



**SCOTTISH BORDERS COUNCIL
THURSDAY, 31 MARCH 2016**

Please find attached Report including missing Appendix 2 in respect Item 9 on the agenda for the above meeting

9.	Review of Heritable Assets in Former Burgh of Innerliethen (Pages 1 - 8) Consider report by Service Director Regulatory Services. (Copy attached.)	10 mins
----	--	---------

This page is intentionally left blank



REVIEW OF HERITABLE ASSETS IN FORMER BURGH OF INNERLEITHEN

Report by Service Director Regulatory Services

SCOTTISH BORDERS COUNCIL

31 MARCH 2016

1 PURPOSE AND SUMMARY

- 1.1 This report advises Members of the outcome of the work done to review the Heritable Property Assets held by the Council within the former Burgh of Innerleithen to ensure that the correct listing is recorded with the Accounts and Registers of the Council and seeks approval for the establishment of a Sub-Committee of Council for the Innerleithen Common Good Fund.**
- 1.2 The Council is required to maintain an Asset Register and an extract of this for the Town of Innerleithen is attached and forms Appendix 1 to this report. There is no direct correlation between the listed assets and a title-several assets may sit on one title and equally several titles may make up the landholding for one asset.
- 1.3 The Council's Legal Services have been reviewing the titles for all Assets held by the Council in all former Burghs to ensure that the Asset Registers are correct in relation to Common Good matters. The Legal Officers have been supported by Estates Officers and Financial Officers in this work which required examination of the former Burgh accounts as well as minutes.
- 1.4 From the work described above the following assets which are currently held on the General Account have been identified as assets which require to be recorded as Common Good assets:
 - Memorial Hall (IN014/01/ 02/03)

This asset was donated to the Burgh Council in 1919 and the donation included a declaration that the subjects were to be held for be hoof of (i.e. in trust for) the community of Innerleithen.
- 1.5 The Council's current Scheme of Administration does not provide for a Sub Committee to administer a Common Good Fund for the former Burgh of Innerleithen as at 1996 no assets were identified as being Common Good.
- 1.6 As these are amendments to the existing Register, the Chief Financial Officer will now put in place measures to amend the Register and the annual accounts accordingly.

2 RECOMMENDATIONS

2.1 I recommend that Council:

- (a) notes the amendment of the Council's Asset Register showing the Memorial Hall, Innerleithen as a Common Good Asset; and**
- (b) approves the establishment of a Sub-Committee of Council for the Innerleithen Common Good Fund, as detailed in Appendix 2, for inclusion in the Council's Scheme of Administration.**

3. REVIEW OF HERITABLE ASSETS IN FORMER BURGH OF INNERLEITHEN

- 3.1 Following significant and continuing pressure from residents and others in relation to the matter of Common Good Fund administration throughout Scotland in recent years, the Council's Legal Officers have been reviewing the titles etc for all assets held by the Council in all former Burgh's to determine the title position with regard to whether or not the records and Registers inherited by it from the previous Authorities were accurate.
- 3.2 As part of that programme the titles for all assets held on the Council Register which form part of the Annual Accounts were identified and located, and researched. Additionally the former minutes and accounts of the former Burgh Council were examined where questions arose as to the nature of the title of the asset. The appointed Solicitor was supported by staff from the Financial Services and Estates Divisions to assist with the review of the Accounts of the former Town Council.
- 3.3 Not all the former accounts have been available to this Authority following the various reorganisations of Local Government and the passage of time.
- 3.4 Assessments as to the nature of titles in each case were made with regards to the legal presumptions from Case Law as to what is Common Good, i.e. following the presumption in favour of former Burgh property being Common Good unless there is clear evidence to the contrary. Where there is no clear title and the Council has enjoyed open occupation it is assumed that the Royal Charter forms the basis of ownership.
- 3.5 An extract of the Council Asset Register for the town of Innerleithen as at 31 March 2013 is attached and forms Appendix 1 to this report. The research in relation to Innerleithen was completed and the resultant outcome is shown in the Appendix 1. The Common Good Fund Assets are also highlighted in the summary section of this report at 1.4.
- 3.6 As there is now an asset for Innerleithen Common Good Fund it is necessary to establish a Sub-Committee of Council to manage that asset. Details of the membership and remit of the Sub-Committee are given in Appendix 2.

4. IMPLICATIONS

4.1 Financial

The assets of the Innerleithen Common Good Fund will be properly accounted in the 2015/16 statutory accounts and the necessary adjustments to the Asset Registers and revenue budget will be actioned by the Chief Financial Officer.

4.2 Risk and Mitigations

- (a) The Council's primary aim is to have accurate Asset Registers. If the Council fails to amend the Asset Register to take account of the findings of the research it will be in breach of the accounts rules and the Council may be subject to adverse public comments and legal

challenge. The risk is mitigated by considering this report and the necessary changes to the Asset Register being carried out.

- (b) If the Council does not form a Sub Committee for the town of Innerleithen it may be seen to be acting less favourably to that community. This risk is eliminated by the creation of a Sub-Committee in similar terms to those already in the Scheme of Administration.

4.3 Acting Sustainably

There are no economic, social or environmental effects in accepting or rejecting the recommendation.

4.4 Carbon Management

There are no effects on carbon emissions in accepting or rejecting the recommendation.

4.5 Rural Proofing

This is not a new policy matter.

4.6 Changes to Scheme of Administration or Scheme of Delegation

The Council's Scheme of Administration requires to be amended by the setting up of an Innerleithen Common Good Fund Sub-Committee.

5 CONSULTATION

- 5.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

Approved by

Brian Frater

Service Director Regulatory Services

Signature

Author(s)

Name	Designation and Contact Number
Hannah MacLeod	01835 824000 (ext 5216)

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Hannah MacLeod can also give information on other language translations as well as providing additional copies.

Contact us at Hannah MacLeod, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 824000 (ext 5216), email Hannah.MacLeod@scotborders.gov.uk.

fldUPRN	Function	Estb Name	Address	Department	Change?	Reason	Title by which Acquired	Deeds Location
IN002/01	CULTURAL FACILITY	INNERLEITHEN LIBRARY	BUCCLEUCH STREET	E&LLL		Site acquired by Burgh Council 1904. Obligation to erect a Public Library, Lecture Room and Keeper's House and thereafter use only for that purpose, or as a self-contained dwelling house (or two). No reference to Libraries legislation in deed. No common good dedication either. See Minutes for further details. Ground at rear sold by BRC 1989	Feu Disp by curator bonis of Alexander Horsburgh Esq. of Horsburgh to Provost etc of Innerleithen recorded GRS (Peebles) 16th March 1904	HQ Pigeon 146
IN002/02	COMMUNITY FACILITY	LIBRARY COMMUNITY CENTRE	BUCCLEUCH STREET	E&LLL		Ditto	Ditto	Ditto
IN003/02	CULTURAL FACILITY	ST RONANS COMMUNITY WING	ST RONANS ROAD	E&LLL	No	Not owned by Burgh Council in 1975. Acquired by Peebles County Council 1952/1953	1. Disp by Provost etc of Innerleithen to Peebles County Council recorded GRS (Peebles) 26th November 1952 2. Disp by James B. Currie to Peebles County Council recorded GRS (Peebles) 22nd October 1953	HQ Pigeon 146
IN003/03	SCHOOLS	ST RONANS PRIMARY SCHOOL	ST RONANS ROAD	E&LLL	No	Ditto.	Ditto	Ditto
IN003/04	SCHOOLS	ST RONANS NURSEY SCHOOL	ST RONANS ROAD	E&LLL	No	Ditto	Ditto	Ditto
IN004/01	INDUSTRIAL	UNIT 1 LEITHEN WORKSHOPS	LEITHEN ROAD	PED	No	Not owned by Burgh Council in 1975. Formerly the Leithenside Primary School. First acquired 1880 by Parish School Board. Superiority acquired by Peebles County Council 1956	1. Feu Disp by Stevenson Macadam to School Board of Parish of Innerleithen recorded GRS (Peebles) 24th November 1880. 2. Disp. By James G L Brown to Peebles County Council recorded GRS (Peebles) 3rd July 1956	HQ Pigeon 147
IN004/02	INDUSTRIAL	UNIT 2 LEITHEN WORKSHOPS	LEITHEN ROAD	PED	No	Ditto	Ditto	Ditto
IN004/03	INDUSTRIAL	UNIT 3 LEITHEN WORKSHOPS	LEITHEN ROAD	PED	No	Ditto	Ditto	Ditto
IN004/04	INDUSTRIAL	UNIT 4 LEITHEN WORKSHOPS	LEITHEN ROAD	PED	No	Ditto	Ditto	Ditto
IN004/05	INDUSTRIAL	UNIT 5 LEITHEN WORKSHOPS	LEITHEN ROAD	PED	No	Ditto	Ditto	Ditto
IN006/01	PUBLIC CAR PARKS	TRAQUAIR ROAD CAR PARK	TRAQUAIR ROAD	TS		NOTHING FOUND		
IN006/02	PUBLIC CAR PARKS	LEITHEN RD CAR PARK	LEITHEN ROAD	TS	No	Acquired by Burgh Council 1974. Deed confirms Council was exercising powers under Road Traffic Regulations Act 1967	Disp by Peebles Building Society with consent to Provost etc of Innerleithen, recorded GRS (Peebles) 12th December 1974	HQ Pigeon 367
IN007/01	DAY CENTRE	INNERLEITHEN FAMILY SUPPORT CENTRE ST RONANS BUNGALOW	MAXWELL STREET	SW	No	Not owned by Burgh Council 1975. See 15 below.	See 15 below	HQ Pigeon 593
IN007/02	ELDERLY PERSONS HOME	ST RONANS RHE	MAXWELL STREET	SW	No	Not owned by Burgh Council 1975. Acquired jointly by County Councils of Peebles, Midlothian and East Lothian on behalf of the joint Social Work Committee for said Counties 1970/71	1. Disp by The Peeblesshire Savings Investment and Building Society to County Councils of Counties of Midlothian, East Lothian and Peebles recorded GRS (Peebles) 14th October 1970 2. Disp by Peebles County Council to County Councils of Counties of Midlothian, East Lothian and Peebles recorded GRS (Peebles) 2nd December 1971	HQ Pigeon 593
IN007/03	AGRICULTURAL	ST RONANS GRAZINGS	MAXWELL STREET	SW	No	Not owned by Burgh Council 1975. Acquired jointly by County Councils of Peebles, Midlothian and East Lothian on behalf of the joint Social Work Committee for said Counties 1970	Disp by The Peeblesshire Savings Investment and Building Society to County Councils of Counties of Midlothian, East Lothian and Peebles recorded GRS (Peebles) 14th October 1970	HQ Pigeon 593
IN011/01	PARKS & OPEN SPACES	VICTORIA PARK	HALL STREET	TS	No	Purchased by Burgh Council 1948 for an annual feuduty of £42.15.8. There is no common good dedication in the narrative or dispositive clauses of the Feu Contract. The title conditions include obligations to use in all time coming as a public park for recreation and for the benefit of the residents of Innerleithen, There is no additional information to be found in the minutes to indicate the intended status of this property. The fact that only an annual feuduty as opposed to a full purchase price was payable, and the existence of the title condition mentioned above, might suggest common good. However, the purchase was completed after the Local Government (Scotland) Act 1947 had come into force and - taking account of the additional fact that the majority of the park had been held under leases continuously since 1911 - it is felt, on balance, that the purchase ought to be regarded as having been effected under section 156 of the 1947 Act - acquisition by agreement for a statutory council function - and thus that the park is not common good.	Feu Contract between Francis J C Maxwell-Stuart with consent and Provost etc of Innerleithen recorded GRS (Peebles) 9th July 1948	Gala Box
IN011/02	COMMUNITY FACILITY	VICTORIA PARK - PAVILION	HALL STREET	TS	No	Ditto	Ditto	Ditto
IN011/03	COMMERCIAL	VICTORIA PARK - SPORTS GROUND	HALL STREET	TS	No	Ditto	Ditto	Ditto
IN011/04	COMMUNITY FACILITY	VICTORIA PARK - TENNIS COURTS	HALL STREET	TS	No	Ditto	Ditto	Ditto
IN011/05	PARKS & OPEN SPACES	VICTORIA PARK PLAY AREA	VICTORIA PARK	TS	No	Ditto	Ditto	Ditto
IN011/08	ALLOTMENTS	MILLER STREET ALLOTMENTS	MILLER STREET	TS	No	Acquired with 9/11/13 Miller Street by Burgh Council 1956. Deed indicates that the purchase was effected under the Housing (Scotland) Act 1950.	Disp. By Trustees of late William D. Adams to Provost etc. of Innerleithen recorded GRS (Peebles) 14th May 1956	Gala Box

IN012/01	CULTURAL FACILITY	ST RONANS WELLS	WELLS BRAE	E&LLL	No	Tenant's interest in Lease of this property acquired 1966, property (i.e. Landlord's interest) acquired 1972, by Town Council. No Common Good dedication and acquired post 1947 Act for a statutory purpose	Feu Disp by Peebles Building Society and Peter D.J.C. Maxwell-Stuart to Provost etc. of Innerleithen recorded GRS (Peebles) 15th February 1973	
IN012/03	RESIDENTIAL	ST RONANS WELLS HOUSE	WELLS BRAE	TS	No		Ditto	
IN013/01	MISCELLANEOUS	INNERLEITHEN CHURCHYARD STORE	LEITHEN ROAD	TS		NOTHING FOUND		
IN013/02	CEMETERY	INNERLEITHEN CEMETERY	LEITHEN ROAD	TS		NOTHING FOUND		
IN014/01	CULTURAL FACILITY	INNERLEITHEN MEMORIAL HALL	LEITHEN ROAD	E&LLL	Yes - CG	Acquired by Burgh Council by donation from Henry Ballantyne in 1919. Deed contains common good declaration ("for behoof of the community of the said Burgh") and statement of intent that it is "for the purposes of a Town Hall and other Buildings as a Memorial in Innerleithen for those who have fallen in the War". Construction of Hall funded by public subscription and associated papers (Memorial for Opinion of Counsel) indicate that it was not the intention that the property be maintained from the rates.	Disp by executors of late Robert C Smail and others, with consent of Henry Ballantyne, in favour of the Provost etc of the Burgh of Innerleithen, recorded GRS (Peebles) 22nd May 1919	
IN014/02	CORPORATE OFFICES	MEMORIAL HALL OFFICE	LEITHEN ROAD	CORP RES	Yes - CG	Ditto	Ditto	Gala Box
IN014/03	COMMERCIAL	MEMORIAL HALL OFFICES (UPPER FLOOR)	LEITHEN ROAD	CORP RES	Yes - CG	Ditto	Ditto	Ditto
IN015/01	COMMERCIAL	INNERLEITHEN CARAVAN PARK	MONTGOMERY STREET	PED	No	This property is held on a title which also included the housing land now comprised in Ballantyne Street, Flora Crescent, Mathiesons Street and the eastern part of Montgomery Street. The whole site was acquired by the Burgh Council in 1951. The deed indicates that the purchase was effected under the Housing (Scotland) Act 1950.	Disp by James B. Currie to Peebles County Council recorded GRS (Peebles) 23rd November 1951	
IN017/01	MISCELLANEOUS	TRAQUAIR ROAD CEMETERY STORE	TRAQUAIR ROAD	TS		Erected on part of original cemetery. See 36 below.	Disp by the Hon Henry Maxwell Stuart of Traquair to Parochial Board of the Parish of Innerleithen recorded GRS (Peebles) 9th June 1879	Gala box
IN018/01	MONUMENTS & MEMORIALS	INNERLEITHEN WAR MEMORIAL	DROVERS WAY	TS	No	No separate title found. Presumed to have been regarded as 'street furniture'		
IN018/02	MONUMENTS & MEMORIALS	INNERLEITHEN MEMORIAL HALL CLOCK	LEITHEN ROAD	CORP RES	Yes - CG	See 27 above for details of title.	See 27 above	Gala Box
IN019/01	PUBLIC CONVENIENCES	HALL STREET TOILET	HALL STREET	TS		Held on Victoria Park title. See 17 above	See 17 above	Gala Box
IN019/02	PUBLIC CONVENIENCES	HALL STREET TOILET	HALL STREET	TS		Ditto	See 17 above	Gala Box
IN020/01	CEMETERY	TRAQUAIR ROAD CEMETERY	TRAQUAIR ROAD	TS	No	Original cemetery acquired by Parochial Board of Parish of Innerleithen 1879. Land for northern extension purchased by Town Council 1952, under Burial Grounds (Scotland) Act 1955	1. Disp by the Hon Henry Maxwell Stuart of Traquair to Parochial Board of the Parish of Innerleithen recorded GRS (Peebles) 9th June 1879 2. Disp by Francis J C Maxwell Stuart of Traquair to Provost etc of Innerleithen recorded GRS (Peebles) 16th Oct 1952	Gala box
	AMENITY LAND	STRAND/DAMSIDE AMENITY LAND	STRAND		Yes - CG	Acquired by Burgh Council by donation (nominal feuduty of £1 per annum) in 1947. Deed narrates to be used for amenity purposes for benefit of inhabitants of Innerleithen - to be laid out with flower beds, shrubberies or other decorative plots and planted with suitable trees. There is also a title condition prohibiting the erection of buildings. No further information to be found from minutes. This acquisition pre-dated the coming into effect of the Local Government (Scotland) Act 1947. This property may therefore be considered part of the common good.	Feu Contract between Francis J C Maxwell-Stuart with consent and Provost etc of Innerleithen recorded GRS (Peebles) 20th June 1947	

(COUNCIL SUB-COMMITTEES)**COMMON GOOD FUND SUB-COMMITTEES****Constitution**

- (a) For each Common Good Fund Sub-Committee, the elected Scottish Borders Councillors representing the Ward(s) of:
 For **Duns** - Mid Berwickshire
 For **Galashiels** – Galashiels and District
 For **Hawick** – Hawick and Denholm; Hawick and Hermitage
 For **Innerleithen – Tweeddale East**
 For **Jedburgh** – Jedburgh and District
 For **Kelso** – Kelso and District
 For **Lauder** – Leaderdale and Melrose
 For **Peebles** – Tweeddale East; Tweeddale West
 For **Selkirk** - Selkirkshire
- (b) For each of the Common Good Fund Sub-Committee, a member of the following local Community Council(s) as a non-voting member:
 For **Duns** – Duns Community Council
 For **Galashiels** – Galashiels Community Council
 For **Innerleithen – Innerleithen Community Council**
 For **Hawick** – Burnfoot Community Council; Hawick Community Council
 For **Jedburgh** – Jedburgh Community Council
 For **Kelso** – Kelso Community Council
 For **Lauder** – Lauderdale Community Council
 For **Peebles** – Peebles Community Council
 For **Selkirk** – Selkirk Community Council

Quorum

- (a) Two Scottish Borders Councillors, in relation to the Common Good Fund Sub-Committees of **Duns, Galashiels, Innerleithen, Jedburgh, Kelso, Lauder** and **Selkirk**.
- (b) Three Scottish Borders Councillors, with at least one from each Ward, in relation to the Common Good Fund Sub-Committees of **Hawick** and **Peebles**.

Chairman of each Sub-Committee

The Chairman of each Sub-Committee shall be a Scottish Borders Councillor.

Functions Referred

The following functions of the Council shall stand referred to each Sub-Committee:

1. The routine administration of the Common Good Fund.

2. Award of grants or loans of up to £20,000.
- *3. Make recommendations to Council in respect of grants or loans or major items of expenditure above £20,000.
4. Approve terms for hires, wayleaves, leases etc., and the sale or purchase of land and property up to a value of £20,000.
- *5. Make recommendations to Council in relation to the sale or lease or purchase of Common Good land or property of a value greater than £20,000.
6. Hold an annual meeting to consider:
 - (i) a budget for the year ahead;
 - (ii) a report reviewing the performance of investments and approval for the amount of funds to be invested, as per the Corporate Investment Policy;
 - (iii) a report on the factorage of property, as appropriate;and otherwise to hold meetings on an ad hoc basis to deal with business as it arises.
7. Approve the amount of funds to be invested each year, as per the Corporate Investment Policy.
8. Consult such other parties as the Sub-Committee considers appropriate prior to decision making.
9. Ensure the implementation of decisions affecting the Common Good Fund and monitor their impact on the Common Good Fund.
10. Grant and confer Burgess Tickets (Lauder Common Good Fund only).

Functions Delegated

All functions above NOT marked *. Those functions marked * are referred to the Sub-Committee for consideration and recommendation only and must receive approval of Council.