

Trusts & Bequests - Review

Report by Director, Corporate Resources

1 Purpose of Report

To provide an update concerning a previous decision relating to the establishment of a Short Life Working Group concerning Trusts and Bequests and Common Good Funds vested in the Council and Mining Community Funds held solely (and jointly) in the Council's name (and that of the Coaling Company).

2 Background

On 23 February 2011, a Seminar of the Committee made a series of recommendations as regards suggestions that measures be taken to rationalise the various funds. However, the recommendations were not approved. Instead, a Short Life Working Group was formed which met just once, on 3 May 2011, in order to review the position prior to any deliberation. However, no further progress was made.

Copies of the reports of the Seminar and Meeting are attached (**Appendices 1 and 2**).

3 Conclusions

The stage has been reached when resumption of consideration of the various aspects can proceed. Reports submitted under separate cover explore the various issues.

It is thought that action could be taken in respect of a number of the Funds as described in separate reports that will obviate the need for a further meeting / reformation of the Short Life Working Group.

7 Recommendations

It is recommended that the Committee note the report.

13 May 2013

Contact Person : R Attack Tel 0131 271 3161

Background Papers – attached.

APPENDIX 1

NOTE of SEMINAR of the MIDLOTHIAN COUNCIL GENERAL PURPOSES COMMITTEE CONCERNING COMMON GOOD FUNDS, TRUSTS AND BEQUESTS AND

MINING COMMUNITY FUNDS held in the Council Chambers,
Midlothian House, Buccleuch Street, Dalkeith on Wednesday
23 February 2011 at 10.00 am.

Present:- Councillors C Beattie, L Beattie, Bennett, Brown,
Milligan and Thompson.

Apologies for Absence:- Councillors Constable, Thacker
and Wilson.

Common Good
Funds, Trusts
and Bequests
and Mining
Community
Funds.

There was submitted report, dated 11 February 2011,
by the Director, Corporate Resources:-

- (a) confirming that on 7 December 2010, the Committee had agreed to continue consideration of his report, dated 23 November 2010, for this Seminar;
- (b) providing a synopsis of the various Trusts;
- (c) confirming the powers which were available to the Council to modify, transfer and amalgamate small trusts;
- (d) confirming the financial position relating to the various common good funds, trusts and bequests and mining community funds;
- (e) confirming the current position relating to disbursement to the Poor and those with health related needs not capable of being financed via the National Health Service, and
- (f) providing various options.

Appended to the Report were:-

- (i) reports, dated 23 November 2010, 27 September 2010 and 25 February 2010, by the Director, Corporate Resources, which had been considered by the Committee on 2 March, 2 November and 7 December 2010, respectively;

- (ii) a statement about the status of the various Common Good Funds, Trusts and Bequests and Mining Community Funds as at 31 March 2010; and
- (iii) an excerpt from the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, relating to the procedure for modifying, transferring or amalgamating Small Trusts ie those having an annual income not exceeding £5,000.

The Principal Solicitor spoke in amplification of the report. In particular, he referred to the need to establish, before consideration was given to (iii) above, that all reasonable efforts had to be made to ensure that, where possible, disbursements were made.

During discussion the following points were made:-

- (1) the income from the maintenance bequests generated very small levels of interest according to the capital sums involved;
- (2) Mayfield and Easthouses Community Council had made representations about the Mayfield Town Centre Project which had been financed from the Blinkbonny Drift Mine Fund and the matter had been raised with the Performance and Scrutiny Committee or the Council by Councillor L Beattie who had raised concerns also about the decision to transfer funding from the Oxenfoord Opencast Fund to the Dalkeith Common Good Fund; and made repeated unsuccessful requests for financial information relating to the former project;
- (3) Difficulties had been experienced in relation to the application of the criteria for the award of funding from the Midlothian Educational Trust; and, as a result the Education Division had not been pro-active in seeking potential beneficiaries;
- (4) public consultation including via the media and through advertisement may be appropriate;
- (5) the cost of making application to the Solicitor General for any alterations to Small Trusts would be restricted as no court process was involved;
- (6) there may be benefit in preparing a list of Trusts that were capable of alteration to good effect;
- (7) appropriate documentation was held in respect of the majority of the Small Trusts;
- (8) for Trusts valued at £1,500 in total, consideration could be given to their amalgamation;

- (9) further consultation could take place amongst Local Members and Community Councils as regards the Opencast Coal Funds;
- (10) further consultation could take place amongst Local Members, local medical practices, with NHS Lothian, the Social Work Division and the Chairman of Midlothian Community Health Trust as regards potential beneficiaries in relation to the Health related Trusts;
- (11) consideration could be given to the merger of the Fraser Hogg and Sir Samuel Chisholm Bequests for the poor of Dalkeith;
- (12) contact could be made with the Head Teacher, Tynewater Primary School concerning the reintroduction of the award of the Miss A Pringle Prize;
- (13) local Citizen Advice Bureaux had access to national databases or charitable giving;
- (14) at Cranston War Memorial, attention could be given to the improvement of the Memorial and its surrounds; and
- (15) as all appropriate documentation had been obtained, there was no reason why the MacFie Hall Trust could not be transferred to Scottish Borders Council.

In conclusion, the Members agreed to recommend, with reference to summary of Funds and Trusts, shown in the Appendix hereto, that:-

- (a) The status quo prevail in respect of the Dalkeith and Penicuik Common Good Funds ie benefit continue to be applied unequivocally for the benefit of the inhabitants of the former burghal areas;
- (b) Consideration be given to the alteration of the Terms of the Midlothian Educational Trust which currently provided for supplementary bursaries for higher education students, those undertaking a course of instruction whilst serving trade apprenticeships, student apprentices, educational excursions, provision of special equipment and promoting education in the visual arts, music and drama, all subject to satisfactory performance;
- (c) Tynewater Primary School be encouraged to reintroduce the award of the Miss A Pringle Prize;
- (d) (i) Consultation take place with a view to identifying potential beneficiaries in respect of the Small Trusts for (1) the Poor, namely:-

Sir Samuel Chisholm Bequest

Fraser Hogg Bequest.

Bonnyrigg John and Margaret Haig Bequest

Pathhead Earl of Stair Bequest

Loanhead Tod Bequest*; and

(2) medical expenses not covered by the National Health Service, namely:-

Bonnyrigg Area

Mrs E W Yorston Bequest

Cockpen and Lasswade and Falconer Trust; and

(ii) should that exercise not generate disbursements, consideration be given to modifying, transferring or amalgamating the respective Small Trusts;

- (e) The maintenance bequests namely the Allison and Ramsay Bequests, the Cranston War Memorial Fund and the Macfie Hall Trust be exhausted by one final payment in respect of the purpose for which each was given or where appropriate transferred to Scottish Borders Council;
- (f) The status quo prevail in respect of the Pentland House Fund, namely that it continue to be administered by the Manager for the benefit of the residents;
- (g) The status quo prevail in respect of the Opencast Funds ie via recommendations as regards the award of benefit by the Blinkbonny and Gourlaw Sub Committees ie for the improvement of the environment in the vicinity of, Blinkbonny and Monteith Houses; and Gourlaw, Newbigging and Shewington, respectively, and the Haul Routes to the Trunk Road (and job Creation at Blinkbonny Drift) ie following consultation with Local Members and Community Councils with a view to identifying potential projects; and
- (h) consultation take place with Local Members and Community Councils as regards potential projects in respect of Smeaton Open Cast Mine; a report back be made.

The meeting terminated at 10.35 am.

APPENDIX 2

Funds and Trusts – A Summary Common Good Funds

(a) Dalkeith

Closing balance	21,557.68	
Commitments 2010/2011	6,000.00	
Criteria		Disbursements to be made unequivocally for the benefit of the inhabitants of the former burghal area of Dalkeith.
Comments		The Gardening Competition will not be promoted in 2011.

(b) Penicuik Common Good Fund

Closing balance	4,032.52	
Commitments 2010/2011	2,200	
Criteria		Disbursements to be made unequivocally for the benefit of the inhabitants of the former burghal area of Penicuik

MISCELLANEOUS TRUSTS AND BEQUESTS

Midlothian Educational Trust

Closing balance	9,267.76	
Commitments 2010/2011	Nil	
Criteria		For supplementary bursaries for higher education students, those undertaking a course of instruction whilst serving trade apprenticeships, student apprentices, educational excursions, provision of special equipment and promoting education in the visual arts, music and drama, all subject to satisfactory performance.
Comments		The Director, Education asked if it would be possible to make up a new criteria for applications.

Ainslie Bequest

(administered by the Church of Scotland and interest paid annually to Midlothian Council)

Closing balance	16.70
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Commitments 2010/2011	16.70
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Criteria	For poor people ie natives of Dalkeith until death or departure from the former burghal area, and who are of good character and strictly sober habits, and who, from reverses of fortune, otherwise have been reduced to necessitous circumstances, and who are not in receipt of aid from the funds destined for the support of the poor.
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Comments	A request has been made for a copy of the founding document with a view to ascertaining whether there it may be possible to alter the terms.
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Sir Samuel Chisholm Bequest

Closing balance	1,234.73
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Commitments 2010/2011	67.48
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Criteria	For the Poor of Dalkeith
Comments	<p>The sum of £1,000 is to be invested and the interest expended annually in making an annual gift to the Poor of the Burgh at such time and in such manner in each year as the Council shall from time to time consider most expedient ie sober, honest, and well behaved persons, in necessitous circumstances, resident within the Burgh.</p> <p>in considering application for the benefit of the bequest, preference be given to those (a) who are natives of the burgh or who have been resident therein for a number of years; (b) who are not old age pensioners; and (c) who are not in receipt of relief;</p>

Fraser Hogg Bequest

Closing balance	4,365.59
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Commitments 2010/2011	105.82
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Criteria	For the Benefit of the Poor in Dalkeith
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Comments	Custom and practice has been to disburse only revenue income. For those in necessitous circumstances and of sober and honest and well behaved nature.
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Mrs E W Yorston Bequest

Closing balance	4,672.48
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Commitments 2010/2011

0.00

Criteria

For poor young persons belonging to the former Burghal area of Lasswade who had suffered from infectious diseases and who were in a state of convalescence with funds to enable them to pay for the cost of a suitable rest in the country or stay at a Convalescent Home.

Comments

John & Margaret Haig Bequest

Closing balance

956.25

Commitments 2010/2011

0.00

Criteria

Annual interest of the bequeathed sum of £250 distributed among deserving poor persons of 70 years of age or over resident within the former Bonnyrigg Burghal Ward

Comments

**Cockpen and Lasswade and
Falconer Trust**

Closing balance 39,890.12

Commitments 2010/2011 0.00

Criteria

in respect of all or any of the following purposes outwith the National Health Service to or for the benefit of persons residing within the burghal area and the immediately adjoining District (in need of any one or more of the benefits hereinafter set forth) and unable in the opinion of the District Council reasonably to afford the whole cost thereof namely:

- (a) for payment of the expenses of administration of the Fund;
- (b) to provide or pay for such persons which may not be available from the National Health Service;
- (c) to help towards treatment for such persons in a private Nursing Home or private Ward of a Hospital;
- (d) to help provide or pay for towards medical or surgical expenses or other articles which may assist the health or comfort of such persons sofar as such appliances and articles may not be available at the public expense;
- (e) to help pay for or towards the maintenance of such persons at Convalescent Homes or other suitable establishments and for or towards their transport thereto and back so far as such maintenance and transport may not be available at the public expense;
- (f) to help to pay for or towards transport for such persons to and from any place where they receive medical or surgical or nursing treatment sofar as such transport may not be available at public expense;
- (g) to provide extra food, clothing and comforts for such persons in their homes and elsewhere;
- (h) to provide or pay for or towards domestic help or other assistance for such persons;
- (i) to arrange for and pay towards the welfare of children during the illness of their parents or guardian.

Comments

The Council is bound to consult one or more persons out of the following four categories namely, a local Health Visitor or District Nurse or a local Parish Minister or a local Bank Manager or a local Medical Practitioner.

Earl of Stair Bequest

Closing balance 642.07

Commitments 2010/2011 0.00

Criteria Formerly the provision of logs for former estate workers. No use of the Fund has been made in recent times.

Allison Bequest

Income 1.49

Expenditure 1.74

Closing balance 100.00

Commitments 2010/2011 0.00

Criteria Interest on Capital sum of £100 applied annually for the maintenance of the Allison Tomb in Loanhead Cemetery.

Peter J Lyle Bequest

Income 7.21

Expenditure 7.21

Closing balance 485.98

Commitments 2010/2011 0.00

Criteria Investment income to be applied to Dalkeith Common Good Fund.

Ramsay Bequest

Income 2.11

Expenditure 2.11

Closing balance 136.16

Commitments 2010/2011 0.00

Criteria Interest on Capital sum of c£100 applied annually for the maintenance of the Burial Ground at Bowland, Stow, Scottish Borders.

Tod Bequest

Closing balance	1,082.33
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Commitments 2010/2011	0.00
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Criteria	For the best advantage of the poor in the Loanhead and Polton District with power to encroach on the Capital sum which failing to pay the Capital amount to the Royal Infirmary on such other charitable institution as the Council may agree on.
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Cranston War Memorial Fund

Income	3.75
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Expenditure	3.75
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Closing balance	101.05
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Commitments 2010/2011	0.00
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Criteria	Interest applied annually for the maintenance of the Memorial
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Macfie Hall Trust

Income	3.88
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Expenditure	3.88
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Closing balance	250.00
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Commitments 2010/2011	0.00
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Criteria	Interest applied annually for the maintenance of the Macfie Hall at Heriot, Scottish Borders.
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Pentland House Bequest

Income 994.60

Expenditure 0.00

Closing balance 20,791.78

Commitments 2010/2011 0.00

Criteria for facilities for the residents there.

Comments Administered by Manager of Pentland House in consultation with residents.

Miss A Pringle - Prize Fund

Income 2.25

Expenditure 0.00

Closing balance 193.80

Commitments 2010/2011 0.00

Criteria for an annual prize at Pathhead Primary School.

Comments Administered by Education Division

OPENCAST COAL FUNDS**New Farm Smeaton**

Closing balance 4,836.04

Commitments 2010/2011 3,500.00

Criteria For the benefit of the environment in the vicinity of the former opencast mine.

Monteith Drift Mine Fund

Closing balance 124,160.67

Commitments 2010/2011 109,314.77

Criteria For job creation in the vicinity of the Drift Mine, including Mayfield

Comments To be considered jointly with Blinkbonny and Monteith Homes funds

Gourlaw Opencast Community Fund

Closing balance 3,470.49

Commitments 2010/2011 0.00

Criteria For environmental improvements in the vicinity of the Open Cast and the haul route for the Trunk Road subject to approval of Coaling Company

Comments To be considered jointly with Newbigging/Shewington Funds

Newbigging/Shewington

Closing balance 276,022.58

Commitments 2010/2011 189,000.00

Criteria For environmental improvements in the vicinity of the Open Cast and the haul route for the Trunk Road subject to approval of Coaling Company.

Comments To be considered jointly with Gourlaw Funds

Oxenfoord

Closing balance 3,116.49

Commitments 2010/2011 3,116.49

Blinkbonny

Closing balance 363.08

Commitments 2010/2011 0.00

Criteria For environmental improvements in the vicinity of the Open Cast and the haul route for the Trunk Road subject to approval of Coaling Company

Comments To be considered jointly with Drift and Monteith Homes Fund

Monteith Houses

Closing balance	18,242.45
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Commitments 2010/2011	7,700.00
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Criteria	For environmental improvements in the vicinity of the Open Cast and the haul route for the Trunk Road subject to approval of Coaling Company
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Comments	To be considered jointly with Blinkbonny Drift and Blinkbonny Funds
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APPENDIX 2

Note of Meeting of Short Life Working Group on Trusts and Funds

administered by the Council held in the Committee Room, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 3 May 2011 at 11.35am.

Present: Councillor Beattie (Chair), Brown and Milligan

With reference to paragraph 4 of the Minutes of the General Purpose Committee of 5 April 2011, there was submitted report, dated 2 May 2011, by the Director, Corporate Resources, concerning the decision to establish this Short Life Working Group and confirming that:-

- (a) A Seminar of the General Purposes Committee had taken place on 23 February 2011, and it had been agreed to recommend as follows:-
 - (i) To maintain the *status quo* in respect of the Dalkeith and Penicuik Common Good Funds ie to continue to apply benefit unequivocally for the benefit of the inhabitants of the former burghal areas;
 - (ii) To remit the terms of the Midlothian Educational Trust to the Director, Education and children's Services for consideration and appropriate action;
 - (iii) To encourage Tynewater Primary School to reintroduce the award of the Miss A Pringle Prize;
 - (iv) To establish a Short Life Working Group, comprising the Chair and Councillors Brown and Milligan, to consider the administration and disbursement of the various Small Trusts, Bequests and Funds held by the Council;
 - (v) To maintain the *status quo* in respect of the Pentland House Fund; and
 - (vi) To maintain the *status quo*, in respect of the Opencast Funds (1) ie via recommendations as regards the award of benefit by the Blinkbonny and Gourlaw Sub Committees ie for the improvement of the environment in the vicinity of, Blinkbonny and Monteith Houses; and Gourlaw, Newbigging and Shewington, respectively, and the respective Haul Routes to the Trunk Road (and job Creation at Blinkbonny Drift); and (2) by decision of the Committee, in respect of Smeaton.
- (b) on 19 April the Audit Committee had agreed *inter alia* to request that the remit include an examination of the broader issues of internal control, processes and procedures across the council to ensure compliance with 'Following the Public Pound' requirements in all cases.
- (c) the background to the criteria of the various types of Fund or Trust;

- (d) current procedures relating to the award of benefit and the need for guidance as to the kind and level of the criteria to be employed in the future as regards the way in which disbursements ought to be made; and
- (e) it was intended to present the Group's recommendations to the General Purposes Committee on 7 June 2011.

Appended to the report was a Note of the Seminar referred to above.

Following introductory remarks by the Director, Corporate Resources, during which he indicated that he intended to prepare an action plan based on the decisions of this Audit Committee, involving input from staff in the appropriate disciplines in the Division; and the Chair during which he suggested *inter alia* that, if possible, the remit might be approached on a 'generic' approach on a cross disciplinary basis to these and other Trust related activities across the Council, the following points were made:-

- (1) subject to the need to be able to demonstrate that it had proved impossible to award benefit on the basis of the terms of the relative Small trust e.g. Poor of Dalkeith, Sick Poor of Bonnyrigg area, etc, the feasibility of amalgamating some of the small trusts and bequests on a local area or topic basis be investigated ie on the basis that care be taken to ensure that, where it was possible to identify descendents of beneficiaries, especially in relation to those trusts which related to sepulchre, appropriate consultation take place and, meantime, there be no public announcement about the availability of benefit ;
- (2) the feasibility of delegating power to Officers could be investigated in relation to the award of benefit directly eg by Social Workers, as regards support for the Poor and Sick Poor;
- (3) enquiries could be made of Officers involved in Housing Benefit, etc and any local organisations , with a view to identifying potential beneficiaries;
- (4) the bequests relating to the Burial Ground at Stow and the MacFie Hall in Heriot; and the Peter Lyle Bequest ought to be transferred to Scottish Borders Council and Dalkeith Common Good Fund, respectively without much further process;
- (5) contact could be made with the Agents for Stair Estates to determine their view on the disbursement of the Fund;
- (6) Officers could seek potential ways forward for the administration of the various small trusts and report back;
- (6) in relation to the Open Cast Funds, any community consultation as regards potential disbursements should be delayed pending the outcome of the deliberations of the Working Group.

The Meeting terminated at 12.05pm.