



**HAWICK COMMON GOOD FUND
SUB-COMMITTEE
TO BE HELD ON TUESDAY, 17TH
NOVEMBER, 2015**

**Please find attached the Briefing Note in respect of Item
No. 10 on the agenda for the above meeting**

10.	Hornshole (Pages 1 - 2) Consider a briefing note by the Managing Solicitor (Copy attached).	10 mins
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HAWICK COMMON GOOD FUND SUB-COMMITTEE 17 NOVEMBER 2015

The purpose of this note is to assist the Members in the discussion relative to this agenda item.

I understand that the Councils' Estate Section have already looked into this and their understanding is that the memorial was erected in 1901 on Land gifted by Captain Palmer Douglas. The Town Council took custody of the memorial on 10 November 1936 and the Council have been responsible for the maintenance of the Memorial and the surrounding Land ever since. There is however nothing in the Council records to suggest that the ownership of the land was transferred to the Council and as such it is the understanding of the Estates Section that ownership of the land probably still remains with the successors of the Palmer Douglas Family of Cavers or Cavers Estate.

A legal title search can be carried out to establish ownership of the Land. A detailed title search maybe required and this could be obtained from an independent firm of property title searchers. It maybe that in the circumstances an extensive search will be required and therefore the costs involved maybe in the region of £400 to £500.

In the event the current owners can be identified by way of a property search then an approach could be made to them with a view to having a title conveyed to the Council. Further costs are likely to be incurred here as I would expect that the current owners would look to the council to meet their legal fees in connection with the legal formalities required when transferring title to the Council.

In the event that the current owner cannot be identified by a title search then the Council could grant a title in favour of itself by way of a "non Domino" Disposition. In order to register such a Disposition at Register House in Edinburgh the Keeper at Register House would require evidence that the Council have taken all reasonable steps to identify and locate the current owner which is why it is important that an appropriate and extensive title search is carried out.

There is one further important point which requires to be taken into account. Following the abolition of Burghs in 1975, the Common Good Fund Committee cannot take title to this area of Land. Title will have to be taken in the name of Scottish Borders Council. As a Sub-Committee of the Council this Sub-Committee can make a decision to purchase or acquire the Land. If however the value or the cost of the Land exceeds £20,000- the decision has to be made by the Executive.

Ron Kirk, Managing Solicitor, Legal & Licensing Services, Scottish Borders Council

