

Common Good

A Quick Guide

Version 5

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Your Common Good

Community ownership is nothing new and it is not restricted to a few crofting communities in the far north west of Scotland. In your community you most probably have property that already belongs to you, the people. One important element of this is Common Good land and property, much of which was granted to the Burghs of Scotland in their original charters and gifted to the people in subsequent years.

This property represents a potential source of wealth and investment for the public good of your community. In recent years, however, a worrying trend of disappearing assets, shoddy accounting, poor record-keeping and lack of awareness has become evident.

Properly accounted for and properly managed, Scotland's Common Good can be used to revitalise communities and return to them the autonomy and initiative after years of municipal maladministration.

Read this Quick Guide and join the campaign to identify, document and restore your common heritage.

What is the Common Good?

One answer to this question is contained in Green's Encyclopædia of 1910;

The common good of a burgh consists of the entire property of the burgh which is held by the corporation for behoof of the community.
Green's Encyclopædia of the Law of Scotland Vol III, edited by John Chisholm. William Green and Sons, 1910

More recently, in a Scottish Parliamentary answer, a more nuanced definition was provided;

S2W-29685 - Campbell Martin (West of Scotland) (Ind) (Date Lodged 8 November 2006) : *To ask the Scottish Executive what constitutes a common good asset and how such assets differ from property or land owned by a local authority.*

Answered by Mr Tom McCabe (17 November 2006): *The Common Good originated as revenues from properties belonging to the early Burghs of Scotland. The Common Good, as these revenues were then termed, is of great antiquity and there is no equivalent in English local government although the term remains current in Scotland. Essentially, the Common Good denoted all property of a Burgh not acquired under statutory powers or held under special trusts.*

This latter definition reflects the case law definition provided by Lord Wark in the case of *The Provost, Magistrates and Councillors of the Royal Burgh of Banff and Others vs. Ruthin Castle Limited, 1943*. Note that property in this context should be read to mean both heritable and moveable property.



Map showing land acquired by Edinburgh Common Good Fund to construct the New Town (yellow), Common Good land of Calton Hill (brown) and Royal Burgh (red hatch).

Origins

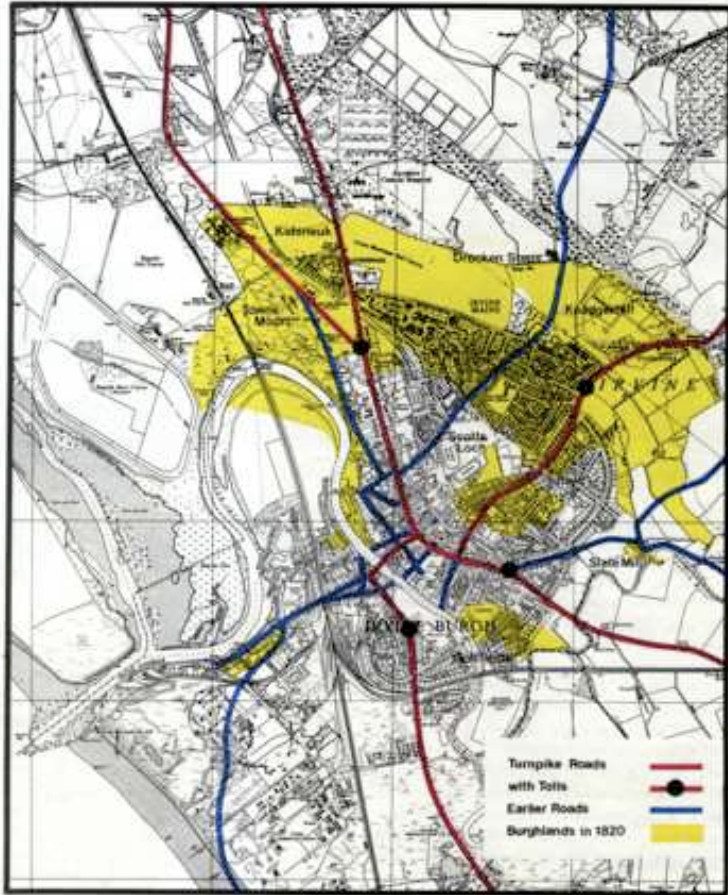
Common Good was a phrase coined as early as the 15th century to describe the purposes for which Burghs held assets and earned revenues under the terms of their Charters.

Common Good Funds emerged in the early development of burghs long before there was any statutory framework for local government. It was made clear in the Common Good Act of 1491 that the revenues from burgh property and various taxes and levies was to be

used for the “common good of the town”. Up until the 19th century, when local government was more clearly organised and given specific statutory functions together with the statutory means to raise taxes, all burgh property and revenue was deemed common good. As statutes covering public health, police, housing, sanitation and other such matters emerged, local government grew in scale and raised a correspondingly greater proportion of its income from rates. Property acquired using statutory powers contained in specific Acts (for example, the Edinburgh Improvement Acts, Planning Acts and Housing Acts) did not form part of the common good. Thus over time as local government expanded, the Common Good Fund (which consisted of a range of moveable and heritable assets of the burgh), became a smaller and smaller element in the total finances of the burgh.

The 196 burghs specified in the Local Government (Scotland) Act 1947 and which survived until 1975 when their Town Councils were wound up, represent the most recent and well documented examples of burghs. Specific provisions were made in the Local Government (Scotland) Acts of 1973 and 1994 for these burghs’ Common Good Funds to be transferred to District Councils and, later, Scotland’s Unitary Authorities.

There is, however, other common good property owned by burghs which never had Town Councils and land owned by former Parish Councils and County Councils purchased or gifted for the benefit of a defined group of people (in a village or town). Such other classes, however, are far less clearly defined in either statute or case law. This Quick Guide concentrates on the 196 burghs which had Town Councils up until 1975.



Map showing extent of Irvine's Common Good Land in 1820 (from *The History of Irvine, Royal Burgh and New Town* by John Strawhorn).

Who owns the assets of the Common Good Fund?

Legally, all the property of the Fund is owned by the local authority. In the case of land and buildings (heritable property), legal title is held by the authority and in the case of moveable assets (heirlooms, chains and robes of office, furnishings, cash and securities etc.) it is also the property of the authority. However, authorities are constrained in various ways in how they administer such property and in how they are permitted to dispose of it since it is held on behalf of the inhabitants of the burgh. In this sense it belongs to those inhabitants in the same way as property legally owned by a Trust belongs to the beneficiaries or a bank account held by a parent on behalf of a child belongs to the child.

How do I find out about the Common Good Fund?

If you live in any of the 196 burghs listed in Annex 1, your local authority should publish a set of Annual Accounts and should provide a list of assets owned by the Fund. Unfortunately, Councils vary widely in their ability to do this with any accuracy. Read *Common Good Land in Scotland. A Review and Critique* for evidence of this (see Further Information on page 6).

This means that if you wish to identify common good assets or enter into any discussions about how they are being used or the finances administered, you may have to do some research of your own. The following steps are designed to act as a guide for doing this.

THE BOTTOM LINE.....is that you are looking for property which, on 15 May 1975,

- was owned by the Town Council (may be in name of Magistrates, Corporation etc.)
- had been acquired by them either by gift or acquisition
- had not been acquired using statutory powers (the title deeds will usually narrate if in fact it was).
- was not held by a constituted Trust (again the title deeds will reveal if this is the case)

All such property should have continued to be held in the Common Good Fund. If disposed of since 1975, the proper legal process should have been followed and financial receipts should have been credited to the Common Good Fund.

Furthermore any property acquired **at any time** and financed using the Common Good Fund forms part of the Common Good. For example, the land for the New Town of Edinburgh was acquired with money from the Common Good Fund and thus all land not subsequently disposed of remains part of the Common Good.

1. Begin with what is admitted by the local authority. This may be nothing at all, a partial or incomplete list, or it may be quite a long list. It is useful to go back to the Annual Report and Accounts of the District Council of 1975 onwards since some Common Good property has “gone missing” since then.
2. Consult local history sources including books, individuals with knowledge (for example those who may have worked for the Town Council before 1975), local library collections and the works of local history societies.



3. Consult the burgh records. Many of these are held by local authority archive services. You can often find out about them on the Council's website or you can search a wide range of archival collections at www.nra.nationalarchives.gov.uk/nra. The National Archives of Scotland (www.nas.gov.uk) also hold some burgh records.
4. To identify the full legal history and status of specific properties, you will need to consult the Register of Sasines, the Land Register and the Burgh Registers (most of the latter were

discontinued around 1930). Searches here will allow you to locate the title deeds - the holy grail of property - and to find out exactly how and on what terms property was acquired (see example in Annex 2 about Laighills Park, Dunblane). The Registers of Scotland hold the Sasines and Land Registers (www.ros.gov.uk).

A full account of how to do this cannot be provided in this short guide but the author can provide professional assistance in this. Briefly, what one wants to do is find out as much as one can before consulting the Register of Sasines in terms of who owned land, who sold it, when, and by what name the property was known. If this is reasonably well known, you can consult the Minute Books in the National Archives of Scotland. If less is known about the property, it will be useful to obtain a copy of the Search Sheet for the burgh (this is a very useful investment in any event). It contains a sequential list of all property transactions of the Town Council.

Remember, that the Common Good Fund consists of moveable assets as well as heritable assets. Tracing the fate of moveable assets is a little bit more tricky. Probably the best place to concentrate is the records of the Town Council.

Remember also that it is important to trace the fate of such assets and the fate of the finances of the Common Good Fund since 1975 and this can best be done by consulting the Annual Reports of (first) the District Council from 1975 to 1996 and (second) of the current Local Authority since 1996. Is it clear that all assets are accounted for in the Accounts? Are there unexplained discrepancies from year to year?

Finally, the results of this research (which can be carried out by a team of people) should be compiled in a dossier of evidence. This can be shared with others in the community through a display or

exhibition, articles in the local press, or published on the internet. It should be sent to your Local Authority to seek their view on its validity.

Ultimately, you should be seeking to assert and recover the assets and value of your Common Good Fund.

Useful Contacts

National Archives of Scotland
HM General Register House
2 Princes Street
Edinburgh
EH1 3YY
tel: 0131 535 1314
web: www.nas.gov.uk

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National Register of Archives

www.nationalarchives.gov.uk/nra

Registers of Scotland
Erskine House
68 Queen Street
Edinburgh
EH2 4NF
tel: 0845 607 0161

9 George Square
Glasgow
G2 1DY
tel: 0845 607 0164

web: www.ros.gov.uk

Further Information

For further information, see www.scottishcommons.org/commongood

Common Good Land, A Review and Critique by Andy Wightman and James Perman is available at the above website to download.

Community Land Rights. A Citizen's Guide is a much fuller and detailed guide to identifying, documenting and researching a range of community land rights. See www.andywightman.com/shop for further details.

Annex 1

List of Burghs in First Schedule to the Local Government (Scotland) Act 1947

1. Aberchirder
2. Aberdeen
3. Aberfeldy
4. Aberlour
5. Abernethy
6. Airdrie
7. Alloa
8. Alva
9. Alyth
10. Annan
11. Arbroath
12. Ardrrossan
13. Armadale
14. Auchterarder
15. Auchtermuchty
16. Ayr
17. Ballater
18. Banchory
19. Banff
20. Barrhead
21. Bathgate
22. Biggar
23. Blairgowrie and Rattray
24. Bo'ness
25. Bonnyrigg and Lasswade
26. Brechin
27. Bridge of Allan
28. Buckhaven and Methil
29. Buckie
30. Burghead
31. Burntisland
32. Callander
33. Campbeltown
34. Carnoustie
35. Castle Douglas
36. Clydebank
37. Coatbridge
38. Cockenzie and Port Seton
39. Coldstream
40. Coupar Angus
41. Cove and Kilcreggan
42. Cowdenbeath
43. Crail
44. Crieff
45. Cromarty
46. Cullen
47. Culross
48. Cumnock and Holmhead
49. Cupar
50. Dalbeattie
51. Dalkeith
52. Darvel
53. Denny and Dunipace
54. Dingwall
55. Dollar
56. Dornoch
57. Doune
58. Dufftown
59. Dumbarton
60. Dumfries
61. Dunbar
62. Dunblane
63. Dundee
64. Dunoon
65. Duns
66. Dunfermline
67. East Linton
68. Edinburgh
69. Elgin
70. Elie and Earlsferry
71. Ellon
72. Eyemouth
73. Falkirk
74. Falkland
75. Findochty
76. Forfar
77. Forres
78. Fortrose
79. Fort William
80. Fraserburgh
81. Galashiels
82. Galston
83. Gatehouse
84. Girvan
85. Glasgow
86. Gourrock
87. Grangemouth
88. Grantown-on-Spey
89. Greenock
90. Haddington
91. Hamilton
92. Hawick
93. Helensburgh
94. Huntly

- | | | |
|---|-----------------------------------|-------------------|
| 95. Innerleithen | 129. Linlithgow | 163. Port Glasgow |
| 96. Inveraray | 130. Loanhead | 164. Portknockie |
| 97. Inverbervie | 131. Lochgelly | 165. Portsoy |
| 98. Invergordon | 132. Lochgilphead | 166. Prestonpans |
| 99. Inverkeithing | 133. Lochmaben | 167. Prestwick |
| 100. Inverness | 134. Lockerbie | 168. Queensferry |
| 101. Inverurie | 135. Lossiemouth and Branderburgh | 169. Renfrew |
| 102. Irvine | 136. Macduff | 170. Rosehearty |
| 103. Jedburgh | 137. Markinch | 171. Rothes |
| 104. Johnstone | 138. Maybole | 172. Rothesay |
| 105. Keith | 139. Melrose | 173. Rutherglen |
| 106. Kelso | 140. Millport | 174. St. Andrews |
| 107. Kilmarnock | 141. Milngavie | 175. St. Monance |
| 108. Kilrenny, Anstruther Easter & Wester | 142. Moffat | 176. Saltcoats |
| 109. Kilsyth | 143. Moniefieth | 177. Sanquhar |
| 110. Kilwinning | 144. Montrose | 178. Selkirk |
| 111. Kinghorn | 145. Motherwell and Wishaw | 179. Stewarton |
| 112. Kingussie | 146. Musselburgh | 180. Stirling |
| 113. Kinross | 147. Nairn | 181. Stonehaven |
| 114. Kintore | 148. Newburgh | 182. Stornoway |
| 115. Kirkcaldy | 149. New Galloway | 183. Stranraer |
| 116. Kirkcudbright | 150. Newmilns and Greenholm | 184. Stromness |
| 117. Kirkintilloch | 151. Newport | 185. Tain |
| 118. Kirkwall | 152. Newton-Stewart | 186. Tayport |
| 119. Kirriemuir | 153. North Berwick | 187. Thurso |
| 120. Ladybank | 154. Oban | 188. Tillicoultry |
| 121. Lanark | 155. Oldmeldrum | 189. Tobermory |
| 122. Langholm | 156. Paisley | 190. Tranent |
| 123. Largs | 157. Peebles | 191. Troon |
| 124. Lauder | 158. Penicuik | 192. Turriff |
| 125. Laurencekirk | 159. Perth | 193. Whitburn |
| 126. Lerwick | 160. Peterhead | 194. Whithorn |
| 127. Leslie | 161. Pitlochry | 195. Wick |
| 128. Leven | 162. Pittenweem | 196. Wigtown |

Annex 2

Brief Case Study of Laighills Park, Dunblane

Stirling Council do not admit the existence of a Common Good Fund for Dunblane in the Annual Accounts for 2005-06. However, Dunblane is a Burgh and had a Town Council up until 1975. It is extremely unlikely that there is no property defined as Common Good in Dunblane. The following story demonstrates that this is indeed the case.

In early 2006, I met a resident of Dunblane and we got talking about the Common Good. His view was that the Laighills (a large area of parkland to the north west of Dunblane) belonged to the town. We decided to make some initial enquiries. To begin with, he uncovered a local history volume which reported that,

The Laighills were the site of the town's first golf course, laid out as a nine hole course in 1892, and in use until the present course was built in 1923. The club house was at the foot of Laighill Loan.

In 1909 Mr RH Martin of New York, a native of Dunblane, bought the Laighills for £1,000 from Cromlix Estate, and presented them as a gift to the people of Dunblane. There had been earlier plans to build houses here.

This extract demonstrated the usefulness of local history sources since it provided a name (Mr RH Martin), a year (1909) and a

property (Cromlix Estate) that could be used to conduct further research in the Register of Sasines.

I then located the Search Sheet for the Burgh of Dunblane in the Register of Sasines (Search Sheet number 2122 in the County of Perthshire). On page 3 of the Search Sheet there is a Minute (a short extract of the full deed) referring to the subjects of "*Laighills*", part of the "*lands and estate of Cromlix*" accompanied by a detailed description of the boundaries. The Minute begins thus,

II

(I.) parts of the lands and Estate of CROMLIX, known as LICHELL or the LAIGHILLS, which lands of Laighills are divided into 2 parts, viz, (1) a portion to the east of the line of the Caledonian Railway Company, (2) a portion to the west of said line of said Railway Company, and bounded on the north, north west, west and south west by the River Allan following the curve thereof until the point where the Laighill Burn joins said River and again on the east by said River until it

Then at the end of the Minute there is real burden narrated to the effect that the land shall be used as a Public Park and Recreation Ground, viz.

William Henry Hay Drummond, therein named Arthur William Henry Hay, and the National Telephone Company, Limited, and under real burden that said lands disposed shall be used as a Public Park and Recreation ground).

Following this is the Minute of the disposition or sale, from Arthur William Henry Hay Drummond of Cromlix (with consent of various third parties with an interest in the property) to Provost, Magistrates and Councillors of the Burgh of Dunblane. It begins thus,

Il. From 55. 186.
98 1911 Aug 14 2. Disp. by ARTHUR WILLIAM HENRY HAY DRUMMOND of Cromlix, with consent of and by (1) Trustees of the deceased JOHN WILLISON, Farmer, Acharu, Parish of Killin and Parishholm, Parish of Douglas (in right to the extent of £9900, of Bond, dated 3rd, and recorded in this Register 13th Apr. 1883, for £15,000, by the Hon. Arthur Drummond of Cromlix, with consent, to Dugald Stuart), (2) AGNES

This Minute contains the evidence we were looking for, namely that the land was disposed to the Provost, Magistrates and Councillors of the Burgh of Dunblane.

Arthur William Henry Hay Drummond, to the effect of dis-
 burdening the lands and others after mentioned of said
 respective securities—To The Provost, Magistrates and
 Councillors of the Burgh of Dunblane,—of said Burgh Dated
 Jun. 20, 25 and 28 and Jul 1, 3, 4, 6, 7, 13, 18, 24 and 27,
 1911; with Warrant of Registration thereon, on behalf of said
 Provost, Magistrates and Councillors.

So it seemed that we had located the relevant deed. Our next step was to go to the National Archives of Scotland and obtain a copy of the full title deed (the extracts above are from the Minute or precis contained in the Search Sheet). This would hopefully explain what had happened to our friend Mr Martin who did not appear to be a party to the sale.

In the National Archives of Scotland, we found the deed which begins,

Disposition by Arthur William Hay
 Drummond and others to The Provost,
 Magistrates and Councillors of the Burgh of
 Dunblane.

The Deed is 28 pages long deed and the first 12 pages are concerned with outlining the legal and financial positions of the seller, Trustees and others. The juicy bit (the dispositive clause) is at the foot of the reverse of Folio 44 (pages are numbered as physical pages with each page having a front and a reverse - a recto and a verso).

"In consideration of the sum of Nine
 hundred and forty pounds Sterling
 instantly paid to me the said Honourable
 Arthur William Henry Hay Drummond by
 the Provost Magistrates and Councillors of
 the Burgh of Dunblane said sum being
 provided to the latter by Robert Hay Martin
 Asbestos Mine Owner New York United
 States of America a native of Dunblane as a
 gift for the purpose of enabling the said
 Provost Magistrates and Councillors to
 acquire the said lands and others for the
 public behoof as the price of the said lands
 and others and of....."

This provided the explanation we were looking for. Robert Hay Martin actually provided a gift of money to the Burgh to acquire the land.

Then the burdens are narrated beginning at the very foot of Folio 47 front,

"...and under the special condition that the
 said lands hereby disposed shall be used
 as a Public Park and Recreation Ground for

the public behoof and shall not be used for building dwelling houses thereon or for any other purposes than of a Public Park and Recreation Ground.”

Thus the history book was a bit inaccurate since Martin gifted not the land but the money to acquire the land. Nevertheless it was clear that Laighill is unambiguously part of the Common Good of Dunblane. Our investigations ended there.

POSTSCRIPT

The story can be continued.

Among the next tasks still to be undertaken are to check whether there have been any breaches of these conditions since the time of the original acquisition and to check that the proceeds of any land subsequently sold were credited to the Common Good Fund. Given that Stirling Council do not admit to a Common Good Fund for Dunblane, there is still some further work to do!

This kind of research needs to be replicated (if not already done) in burghs across Scotland.

*Andy Wightman
Edinburgh
July 2009*