a section of the public rather than private individuals, and
- most have charitable purposes

# **What Public Trusts does the Council Hold?**

TMC administers 65 Trusts (60 sole Trustee & 5 joint)

- Funds ranging from £9 to over £1/2 million
- Property Trusts
- Value 2016/17 £8m +
- Various Purposes – discuss
- Signpost to Moray Council Website –

[http://www.moray.gov.uk/moray\\_standard/page\\_58388.html](http://www.moray.gov.uk/moray_standard/page_58388.html)



# Trust Examples

## Funds

- Auchernack £500k +
- Banffshire £500k +
- Dundurcus Bede Riggs Bequest for Poor £44

## Property

- Diamond Jubilee Cottages - Elgin
- Cooper Park & Grant Lodge – Elgin
- Grant Park – Forres

## Other

- Arthur Stuart Murdoch Trust – Findhorn Fishing Rights

# **Who exactly are the Trustees?**

Depends what Trust Deed says:

If council are appointed Trustee then the Trustee is the body corporate (Full Council). In practice this is delegated, usually to

- P& R Committee, or sometimes to
- Service Committee

Alternatively the Deed may name office holders e.g. Provost in which case the Trustees are:

- ex officio members

Occasionally external Trustees also appointed e.g.

- Ministers/Chair of Parish Council

# **(Non P&R) Trustee Examples**

Auchernack – Forres Members & Chair of FCC

Banffshire Educational Trust – 3 members from TMC & 3 members from Aberdeenshire Council

Lawtie – Senior Member Keith & Cullen, Chair of Children & Young People, Convenor

Arthur Stuart Murdoch Trust – Forres Member, Chair FCC, Minsters Rafford & Forres, Rector Forres Academy

# Management

- P&R 8<sup>th</sup> Oct 2013
  - If Trust Deeds permits & Trustees unanimous then capital may be used
  - Where deed prevents capital expenditure the whole annual income may be disbursed
- Annual Accounts
- Recharge
- Trust Reorganisation

## **Committee Members have 2 distinct roles:**

- Trustees - in relation to *administration* of specific trusts in terms of the trust purposes *distinguishable from*
- Committee Members in relation to *policy and management* of the trust portfolio in terms of council policy

## **Conflict**

Arises in three ways:

- direct financial gain/benefit to the trustee
- indirect financial gain/benefit to the trustee
- conflicts of loyalty.

## **Extract from Councilors' Code of Conduct:**

3.17 You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

# **Problems in Trust Administration**

Some Trusts run efficiently but these are the exception. Typical problems we encounter:

- Depleted balances
- Missing or incomplete paperwork
- Outdated or unclear purposes
- Hard to identify suitable beneficiaries
- High administrative costs



# QUESTION TIME

