**COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015**

**COMMON GOOD CONSULTATION**

**INTRODUCTION**

There is no formal statutory definition of Common Good. It is not a separate legal entity in its own right. Property is not “owned by the Common Good”. It is owned by the Local Authority, but the Authority may be legally restricted in the uses to which it can put such property, or whether it can dispose of it, if it is considered to be Common Good.

**WHAT IS COMMON GOOD?**

Basically, property which was owned by one of the former Royal Burghs (usually taken to mean held by the old Town or Burgh Councils) would generally be considered to be Common Good, though there are some exceptions to that rule- the most frequently encountered one being where an asset was acquired by a Local Authority for a specific statutory purpose.

Common Good assets are generally thought of mainly in terms of land and buildings, but can include non-property assets such as paintings and sculptures, historic documents, precious metals such as cups, medals and civic regalia, and money in the form of a Common Good fund.

**ALIENABLE OR INALIENABLE**

Property that falls into the ambit of Common Good will either be deemed to be alienable, or inalienable- that is to say, the Council can sell or otherwise dispose of it (such as by lease) or it cannot. As with the definition of Common Good itself, there is no clearly expressed definition of what would make such land inalienable. The broad test of whether Common Good property is inalienable can be summarised as where the local community have exercised rights in or over the land “from time immemorial”- in other words, for as long as anyone can remember; where the property been effectively dedicated to a public use by the Local Authority themselves- for example Town Houses and Council Chambers; or where inalienability has arisen from the terms of the deed granting title itself- such as wording which effectively binds the Council to hold the land in trust for the local community.

Where there is deemed to be a doubt as to the right of the Council to sell or lease the subjects, (ie the suggestion is that it is inalienable) then the Council would generally require to seek court authorisation in terms of S75(2) of the Local Government (Scotland) Act 1973 to enable such disposal.

**REVIEW OF & PUBLIC CONSULTATION ON COMMON GOOD ASSETS**

The Community Empowerment (Scotland) Act 2015 imposes duties on Local Authorities to prepare and publish lists of Common Good assets held by them, which lists require to be the subject of public consultation before they are finalised.

The attached is the current proposed list of Common Good assets held by East Lothian Council, on which comments from the General Public are now being invited. In additional to the physical heritable assets, such as land and buildings, the list also includes certain moveable assets such as paintings, chains of office and the like. The Council also holds cash assets in Common Good accounts.

At the present time there are four active Common Good accounts which hold and administer cash funds- Musselburgh, Haddington, Dunbar and North Berwick. The amount of money held in these accounts varies from time to time and so specific sums are not specified in the present consultation document.