

# Public Document Pack



## HAWICK COMMON GOOD FUND SUB-COMMITTEE TUESDAY, 17 NOVEMBER, 2015

A MEETING of the HAWICK COMMON GOOD FUND SUB-COMMITTEE will be held in the  
**LESSER HALL, TOWN HALL, HAWICK** on TUESDAY, 17 NOVEMBER 2015 at 4.00 pm

J. J. WILKINSON,  
Clerk to the Council,

10 November 2015

<b>BUSINESS</b>		
1.	<b>Apologies for Absence</b>	
2.	<b>Order of Business</b>	
3.	<b>Declaration of Interest</b>	
4.	<b>Minute</b> (Pages 1 - 2)  Consider Minute of meeting held on 16 September 2015. (Copy attached),	2 mins
5.	<b>Monitoring Report for six months to 30 September 2015</b> (Pages 3 - 14)  Consider report by Chief Financial Officer. (Copy attached).	10 mins
6.	<b>Common Haugh - Application for Family Fun Fair</b> (Pages 15 - 16)  To consider an application from K Stuart's Family Fun Fairs. (Copy attached).	10 mins
7.	<b>Williestruther Reservoir</b> (Pages 17 - 48)  Update report from Property Officer. (Copy of S10 report attached).	5 mins
8.	<b>Hawick Race Course</b> (Pages 49 - 64)  To consider a briefing note by the Managing Solicitor. (Copy attached).	10 mins
9.	<b>Property Update</b> (Pages 65 - 68)  Consider briefing note from the Estates Officer. (Copy attached).	10 mins
10.	<b>Hornshole</b>  Consider a briefing note by the Managing Solicitor (To follow).	10 mins
11.	<b>Any Other Items Previously Circulated</b>	

12.	<p><b>Items Likely to be Taken in Private</b></p> <p>Before proceeding with the private business, the following motion should be approved:-</p> <p>“That under Section 50A(4) of the Local Government (Scotland) Act 1973 the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the relevant paragraph of Part 1 of Schedule 7A of the aforesaid Act.”</p>	
13.	<p><b>Private Minute</b> (Pages 69 - 70)</p> <p>Consider the private section of the Minute of the Meeting held on 16 September 2015. (Copy attached).</p>	2 mins
14.	<p><b>Pilmuir Farm - Silage Clamp</b> (Pages 71 - 72)</p> <p>Consider private briefing note from the Property Officer. (Copy attached).</p>	5 mins
15.	<p><b>Property Update</b> (Pages 73 - 74)</p> <p>Consider private briefing note from the Estates Officer. (Copy attached).</p>	5 mins
16.	<p><b>Date and Venue of the next Meeting</b></p> <p>Tuesday, 16 February 2016 at 4.00 pm in the Lesser Hall, Town Hall, Hawick.</p>	

#### NOTES

1. **Timings given above are only indicative and not intended to inhibit Members' discussions.**
2. **Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.**

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**Membership of Sub-Committee:-** Councillors G. Turnbull (Chairman), A. Cranston, S. Marshall, W. McAteer, D. Paterson and R. Smith

Mrs A Knight, Burnfoot Community Council  
Mr J Little, Hawick Community Council

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**SCOTTISH BORDERS COUNCIL**  
**HAWICK COMMON GOOD FUND SUB-COMMITTEE**

MINUTES of Meeting of the HAWICK  
COMMON GOOD FUND SUB-COMMITTEE  
held in Council Chamber, Town Hall, Hawick  
on Wednesday, 16 September, 2015 at 2.00  
pm

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Present:- Councillors G Turnbull (Chairman), W McAteer, D Paterson, R Smith,  
Mrs A Knight and Mr J Little  
Apologies:- Councillors S Marshall.  
In Attendance:- Managing Solicitor (R Kirk) Estates Officer (J Morison), Senior Finance  
Officer (J Yallop), Democratic Services Officer (J Turnbull).

1. **MINUTE**  
There had been circulated copies of the Minute of the Meeting held on 18 August 2015.

**DECISION**  
**APPROVED the Minute for signature by the Chairman.**

2. **PRIVATE BUSINESS**  
**DECISION**  
**AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to the Minute on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 6 of Part 1 of Schedule 7A of the Act.**

**SUMMARY OF PRIVATE BUSINESS**

3. **PRIVATE MINUTE**  
Members approved the private section of the Minute of 18 August 2015.
4. **LEASE OF WILLESTRUTHER COTTAGE**  
The Sub-Committee considered a briefing paper by the Estates Officer.
5. **URGENT BUSINESS**  
Under Section 50B(4)(b) of the Local Government (Scotland) Act 1973, the Chairman was of the opinion that the item dealt with in the following paragraph should be considered at the meeting as a matter of urgency, in view of the need to keep Members informed / make an early decision.
6. **MARKET SITE LEASE**  
The Sub-Committee considered a verbal report by the Estates Officer.

*The meeting concluded at 3.00 pm.*

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## **Monitoring Report for 3 Months to 30 September 2015**

**Report by the Chief Financial Officer**

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### **Hawick Common Good Sub Committee**

**17 November 2015**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report provides the details of the income and expenditure for the Hawick Common Good Fund for the 6 months to 30 September 2015 and full year projected out-turn for 2015/16 and projected balance sheet values to 31 March 2016**
- 1.2 Appendix 1 provides a projected Income and Expenditure position. This shows a projected deficit of £37,442 for the year. A reduction to the £40,660 deficit reported in August 2015 due to increased rental income is detailed in Section 4.2.
- 1.3 Appendix 2 provides a projected Balance Sheet to 31 March 2016. It shows a projected decrease in the reserves of £80,235 due to the projected reduction in revenue reserve and the revaluation reserve.
- 1.4 Appendix 3 provides a breakdown of the property portfolio showing actual Income and Expenditure to 30 September 2015.
- 1.5 Appendix 4 shows the value of the Newton Fund to 30 September 2015.

#### **2 RECOMMENDATIONS**

- 2.1 It is recommended that the Common Good Sub Committee:**
  - (a) Agrees the projected Income and Expenditure for 2015/16 in Appendix 1.**
  - (b) Notes the projected Balance Sheet value to 31 March 2016 in Appendix 2.**
  - (c) Notes the summary of the property portfolio in Appendix 3.**
  - (d) Notes the current position of the investment in the Newton Fund in Appendix 4.**

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### **3 BACKGROUND**

3.1 This report provides the Committee with financial information for the period to 30 September 2015 and projections to 31 March 16. The report also contains a projected balance sheet for the Common Good Fund to 31 March 2016.

### **4 FINANCIAL POSITION 2014/15**

4.1 Appendix 1 provides detail on income and expenditure for the 2015/16 financial year. The projected net position for the year is a deficit of £37,442, assuming full expenditure of the grants and donations budget of which £11,400 remains to be allocated.

#### **4.2 Income & Expenditure – Rental Income**

Rental income for 2015/16 is shown on Appendices 1 & 3, with Appendix 3 detailing the projected annual rental income by individual property. There has been an increase of £2,541 on the projected income for Common Haugh due to the voluntary weekly collections from the market undertaken by Jim Little Hawick Community Council. These have now stopped and a new Tenant Geraud Markets has taken over the site. They have a 1 year rent free period with payment commencing September 2016. Williestruther Cottage and Kennels will be under a new tenancy from 1 November 2015 and will increase to a market value rent. This will therefore increase the rental income for 2015 by £677. These additions will increase the proposed budget for 2015/16 by £3,218. A request by the organisers of the Roger Albert Clark Rally as a service area for the cars on 29 November 2015 has been received and it is proposed a fee of £1,000 be charged to include the use of the site and for leaving it clean, tidy with any damage caused by the cars to be repaired, this has yet to be accepted by the Rally and is therefore not included in the projections at this time.

#### **4.3 Income & Expenditure – Non-Property Related Income**

The projected out-turn includes an estimate for the interest receivable on cash deposited with the Council. This, however, does not show as an actual income until the end of the financial year as amount is dependent on interest rates and the average cash revenue balance invested with the Council over the full financial year. The annual rate of interest applied to the cash deposits is expected to be around 0.4%.

4.4 The capital reserve is invested in the Newton Fund and distributions are made twice a year in September and February. Dividends of £5,067 were received in September 2015 in line with the proposed budget of £8,979 for the year. The proposed budget for 2015/16 is based on a distribution of 2.5% which will be subject to the overall performance of the fund.

#### **4.5 Income & Expenditure – Property Expenditure**

The property expenditure to 30 September 2015 is detailed in Appendix 3 by property. The proposed Budget for 2015/16 includes £71,000 to complete silage pit work at Pilmuir, £8,700 for Williestruther Path, offset by balance of income received from Community Council in 2014/15. See Property Costs – General in Appendix 1. The balance of the additional income from the Community Council will be spent on a strimmer costing approximately £480. The fund has paid the original £6,480 2015/16 Rates bill for the Common Haugh. A proportion of this will be credited back to the

fund once the new Rates Bill for the new market tenant has been produced but there will be also be a bill for work to remark the Car Park, both of which are yet to be quantified.

#### 4.6 **Income & Expenditure – Grants & Other Donations**

The grants and other donations distributed to 30 September 2015 are shown below. There is a further £4,000 available to Burnfoot Community Council for the Remembrance Garden at Wilton Cemetery that has been delegated to the Chief Financial Officer in consultation with the Chair.

<b>Grant Recipients</b>	<b>Approved</b>	<b>£</b>
<b>Approved and Paid to 30 September 2015</b>		
Hawick Honorary Provost Running Costs	26/05/15	2,000
History of Hawick & District during WW1	18/08/15	600
Burnfoot CC-Remembrance Grdn Wilton Cemetery	18/08/15	2,000
<b>Total Paid to 30 June 2015</b>		<b>4,600</b>
<b>Approved but not yet paid</b>		
Burnfoot CC-Remembrance Grdn Wilton Cemetery	18/08/15	4,000
<b>Total Approved but not yet paid</b>		<b>4,000</b>
<b>Total Grants Approved</b>		<b>8,600</b>
<b>2015/16 Budget</b>		<b>20,000</b>
<b>Unallocated Budget</b>		<b>11,400</b>

#### 4.7 **Income & Expenditure – Depreciation Charge**

The depreciation charge is projected to be £42,792 based on the revaluation of the properties at 1 April 2014. This is not a cash transaction.

4.8 Appendix 2 provides the balance sheet value to 31 March 2015, the projected movement in year and a projected balance at 31 March 2016.

#### 4.9 **Balance Sheet – Fixed Assets**

All fixed assets of the Common Good Fund are revalued every 5 years as part of the Council's rolling programme. The fixed assets were revalued at 1 April 2014. Appendix 3 shows the values of the individual properties at 31 March 2015, projected depreciation charges 2015/16 and projected value at 31 March 2016.

#### 4.10 **Balance Sheet – Newton Investment**

- a) The markets remain volatile due to the continued downturn in the growth rate of the Chinese economy and the US Federal Reserve's decision to leave US interest rates unchanged. This has resulted in a small negative return of -0.78% for the quarter to 30 September 2015 in comparison to equity markets which fell by 6% in the same period. Newton continues to put plans in place to protect the Fund.
- b) Due to the volatility of the market conditions the projections do not include estimates for movements in the unrealised gains. Appendix 4 shows the performance of the Newton Fund since inception.

#### 4.11 Balance Sheet – Cash Balance

The cash held by the fund is projected to be £96,962, an in year projected decrease of £37,442. The projected cash movement for 2015/16 is as follows:

<b>Cash Balance</b>	<b>£</b>
<b>Opening Balance at 1 April 2015</b>	<b>134,404</b>
Transfer to Newton Fund	0
Projected Deficit for year from Income & Expenditure Statement	(37,442)
Net cash movement in Debtors/Creditors	0
<b>Projected Closing Balance at 31 March 2016</b>	<b>96,962</b>

#### 4.12 Balance Sheet – Capital Reserve

The projections for the Capital Reserves include the unrealised gain for the Newton Fund as at 31 March 2016 but due to the extremely volatile nature of the markets no estimate has been made for the current years' movement.

## 5 IMPLICATIONS

### 5.1 Financial

There are no further financial implications other than those explained above in Section 4.

### 5.2 Risk and Mitigations

There is a risk that investments in the Newton Fund may reduce in value due to market or investment performance. This risk cannot be fully mitigated; however it is being managed by the selection of a Fund Manager with a clear objective of preserving capital values while aiming to produce returns in line with the benchmark

### 5.3 Equalities

It is anticipated that there are no adverse equality implications arising from the proposals contained in this report.

### 5.4 Acting Sustainably

Whilst there are no economic, social or environmental effects arising from the proposals contained in this report, there are, through the activities reported upon, positive impacts upon the economy through protection of employment, positive impacts upon the quality of community life and improvements in local amenities and nurturing of local talent. The potential improvement in levels of income through the use of the new investment fund will act to make the Common Good Fund more sustainable in the future.

### 5.5 Carbon Management

There are no effects on carbon emissions arising from the proposals contained in this report.

### 5.6 Rural Proofing

There are no effects on rural proofing arising from the proposals contained in this report.



**5.7 Changes to Scheme of Administration or Scheme of Delegation**

There are no changes required to the Scheme of Administration or Scheme of Delegation arising from the proposals contained in this report.

**6 CONSULTATION**

6.1 The Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and their appropriate comments have been incorporated into this report.

**Approved by**

**David Robertson  
Chief Financial Officer**

**Signature .....**

**Author(s)**

Kirsty Robb	Capital and Investments Manager Tel: 01835 825249
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**Background Papers:**

**Previous Minute Reference:** Hawick Common Good Committee 18 August 2015

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

Contact us at Corporate Finance, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA.  
Tel: 01835 824000  
Fax: 01835 825011  
Email: treasuryteam@scotborders.gov.uk

## HAWICK COMMON GOOD FUND

## INCOME AND EXPENDITURE 2015/16

	Actuals at 30/09/15	Full Year Approved Budget 2015/16	Full Year Projected Out-turn	Full Year Projected Over/ (Under) Spend	Para Ref	Commentary
	£	£	£	£		
<b>Property Income</b>						
Rentals Receivable	(92,710)	(92,220)	(95,438)	(3,218)	4.2	Tenancy Changes Common Haugh/Williestruther
<b>Non-Property Related Income</b>						
Interest on Cash deposited with Council						Calculated at 0.4%
Newton Fund Investment – Dividends Rec'd	0	(300)	(300)	0	4.3	Calculated at 2.5%
Other Income	(5,067)	(8,979)	(8,979)	0	4.4	Contribution from CC and
<b>Total Income</b>	(10,186)	(10,186)	(10,186)	0	4.5	balance of Grant for Squirrel Control
	<b>(107,964)</b>	<b>(111,685)</b>	<b>(114,903)</b>	<b>(3,218)</b>		
<b>Property Expenditure</b>						
Property Costs – General	36,333	49,423	49,423	0	4.5	Williestruther Path & Common Haugh Rates
Property Costs – Pilmuir	13,278	72,225	72,225	0	4.5	Pilmuir Silage Pit
Property Costs – St Leonards	2,375	5,532	5,532			
<b>Total Property Expenditure</b>	<b>51,986</b>	<b>127,180</b>	<b>127,180</b>	<b>0</b>		
<b>Grants &amp; Other Donations</b>	<b>4,600</b>	<b>20,000</b>	<b>20,000</b>	<b>0</b>	4.6	£4,000 approved not yet paid
<b>Running Costs</b>						
Central Support Service Charge	10,841	10,841	10,841	0		
SBC Grant towards Service Charge	(5,676)	(5,676)	(5,676)	0		
<b>Net Running Costs</b>	<b>5,165</b>	<b>5,165</b>	<b>5,165</b>	<b>0</b>		
<b>Depreciation</b>						
Depreciation Charge	0	42,792	42,792	0		
Contribution from Revaluation Reserve	0	(42,792)	(42,792)	0		
<b>Net impact of Depreciation on Rev Res</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
<b>Total Net (Surplus)/Deficit for year</b>	<b>(46,212)</b>	<b>40,660</b>	<b>37,442</b>	<b>(3,218)</b>		

## HAWICK COMMON GOOD FUND

## PROJECTED BALANCE SHEET VALUE AS AT 30 September 2016

	Opening Balance at 01/04/15 £	Projected Movement in Year £	Projected Balances at 31/03/16 £
<b>Fixed Assets</b>			
Land & Buildings	3,674,859	(42,792)	3,632,066
Heritable Assets	3,000	0	3,000
Feu Duties	18	0	18
<b>Total Fixed Assets</b>	<b>3,677,877</b>	<b>(42,792)</b>	<b>3,635,084</b>
<b>Capital in Newton Investment Fund</b>			
Investment in Newton Fund	359,171	0	359,171
Unrealised Gains/(Loss)	18,320	0	18,320
<b>Market Value</b>	<b>377,491</b>	<b>0</b>	<b>377,491</b>
<b>Current Assets</b>			
Debtors	6,812	0	<b>6,812</b>
Cash deposited with SBC	134,404	(37,442)	<b>96,962</b>
<b>Total Current Assets</b>	<b>141,216</b>	<b>(37,442)</b>	<b>103,774</b>
<b>Current Liabilities</b>			
Creditors	(21,472)	0	<b>(21,472)</b>
Receipts in Advance	(19,197)	0	<b>(19,197)</b>
<b>Total Current Liabilities</b>	<b>(40,668)</b>	<b>0</b>	<b>(40,670)</b>
<b>Net Assets</b>	<b>4,155,916</b>	<b>(80,235)</b>	<b>4,075,681</b>
<b>Funded by:</b>			
<b>Reserves</b>			
Revenue Reserve	(100,547)	37,442	(63,105)
Capital Reserve	(513,326)	0	(513,326)
Revaluation Reserve	(3,542,043)	42,792	(3,499,250)
<b>Total Reserves</b>	<b>(4,155,916)</b>	<b>80,235</b>	<b>(4,075,681)</b>

## HAWICK COMMON GOOD FUND

**PROPERTY PORTFOLIO PERFORMANCE FOR 2015/16**  
**(Actual Income and Expenditure to 30 September 2015)**

Fixed Assets	Net Book Value at 31/03/15	Projected Depn Charge 2015/16	Projected Net Book Value at 31/03/16	Projected Rental Income 2015/16	Actual Property Expenditure at 30/09/15				
					Repairs	Rates, Water & Power	Ins	Other	Total
	£	£	£	£	£	£	£	£	£
<b>General</b>									
Moat Park	0	0	0	0	0	0	0	0	0
Moat Park Playground	0	0	0	0	0	0	0	0	0
Hawick Golf Course	73,000	0	73,000	0	0	0	0	0	0
Acreknowe Reservoir (Part)	0	0	0	0	206	0	0	0	206
Williestruther Loch	4,500	0	4,500	375	6,408	0	0	0	6,408
Williestruther Cottage	175,371	4,629	170,742	6,230	861	0	60	0	921
Lothian Street Store	17,537	463	17,074	2,550	0	0	83	0	83
Common Haugh Car Park	82,000	0	82,000	7,741	246	6,550	0	0	6,795
Underhaugh	0	0	0	0	0	0	0	0	0
Hawick Moor Racecourse & Bldgs	33,760	1,240	32,520	700	5,690	0	1,477	0	7,167
Hawick Moor Shootings	4,000	0	4,000	200	0	0	0	0	0
Woodend Grazings (West)	1,500	0	1,500	75	0	0	0	0	0
Millpath Stables	21,940	560	21,380	0	23	0	2	0	25
Ca'Knowe Monument	0	0	0	0	0	0	0	0	0
Volunteer Park & Stand	325,067	14,933	310,134	1,750	96	0	152	356	603
Hawick Burgh Woodlands	99,000	0	99,000	0	0	0	0	0	0
Woodend Grazings (East)	1,000	0	1,000	80	0	0	0	0	0
Hawick Golf Club Sub Stn Site	750	0	750	75	0	0	0	0	0
Common Riding	0	0	0	0	1,524	0	0	0	1,524
Haggis Ha/Burnflat Wall	0	0	0	0	1,005	0	0	0	1,005
Williestruther Path	0	0	0	0	7,951	0	0	0	7,951
100 Stairs and Adjacent Land	0	0	0	0	0	0	0	0	0
Property Expenditure (General)	-	-	-	-	185	1,261	-39	2,239	3,646
<b>General Sub Total</b>	<b>839,425</b>	<b>21,825</b>	<b>817,600</b>	<b>19,776</b>	<b>24,192</b>	<b>7,810</b>	<b>1,735</b>	<b>2,595</b>	<b>36,333</b>

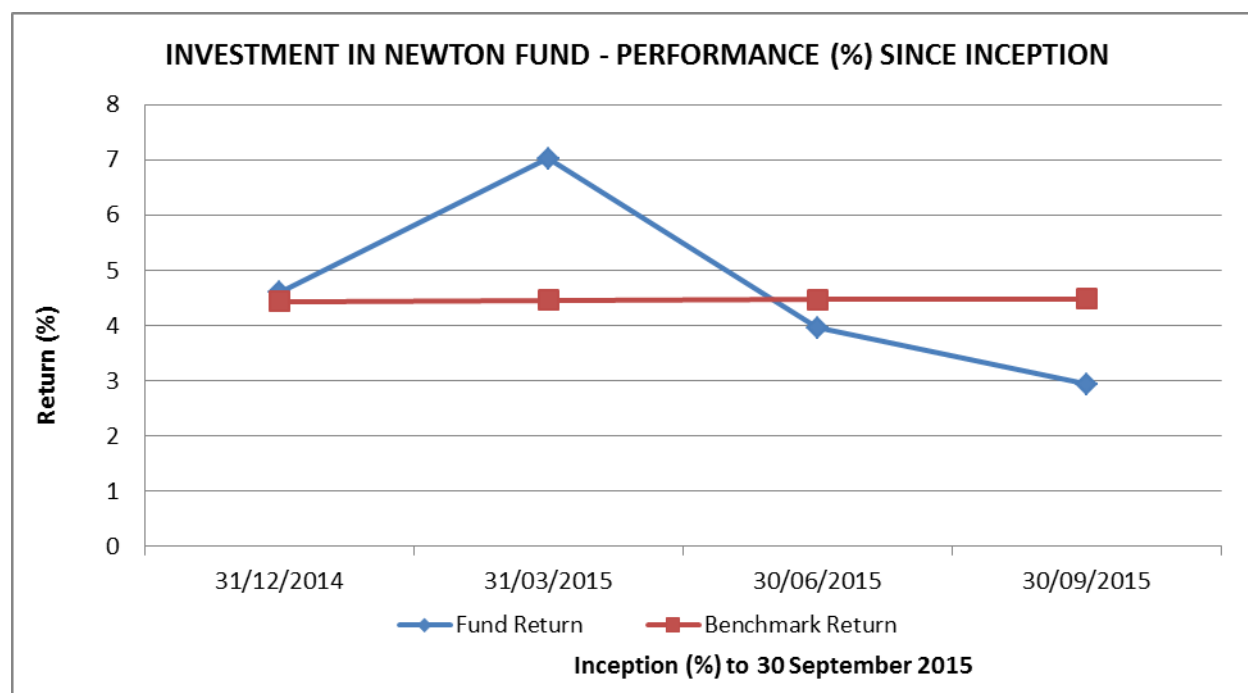
Fixed Assets	Net Book Value at 31/03/15 £	Projected Depn Charge 2015/16 £	Projected Net Book Value at 31/03/16 £	Projected Rental Income 2015/16 £	Actual Property Expenditure at 30/06/15				
					Repairs £	Rates, Water & Power £	Ins £	Other £	Total £
<b>Pilmuir</b>									
Pilmuir Farm	1,796,251	3,749	1,792,502	45,000	12,053	0	1,225	0	<b>13,278</b>
Pilmuir Farm Cottage	156,400	3,600	152,800	7,200	0	0	0	0	<b>0</b>
Pilmuir Farm Shed & Silage Pit	0	0	0	0	0	0	0	0	<b>0</b>
Pilmuir Farm Shootings	0	0	0	0	0	0	0	0	<b>0</b>
Property Expenditure (General)	-	-	-	-	0	0	0	0	<b>0</b>
<b>Pilmuir Sub Total</b>	<b>1,952,651</b>	<b>7,349</b>	<b>1,945,302</b>	<b>52,200</b>	<b>12,053</b>	<b>0</b>	<b>1,225</b>	<b>0</b>	<b>13,278</b>
<b>St Leonards</b>									
St Leonards Farmhouse Buildings	251,111	4,889	246,222	9,600	315	0	454	0	<b>769</b>
St Leonards Cottage & Park	209,471	5,529	203,942	5,400	304	0	78	0	<b>382</b>
St Leonards Hut	3,200	3,200	0	0	1,193	0	31	0	<b>1,224</b>
St Leonards Grazings (Lot 1)	135,000	0	135,000	1,349	0	0	0	0	<b>0</b>
St Leonards Horse Gallop	17,000	0	17,000	600	0	0	0	0	<b>0</b>
St Leonards Grazings (Lot 2)	267,000	0	267,000	7,191	0	0	0	0	<b>0</b>
Property Expenditure (General)	-	-	-	-	0	0	0	0	<b>0</b>
<b>St Leonards Sub Total</b>	<b>882,782</b>	<b>13,618</b>	<b>869,164</b>	<b>24,140</b>	<b>1,812</b>	<b>0</b>	<b>563</b>	<b>0</b>	<b>2,375</b>
<b>Total</b>	<b>3,674,858</b>	<b>42,792</b>	<b>3,632,066</b>	<b>96,116</b>	<b>38,058</b>	<b>7,810</b>	<b>3,524</b>	<b>2,595</b>	<b>51,987</b>

## HAWICK COMMON GOOD FUND

## INVESTMENTS EXTERNALLY MANAGED IN NEWTON REAL RETURN FUND

Cost of Investment	Units	£
13 December 2013	102,901	192,394
17 January 2014	30,010	56,884
24 January 2014	29,680	56,036
3 February 2014	28,602	53,857
<b>Total Invested to 30 September 2015</b>	<b>191,193</b>	<b>359,171</b>

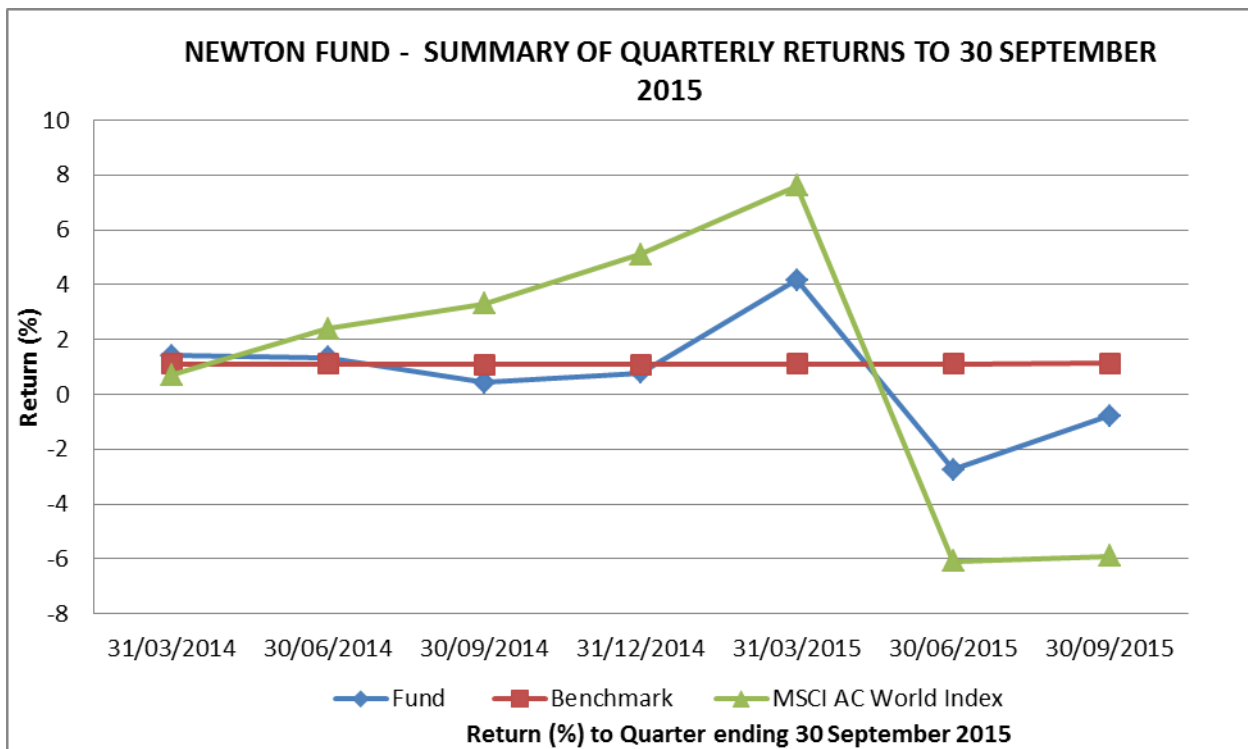
Value of Investment	£
31 March 2015	377,491
30 June 2015	366,766
30 September 2015	356,326
31 December 2015	
31 March 2016	
<b>Increase/(Decrease) from Total Cash Invested</b>	<b>(2,845)</b>



Note:

Benchmark is a performance aim of cash returns (1month GBP LIBOR) plus 4% per annum on a rolling 5 year average. Therefore if GBP 1 month LIBOR is 0.5% p.a., the benchmark for the Newton Fund is 4.5%. It is not an equity market based benchmark.

The following chart shows the Newton Funds quarterly return performance against the Benchmark and against an equity performance index (MSCI AC World Index).



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Chief Executive

27 OCT 2015



**Scottish  
Borders  
COUNCIL**

Democratic Services

HAWICK COMMON GOOD FUND  
APPLICATION FOR USE OF COMMON HAUGH

<p><u>Applicant Details</u> Name and Address of Applicant/Organisation:  Telephone No:</p>	<p>K Stuart Family Fun Fair SHOWMANS YARD DUNSDALE ROAD SELLERIL TD7 5EB</p>
<p><u>Activities</u> Please supply a brief description of the activities proposed:</p>	<p>FAMILY FUNFAIR</p>
<p><u>Dates &amp; Times Requested</u> Please indicate the dates and times it will be used:</p>	<p>PLEASE SEE ENCLOSED SHEET</p>
<p><u>Other information</u> If you have other information which you feel is relevant to this application please provide details including details of any previous use:</p>	<p>WILL FOLLOW ALL THE CONDITIONS LAID DOWN BY ENVIRONMENTAL HEALTH AS PER OUR 2015 FAIR. AS PER MR JAMES MORISON'S E-MAIL I WILL REDUCE THE FAIR BY 200 sqm.</p>
<p><u>Declaration</u> I hereby make the application as set out above and certify that the information I have provided is accurate</p> <p>Signed: ..</p> <p>Position Held: FAIRGROUND PROPRIETOR</p> <p>Date: 26/10/2015</p>	
<p>This completed form and any supporting details should be submitted to Judith Turnbull Democratic Services Officer, Scottish Borders Council, Newtown St Boswells, TD6 0SA. Telephone 01835 826556</p>	

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Saturday 26th " ~ 1.00pm - 10.00pm

if possible - Sunday 27th March - (1.30pm - 4.30pm)

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REPORT OF AN INSPECTION MADE UNDER SECTION 10  
OF THE RESERVOIR ACT 1975

# Williestruther Reservoir



*Prepared for*

Scottish Borders Council

October 2015



Halcrow Group Ltd  
City Park  
368 Alexandra Parade  
GLASGOW  
G31 3AU  
Tel: 0141 552 2000  
[www.ch2m.com](http://www.ch2m.com)



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**Appendix B: Section 10(5) Certificate**

# Document History

Report Title: Williestruther Reservoir - Report of an Inspection made under Section 10 of the Reservoirs Act 1975

Client: Scottish Borders Council

This document has been issued and amended as follows:

Version	Date	Description
1.0	12/10/2015	Issue to Client

## DISCLAIMER

This document has been prepared by J G Penman ("the Inspecting Engineer" on behalf of CH2M HILL ("CH2M"), solely for the Scottish Borders Council ("the Client"). No liability is accepted for any use of this document other than by the Client for the purposes for which it was originally commissioned and prepared.

This document has been prepared on the basis of a visual inspection of the relevant structures by the Inspecting Engineer, a review of data supplied to the Inspecting Engineer by the Client and discussion between the Inspecting Engineer and the Client. No liability is accepted in relation to any defects which were not visually apparent on the date of inspection or which become apparent subsequent to the inspection, or in respect of information which was not brought to the attention of the Inspecting Engineer by the Client at the time of the inspection or prior to the date of this document.





## SECTION 1

# General

## 1.1 Name and Situation of Reservoir

Williestruther Reservoir is situated about 3km south of Hawick in the Scottish Borders at National Grid Reference NT 492115.

## 1.2 Name and address of Engineer making the Report

James G Penman  
CH2M HILL  
Burderop Park  
Swindon  
Wiltshire  
SN4 0QD  
Tel: 01793 816482  
Email: james.penman@ch2m.com

## 1.3 Panel of which the Engineer is a member and expiry date of appointment

All Reservoirs Panel. Appointment valid to 8th February 2020.

## 1.4 Name and address of Undertaker

Scottish Borders Council  
Technical Services Department  
Newton St Boswells  
Melrose  
TD6 0SA

## 1.5 Name and address of Enforcement Authority

Scottish Borders Council  
Technical Services  
Newton St Boswells  
Melrose  
TD6 0SA

## 1.6 Date of Inspection

The inspection was carried out on 11<sup>th</sup> August 2015. I was accompanied by:

Frank Scott – Scottish Borders Council  
John Walker – CH2M – Supervising Engineer  
Alan McGowan – CH2M

## 1.7 Name and address of Supervising Engineer

Mr John Walker  
CH2M HILL  
City Park  
368 Alexandra Parade  
Glasgow  
G31 3AU

Telephone: 01479 841817 and 07802 776048  
E-mail: john@jcwalker.co.uk

Expiry date of panel appointment: 31<sup>st</sup> December 2016

# Certificate, reports and previous inspections and other items of information which were provided to the Engineer

## 2.1 Reports and certificates

The previous reports and certificates which were made available are summarised below:

- Section 10(3) Inspection Report by Mr P William, January 2006

There were no recommendations of measures to be taken in the interests of safety detailed in the 2006 Inspection Report.

## 2.2 Prescribed Form of Record

This was presented for review. A commentary on the Prescribed Form of Record is provided in Section 6.1.

## 2.3 Supervising Engineer's Statements

The following statements were presented for review:

- Statement by Supervising Engineer under Section 12(2) of the Act by John Walker – March 2014

## 2.4 Other Information

Other information provided was as follows:

- Technical Note – Williestruther Flood Routing, Halcrow July 2003



# General Description

## 3.1 Reservoir

Williestruther Reservoir is an impounding reservoir on a tributary of the Slitrig Water.

The reservoir characteristics as detailed in the Prescribed Form of Record are:

Top water level (TWL)	206.35mAOD
Capacity at TWL	111,400m <sup>3</sup>
Surface area at TWL	52,000m <sup>2</sup>

The fetch as shown on OS Landranger Sheet 79 is 550m. This disagrees with Part 7 of the Prescribed Form of Record. The OS Map agrees with Google Earth imagery and is considered to be correct.

## 3.2 Geology

The geological survey of Great Britain mapping shows Williestruther Reservoir to lie on the Gala Group of the Llandovery series of Greywackes, shales flags and grits.

## 3.3 Catchment

The reservoir has a natural catchment of 1.89km<sup>2</sup> lying to the south west of the dam. The catchment comprises upland rolling grassland.

## 3.4 Dam details

The dam is an earth embankment about 45m long which is curved upstream in plan.

The downstream face is at a gradient of about 1v:2h. The crest is 5m wide and incorporates a 2.5m wide surface road. There is a wire fence along the upstream side of the road.

The upstream face incorporates a masonry wall which extends to 250mm above top water level. The wall is topped with stone sets which are tied together with iron staples. The wall is understood to be about 1.6m high. Above the wall the upstream face is at a gradient of 1v:2.5h and is protected by stone pitching. The slope below the masonry wall is reported to be at a gradient of 1v:3h.

The dam is understood to have been constructed in the early 19<sup>th</sup> century. Construction details are unknown.

## 3.5 Details of modifications, remedial works and history

At an unknown date the capacity of the spillway was increased by adding a 750mm dia pipe through the embankment crest.

The crest of the embankment has been raised since the last Section 10 Inspection as part of road resurfacing works.

## 3.6 Spillway

The spillway is at the right abutment of the dam and comprises a number of pipes passing through the embankment crest. There are twin 375mm diameter precast concrete pipes and a single 750mm diameter precast concrete pipe all with a common invert level of 206.35mAOD.

There is a short, tapering section of insitu concrete culvert at the inlet to the 750mm pipe. The 375mm pipes have a concrete headwalls with short wingwalls.

All three pipes have a nominal fall and discharge through a common outlet structure leading into an unlined channel which connects back to the stream bed in the base of the valley.

### 3.7 Bottom Outlet

The bottom outlet comprises a 225mm dia pipe passing beneath the embankment on the line of the original stream bed. Details of the upstream end are unknown. The outlet is controlled by a 225mm diameter in-line valve located in a chamber at the downstream toe of the embankment. 8m downstream of the valve chamber there is a second chamber which acts as an energy dissipater on the outlet. The connection from the valve chamber enters the chamber at low level. A separate 450mm pipe acts as an overflow to the chamber and itself discharges through a small outlet structure to the stream bed downstream.

### 3.8 Instrumentation

There is no formal instrumentation on this reservoir. Level surveys are undertaken on the crest to check for settlement

### 3.9 Method of recording water levels

Water levels are recorded at a gauge board located on the masonry wall near to the centre of the upstream face of the embankment.

### 3.10 Access

The reservoir is located immediately adjacent to an unclassified road and there is a tarmac roadway along the crest of the embankment. There is good access to the dam crest, but none to the downstream toe.

### 3.11 Valley downstream of the dam

The valley downstream of the dam is relatively narrow and flows in a north easterly direction to pass under the B6399 and join the Slitrig Water. There is a single house in the floodplain of the Slitrig water adjacent to the stream from Williestruther.

## Condition of the Reservoir

### 4.1 General

The reservoir was inspected on 12<sup>th</sup> August 2015. The weather was warm and sunny with a light breeze. The reservoir level was 20mm above top water level.

### 4.2 Catchment

The catchment is predominately open, undulating farmland. There do not appear to have been any changes to the catchment in recent times.

### 4.3 Dam

The dam is generally in good condition and is being well maintained. There are no indications of instability or settlement.

The upper part of the upstream face is now fully covered by grass which has grown up through the stone pitching (see photo 1). The grass is being cut three times per year and has good grass cover. The grass will be helping to stabilise the stone pitching.

The masonry wall at top water level is in good condition with no indications of movement. Some of the iron staples tying the capping stones have corroded but this does not appear to have affected the stability of the wall. There is no vegetation growing within the masonry

The downstream face was fully accessible but quite overgrown with this season's growth of grass and wild flowers (see photo 4). It is recommended that the downstream face should be maintained in the same condition as the grassed portion of the upstream face ie cut three times per year.

The crest road is in good condition (see photo 3).

An overhead electricity cable runs along the crest of the dam. One of the posts is leaning slightly (see photo 4) but this is understood to be unchanged in recent years and is not considered to be an indication of instability.

A new car park has recently been constructed on the natural ground at the right end of the dam (see photo 4). This provides access to a footpath around the reservoir.

### 4.4 Spillway

The spillway and outlet channel are in satisfactory condition. The pipes were all discharging freely with no blockages (see photo 7).

The outlet channel is unlined but appears stable with no indications of ongoing erosion (see photo 9).

The baffle boards in front of the spillway have been partially dislodged and should be reinstated (see photo 6).

### 4.5 Bottom outlet

The bottom outlet was tested on the day of the visit. The valve operated freely and the outlet was seen to discharge to the stream. The flow was initially very silty, but cleared significantly over a ten minute period. Both chambers and their covers are in good condition.

The valve chamber was full of water to a level 1120mm below cover level. This is understood to be usual and is considered to be a reflection of the groundwater level in the adjacent area. Because the chamber was flooded it was impossible to inspect the valve. It would be worthwhile to arrange for the chamber

to be pumped out at the time of the next Statutory Inspection. The water level was unchanged when the valve was opened which demonstrates that there is no leakage from the valve.

## 4.6 Settlement and movement

Embankment crest levels are reported in the Supervising Engineer's Annual Statement. Levels are taken at 15m intervals along the tarmac section of the embankment crest.

No significant settlement was recorded between 2012 and 2014. The road was resurfaced in March 2011 which resulted in some low spots being raised by up to 250mm.

The lowest point on the crest is currently at an elevation of 208.32mAOD

## 4.7 Instrumentation

There is no instrumentation at the dam.

## 4.8 Method of recording water levels

Water levels are recorded from a gauge board mounted on the masonry wall on the upstream face of the dam. The gauge is surrounded by a baffle to limit the effects of wave action. The numbers on the gauge board have been partially scoured off and are now difficult to read. It is recommended that the gauge board is replaced.

## 4.9 Access for maintenance and emergency

There is good access along the crest of the dam. The outlet works could potentially be accessed by way of the fields adjacent to the downstream toe.

## 4.10 Movement of surrounding land which might affect the stability of the reservoir

There is no evidence of any instability in the land surrounding the reservoir.

## 4.11 Area downstream of the dam

The area downstream of the dam was found to be unchanged from that shown of the latest Ordnance Survey mapping.



# Engineer's Findings

## 5.1 Adequacy of the spillway

### 5.1.1 Categorisation

The previous Inspecting Engineer placed the dam in Category C as set out in "Floods and Reservoir Safety, 3<sup>rd</sup> Edition" on the basis of the low risk to people and property downstream. I endorse the categorisation.

Since the last inspection "Floods and Reservoir Safety" has been updated to the 4<sup>th</sup> edition. This revision introduced new concepts of a Design Flood and a Safety Check Flood. The revised guidance also recommends that wave freeboard should be determined on the basis of *overtopping discharge* rather than a wave run-up allowance.

In accordance with "Floods and Reservoir Safety" 4<sup>th</sup> edition the appropriate assessment floods for a Category C reservoir are:

Design Flood	150 year flood
Safety Check Flood	1000 year flood

In the Design Flood event there should be no overtopping. This is defined as an overtopping discharge of less than 0.001l/s/m. For Category C dams there is also a minimum freeboard requirement of 0.4m in the Design Flood.

In the Safety Check Flood some overtopping is permitted. For Williestruther Reservoir a maximum allowable overtopping discharge of 0.1l/s/m is considered to be appropriate

### 5.1.2 Flood studies

Previous flood studies report the peak inflow for the 1000 year flood as 5.82m<sup>3</sup>/s. The reported peak outflow is 1.74m<sup>3</sup>/s with an associated Stillwater reservoir level of 207.68mAOD. These values have been checked by the "Rapid Method" detailed in Floods and Reservoir Safety and found to be credible.

No details of the 150 year flood are provided.

### 5.1.3 Freeboard

Flood routing and wave overtopping discharges have been calculated in accordance with Floods and Reservoir Safety, 4<sup>th</sup> edition. The minimum Embankment crest level is 208.32mAOD. The findings of the analysis are summarised below:

Flood	Max Stillwater reservoir level (mAOD)	Wave freeboard provided (m)	Estimated overtopping discharge <sup>1</sup> (l/s/m)	Max tolerable overtopping discharge (l/s/m)	Wave freeboard required (m)	Min acceptable crest level (mAOD)	Margin from lowest existing crest level (m)
Design (150 yr)	207.33	0.99	<0.001	0.001	0.98	208.31	0.01
Safety Check (1,000 yr)	207.68	0.64	0.07	0.10	0.61	208.29	0.03

Note 1. In mean annual hourly maximum wind

The above analysis demonstrates that the freeboard is currently just adequate. It will be important to ensure that a minimum crest level of 208.32m is maintained.

## 5.2 Adequacy of the dam

The slopes of the inner and outer faces are both 1v:2.5h. These slopes are not unusual for this type of dam and there are no indications of instability. The stability of the dam is considered to be acceptable.

## 5.3 Adequacy under seismic loading

The seismic safety of the dam has been assessed using the recommended criteria given in the 1991 BRE publication "An Engineering Guide to the Seismic Risk to Dams in the UK" and the more recently published "Application Note" to the guide published in 1998.

From an examination of the surrounding area and the information provided in the guide, the risk classification may be derived as follows:

		Classification Factor
Capacity	0.11Mm <sup>3</sup>	2
Height of dam	<15m	0
Evacuation requirements	1-100	4
Potential downstream damage (Low)		4
<b>Total</b>		<b>10</b>
<b>Dam Category (Table 3)</b>		<b>II</b>
Level of safety evaluation		E <sub>b</sub>

Table N5 of the Application Note indicates that for Category II dams it is necessary to look for features particularly vulnerable to earthquake damage and undertake seismic analysis only if such features are found. There are no features which are particularly vulnerable to earthquake damage at Williestruther so no seismic assessment is considered to be necessary.

## 5.4 Efficiency of means of lowering and controlling inflows to the reservoir

The estimated capacity of the outlet at top water level is 0.15m<sup>3</sup>/s.

With a reservoir surface area of 52,000m<sup>2</sup> this would achieve an initial drawdown rate of 0.25m per day which is considered to be adequate for a Category C reservoir.

New guidance on drawdown rates is due to be published shortly and the drawdown rate should be reviewed in the context of the new guidance at the time of the next Section 10 Inspection.

## Supervision provided by the Undertaker

### 6.1 Correctness of the particulars in the Prescribed Form of Record

The Prescribed Form of Record was reviewed and found to be complete and up to date. Water level readings are being entered at weekly intervals. The following points were noted:

Part 3 - Include details of this inspection

Part 7 – Correct the Fetch from 230m to 550m

### 6.2 Frequency of surveillance by the Undertaker

The reservoir is understood to be visited weekly by the Undertaker. This regime is considered to be satisfactory.



# Recommendations

## 7.1 Statement in relation to previous measures to be taken in the interests of safety

There were no recommendations of measures in the interests of safety in the previous Section 10 report.

The report does however state that a 0.52m high wave wall was constructed along the full length of the dam crest after the last inspection. This appears to be an error. There is no wave wall but the freeboard was nevertheless increased by raising the road level.

## 7.2 Measures to be taken in the interests of safety under Section 10(6) of the Act

The following measures are recommended:

- none

## 7.3 Other measures recommended to be taken

The following measures are recommended:

- the gauge board should be replaced
- repair the baffle at the spillway inlet

## 7.4 Other matters of maintenance and safety of personnel/public

The following measures are recommended:

- maintain the existing practice for cutting the grass on the upstream face of the embankment
- cut the grass on the downstream face of the embankment three time per year (as for the upstream face),
- operate the outlet valve at intervals of no more than 6 months

## 7.5 Directions in respect of records under Section 11 of the Act

### 7.5.1 Water Level

The water level in the reservoir should continue to be recorded at weekly intervals.

### 7.5.2 Crest Level Survey

The embankment crest should be resurveyed prior to the next Section 10 inspection.

## 7.6 Matters to be watched by the Supervising Engineer in accordance with Section 10(4)

The Supervising Engineer should visit the dam at least once per year. In addition to the normal requirements of an embankment dam, the Supervising Engineer should take special note of the following:

- any indication of deterioration of the outlet pipe bearing in mind that the pipe is normally pressurised and that failure of the pipe could lead to erosion of the embankment fill

## 7.7 Date of the next inspection under Section 10

The next Inspection by an Inspecting Engineer under Section 10 (2) of the Act should be undertaken within ten years of this inspection, ie before 11<sup>th</sup> August 2025.

SECTION 8

# Signature of Inspecting Engineer and date of report

James G Penman

12<sup>th</sup> October 2015

Expiry of 5-year panel appointment 8<sup>th</sup> February 2020

# Appendix A Photographs





**Photo 1 – Upstream face of embankment viewed from right abutment**



**Photo 2 – Upstream face of embankment viewed from left abutment**



Photo 3 – Embankment crest

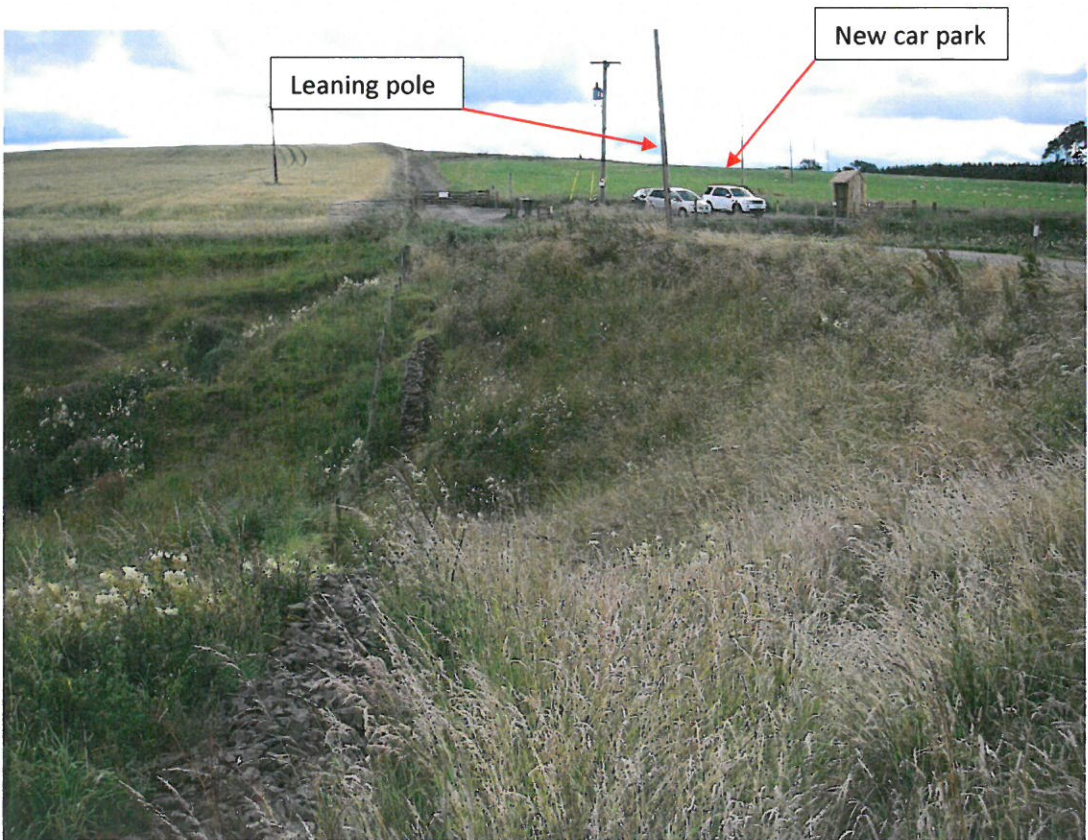


Photo 4 -Downstream face of embankment viewed from right abutment



**Photo 5 - Downstream face of embankment viewed from right flank**



**Photo 6 – Spillway inlet showing damaged baffle board**



**Photo 7 – Internal arrangement of 750mm dia outlet pipe (looking downstream)**



**Photo 8 – Outfall from spillway pipes**



**Photo 9 – Spillway channel between outlet from pipes and stream bed**



**Photo 10 – Manhole on scour valve**



**Photo11 – Outlet discharging at full capacity**



**Photo 12 – Gauge board**



**Photo 13 – Valley downstream of dam**

Appendix B  
Section 10(5) Certificate



**RESERVOIRS ACT 1975**

**INSPECTING ENGINEER'S CERTIFICATE UNDER SECTION 10(5)**

I, James Guthrie Penman of Burderop Park, Swindon, Wiltshire, being a member of the All Reservoir Panel, appointed by Scottish Borders Council to carry out an inspection of the reservoir known as williestruther Reservoir situated at National Grid Reference NT 492 115, made a report of that inspection on 11 August 2015 which does not include recommendations as to measures to be taken in the interests of safety. That report includes a recommendation as to the time of the next inspection of the reservoir, which should be made within ten years ie no later than 11<sup>th</sup> August 2025.

Signature of Engineer

**J G Penman CEng, MICE**

**Date: 12<sup>th</sup> October 2015**



## **HAWICK COMMON GOOD FUND SUB-COMMITTEE 17 NOVEMBER 2015**

### **Hawick Race Course**

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

Everyone has access rights which have been established by the Land Reform (Scotland) Act 2003, this is commonly referred to as the “right to roam” legislation. There is also a Scottish Outdoor Access code which is relevant. I attach a copy of pages 5-16 from the code.

The Land Reform (Scotland) Act 2003, conferred a duty on all local authorities’ to draw up a plan for a system of paths to be known as core paths and which would be sufficient for the purpose of giving the public reasonable access throughout their area. Scottish Borders Council have a system of core paths and one of these runs adjacent to the race course and I also attach a copy of a map showing the line of the core path.

Members will note that the Scottish Outdoor Access Code outlines where and when access rights can be exercised, what can be done under these access rights, where access rights do not apply and what attributes are excluded from access rights.

In particular I would draw members’ attention to the third last paragraph on page 12 which falls under the heading “Where do access rights not apply” and which paragraph specifically refers to Land which has been developed or set out for a recreational purpose such as horse racing gallops.

In Summary therefore it does appear to me that members would be entitled to insist upon members’ of the public sticking to the core path and from endeavouring to deter members of the public from entering onto the race course however, I appreciate that policing that will be easier said than done.

*Ron Kirk, Managing Solicitor, Legal & Licencing Services*

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# St Leonard's Park Race Course Hawick Scottish Borders

## Legend

- Managed Path (Local Community)
- Managed Path SBC (Core Path, Promoted Route; Aspirational Core Path)
- Other (Right of Way; Permissive/ Customary Path; Longer-term Aspirational Path)
- Path Link on SBC Adopted Road (No Pavement) (Core Path Link and Promoted routes)

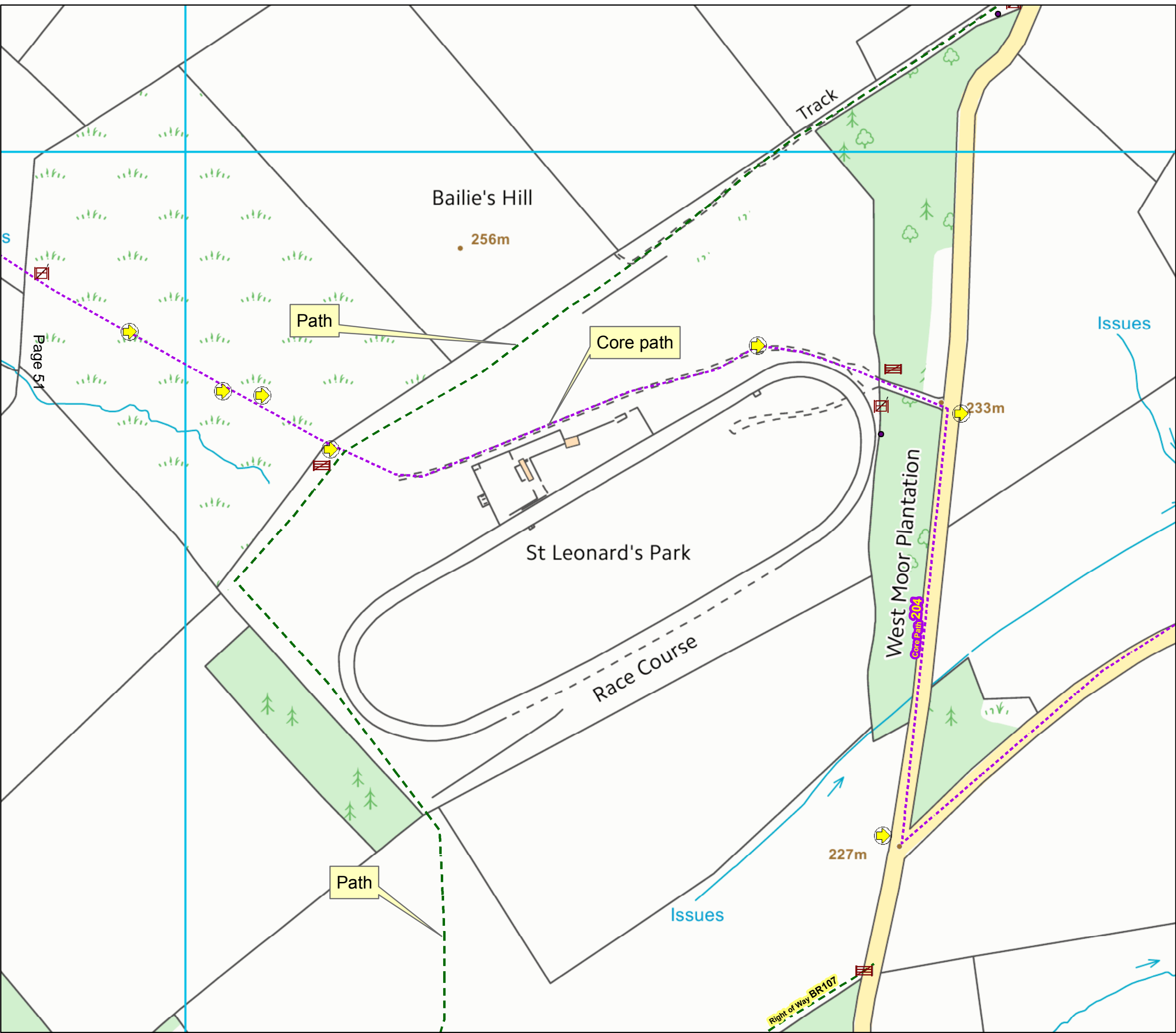
Scale: 1:3,249

This map has been prepared by the Countryside Access Ranger Service of Scottish Borders Council.

For further details contact:  
outdooraccess@scotborders.gov.uk  
01835 826509

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## Part 2 ACCESS RIGHTS

### A summary of your access rights

- 1 Everyone, whatever their age or ability, has access rights established by the Land Reform (Scotland) Act 2003. You only have access rights if you exercise them responsibly.
- 2 You can exercise these rights, provided you do so responsibly, over most land and inland water in Scotland, including mountains, moorland, woods and forests, grassland, margins of fields in which crops are growing, paths and tracks, rivers and lochs, the coast and most parks and open spaces. Access rights can be exercised at any time of the day or night.
- 3 You can exercise access rights for recreational purposes (such as pastimes, family and social activities, and more active pursuits like horse riding, cycling, wild camping and taking part in events), educational purposes (concerned with furthering a person's understanding of the natural and cultural heritage), some commercial purposes (where the activities are the same as those done by the general public) and for crossing over land or water.
- 4 Existing rights, including public rights of way and navigation, and existing rights on the foreshore, continue.
- 5 The main places where access rights do not apply are:
  - houses and gardens, and non-residential buildings and associated land;
  - land in which crops are growing;
  - land next to a school and used by the school;
  - sports or playing fields when these are in use and where the exercise of access rights would interfere with such use;

Scottish Outdoor Access Code, 2005

- land developed and in use for recreation and where the exercise of access rights would interfere with such use;
- golf courses (but you can cross a golf course provided you don't interfere with any games of golf);
- places like airfields, railways, telecommunication sites, military bases and installations, working quarries and construction sites; and
- visitor attractions or other places which charge for entry.

**6** Local authorities can formally exempt land from access rights for short periods. Local authorities and some other public bodies can introduce byelaws.

**7** Access rights do not extend to:

- being on or crossing land for the purpose of doing anything which is an offence, such as theft, breach of the peace, nuisance, poaching, allowing a dog to worry livestock, dropping litter, polluting water or disturbing certain wild birds, animals and plants;
- hunting, shooting or fishing;
- any form of motorised recreation or passage (except by people with a disability using a vehicle or vessel adapted for their use);
- anyone responsible for a dog which is not under proper control; or to
- anyone taking away anything from the land for a commercial purpose.

**8** Statutory access rights do not extend to some places or to some activities that the public have enjoyed on a customary basis, often over a long period of time. Such access is not affected by the Land Reform (Scotland) Act 2003 and will continue.



## Introduction

**2.1** The Land Reform (Scotland) Act 2003 establishes access rights and these must be exercised responsibly. This part of the Code summarises where and when you can exercise these rights and for what purposes, and lists those areas where, and activities to which, access rights do not apply. Understanding the extent of access rights will help you to exercise them responsibly.

## Where and when you can exercise access rights

**2.2** Everyone, whatever their age or ability, can exercise access rights over most land and inland water in Scotland, at any time of day or night, providing they do so responsibly<sup>2</sup>. These rights do not extend to all places or to all activities (see paragraphs 2.11 to 2.15). Provided you do so responsibly (see Parts 3 and 5 of the Code), you can exercise access rights in places such as:

- hills, mountains and moorland;
- woods and forests;
- most urban parks, country parks and other managed open spaces;
- rivers, lochs, canals and reservoirs;
- riverbanks, loch shores, beaches and the coastline;
- land in which crops have not been sown;
- on the margins of fields<sup>3</sup> where crops are growing or have been sown;

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<sup>2</sup> Sections 1 and 2, Land Reform (Scotland) Act 2003

<sup>3</sup> Section 7(10) of the Land Reform (Scotland) Act 2003 states land on which crops are growing does not include "headrigs, endrigs or other margins of fields in which crops are growing".

- grassland, including grass being grown for hay or silage (except when it is at such a late stage of growth that it is likely to be damaged);
- fields where there are horses, cattle and other farm animals;
- on all core paths agreed by the local authority<sup>4</sup>;
- on all other paths and tracks where these cross land on which access rights can be exercised;
- on grass sports or playing fields, when not in use, and on land or inland water developed or set out for a recreational purpose, unless the exercise of access rights would interfere with the carrying on of that recreational use;
- golf courses, but only for crossing them and providing that you do not take access across greens or interfere with any games of golf;
- on, through or over bridges, tunnels, causeways, launching sites, groynes, weirs, boulder weirs, embankments of canals and similar waterways, fences, walls or anything designed to facilitate access (such as gates or stiles).

**2.3** You can also exercise access rights above<sup>5</sup> or below the land (for example, you can exercise access rights in the air and in caves). Access rights apply under water as well as on the surface.

**2.4** You can exercise access rights at any time of the day or night, provided you do so responsibly. The Code provides specific guidance on responsible access at night (see paragraphs 3.19 and 3.20).

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<sup>4</sup> Local authorities must produce, within three years of the legislation coming into force, core path plans setting out their proposals for a system of paths – called “core paths” – sufficient for the purpose of giving the public reasonable access throughout their areas.

<sup>5</sup> Subject to any regulations governing the use of air space in any particular place.

- 2.5 Access rights do not apply on some types of land and these are described in paragraph 2.11. Where some land management operations are taking place, such as crop spraying or tree felling and harvesting, you might be asked to avoid using particular routes or areas for your own safety (see paragraphs 3.24 to 3.28). In some places, local authorities and some other public bodies may have introduced byelaws or other statutory regulations which might affect how you can exercise access rights (see paragraph 2.11).

## What you can do under access rights

- 2.6 You can exercise access rights for recreational purposes, some educational activities and certain commercial purposes, and for crossing over land and water.
- 2.7 "Recreational purposes" is not defined in the legislation. It is taken to include:
- **pastimes**, such as watching wildlife, sightseeing, painting, photography and enjoying historic sites;
  - **family and social activities**, such as short walks, dog walking, picnics, playing, sledging, paddling or flying a kite;
  - **active pursuits**, such as walking, cycling, horse riding and carriage driving, rock climbing, hill-walking, running, orienteering, ski touring, ski mountaineering, caving, canoeing, swimming, rowing, windsurfing, sailing, diving, air sports and wild camping; and
  - **participation in events**, such as walking or cycling festivals, hill running races, mountain marathons, mountain biking competitions, long-distance riding events, orienteering events and canoeing competitions.
- 2.8 Access rights extend to any educational activities concerned with furthering a person's understanding of the natural or

cultural heritage<sup>6</sup>. For example, access rights would extend to the students, leader and any support staff on a visit to the outdoors to learn about wildlife or landscapes or geological features. People carrying out field surveys of the natural or cultural heritage, such as of birds or plants, as a recreational activity or for educational purposes, are covered by access rights (see paragraph 3.64).

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**2.9** Access rights extend to activities carried out commercially or for profit, provided that these activities could also be carried on other than commercially or for profit (ie by the general public for recreational purposes or for educational activities or for crossing land). For example, a mountain guide who is taking a customer out hill-walking is carrying on a commercial activity but this falls within access rights because the activity involved – hill-walking – could be done by anyone else exercising access rights. The same would apply to a canoe instructor from a commercial outdoor pursuits centre with a party of canoeists. Other examples would be a commercial writer or photographer writing about or taking photographs of the natural or cultural heritage.

**2.10** Access rights can also be used to cross land and inland water. This means going into land or inland water, passing over it and then leaving it for the purpose of getting from one place to another place, and is not limited to recreational purposes or educational activities. Access rights for recreational purposes, for relevant educational activities and for relevant commercial purposes refer to going into, passing over and remaining on land or inland water for these purposes and then leaving it.

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<sup>6</sup> Section 1, Land Reform (Scotland) Act 2003. Natural heritage is defined as including the flora and fauna of the land, its geological and physiographical features and its natural beauty and amenity. Cultural heritage is defined as including structures and other remains resulting from human activity of all periods, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes.

## Where do access rights not apply?

**2.11** Access rights do not apply in the following places<sup>7</sup>.

- Land on which there is a house, caravan, tent or other place affording a person privacy or shelter, and sufficient adjacent land to enable those living there to have reasonable measures of privacy and to ensure that their enjoyment of the house or place is not unreasonably disturbed. The extent of this land may depend on the location and characteristics of the house (see paragraphs 3.13 to 3.17).
- Gardens which are separated from houses but only accessible to the residents who have common rights in them (these are usually found in cities such as Edinburgh and Glasgow).
- Land on which there is a building or other structure or works, plant or fixed machinery, and land which forms the curtilage of a building or which forms a compound or other enclosure containing any structure, works, plant or fixed machinery. Examples of non-residential buildings and structures include: farm buildings and yards; animal and bird rearing pens; sports centres, pavilions and stands; club houses; factories; warehouses and storage areas; military bases and other installations; pipelines; chemical and other processing plants; canal locks and lifts; water treatment and sewage works; horticultural nurseries; and, fish farms and hatcheries.
- Land in which crops have been sown or are growing<sup>8</sup>. Crops are taken to include cereals (such as wheat and barley), vegetables (such as potatoes, turnips and cabbages), fruits

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<sup>7</sup> Sections 6 and 7, Land Reform (Scotland) Act 2003

<sup>8</sup> However, you can exercise statutory access rights on the margins of fields, along paths and tracks, and on any unsown ground (see paragraphs 2.2 and 3.35 to 3.37).

(such as strawberries and raspberries). Grass being grown for hay or silage and which is at such a late stage of growth that it is likely to be damaged by you exercising access rights is a crop (see paragraph 3.37).

- Grass sports pitches or playing fields whilst they are in use for their intended purpose (for example, you cannot exercise your access rights on a grass football field whilst there is a football match in progress).
- Any sports pitch or playing field with an artificial surface (such as synthetic grass or rubber), whether or not in use.
- On golf greens, bowling greens, cricket squares, lawn tennis courts or other similar area on which grass is grown and prepared for a particular recreational purpose, whether or not in use.
- Land or water that has been developed or set out for a recreational purpose, whilst in use and where your exercise of access rights would interfere with the recreational use intended for that land, such as horse racing gallops<sup>9</sup>.
- On land contiguous to any school and used by that school (such as a playing field).
- Places where you have to pay to go in<sup>10</sup>, such as castles, historic houses and gardens, historic sites, and visitor attractions.

<sup>9</sup> Section 7 (8) of the Land Reform (Scotland) Act 2003 states that this does not include land on which groynes have been constructed, deepening of pools has been undertaken, fishing platforms have been erected or where other works for the purposes of fishing have taken place. Access rights can therefore be exercised in these places.

<sup>10</sup> Section 6 (1)(f) of the Land Reform (Scotland) Act 2003 states that these are places where the public were admitted only on payment on at least 90 days in the year to 31 January 2001 and on at least 90 days in each year thereafter.

#### Scottish Outdoor Access Code, 2005

- Building, civil engineering or demolition sites.
- Railway and airfield infrastructure and airports.
- Working quarries and other surface workings.
- Land or water where public access is, by or under any other legislation, prohibited, excluded or restricted. This would normally be for safety grounds or public security reasons<sup>11</sup>. In some places, byelaws, management rules or other regulations may have been introduced by a local authority or other similar public body and these may affect how you can exercise access rights. All byelaws need to be consistent with the access provisions in the Land Reform (Scotland) Act 2003<sup>12</sup>.
- Land exempted from access rights through an order made by a local authority (for exemptions lasting for six or more days, the order needs to be confirmed by Ministers and be subject to public consultation)<sup>13</sup>.

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<sup>11</sup> For example, military bases and other installations. On other land or water managed by the Ministry of Defence there is usually a presumption in favour of recreational access wherever this is compatible with the primary military purpose. Follow any local information on access to such land. See Part 5 for further information.

<sup>12</sup> Local authorities and some other public bodies (see paragraph 6.7) can introduce byelaws. Section 30, Land Reform (Scotland) Act 2003 states that all byelaws must be reviewed and, if necessary, modified by the appropriate local authority or public body so that they are consistent with the provisions in the Act. This must be done within two years of the Act coming into force.

<sup>13</sup> Section 11, Land Reform (Scotland) Act 2003. This power might need to be used for some sporting events, such as motorised hill trials, car rallies and water skiing competitions, and some other events, such as agricultural shows, car boot sales, music festivals, wedding receptions and events involving the sale of goods or catering.

## What activities are excluded from access rights?

**2.12** Access rights must be exercised in ways that are lawful and reasonable. By definition this excludes any unlawful or criminal activity from the time at which it occurs. Furthermore, being on or crossing land for the purpose of doing anything which is an offence or a breach of an interdict or other order of a court is excluded from access rights. This means that a person intent on such a purpose is excluded from access rights at the time they seek to enter the land. This is also taken to include the carrying of any firearm, except where the person is crossing land or water to immediately access land or water, or return from such, where shooting rights are granted, held or held in trust or by any person authorised to exercise such rights.

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**2.13** A list of the more obvious statutory offences relating to people's behaviour is provided at Annex 1. This list includes poaching, vandalism, not clearing up after your dog has fouled in a public place, being responsible for a dog worrying livestock, dropping litter, polluting water, and disturbing wild birds, animals and plants. There are also common law offences, such as breach of the peace.

**2.14** The Land Reform (Scotland) Act 2003 excludes some other conduct from access rights<sup>14</sup>, including:

- Hunting, shooting or fishing. These activities still require the permission of the relevant owner.
- Motorised activities, such as motor biking and scrambling, off-road driving, the use of any powered craft on water, microlighting, and the use of powered model craft. These activities still require the permission of the relevant owner or manager. Access rights, however, do extend to a person

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<sup>14</sup> Section 9, Land Reform (Scotland) Act 2003



with a disability who is using a motorised vehicle or vessel built or adapted for use by that person<sup>15</sup>.

- Being on or crossing land while responsible for a dog that is not under proper control (see paragraph 3.55).
- Being on or crossing land or water for the purpose of taking away, for commercial purposes or for profit, anything in or on the land or water (for example, mushrooms or berries picked for commercial use, or gravel and stones).

## What about public rights of way and navigation?

**2.15** Public rights of way are different from access rights and have been recognised in Scots law for centuries and are a valuable part of our cultural heritage. For a right of way to be established under the common law, it must run from one public place to another public place along a more or less defined route (it need not be an identifiable path), and it must have been used openly and peaceably by the public, otherwise than with the permission, express or implied, of the landowner, for at least 20 years. Many rights of way have been established for walkers only, but some have been established for use by horse riders and cyclists, and a small number exist for motorised vehicular use.

**2.16** All public rights of way will continue to exist<sup>16</sup> and are unaffected by the Land Reform (Scotland) Act 2003<sup>17</sup>. You can exercise access rights over public rights of way where these routes pass over the land listed in paragraph 2.2. Where a public right of way passes over land excluded from access rights, such as the land associated with a building or land on which crops are growing, you can still use the route as a right

<sup>15</sup> Subject to the Highway Code being adhered to.

<sup>16</sup> Information on rights of way is available from local authorities. Also see [www.outdooraccess-scotland.com](http://www.outdooraccess-scotland.com) for links to other appropriate bodies.

<sup>17</sup> Section 5, Land Reform (Scotland) Act 2003

of way. Although access rights do not extend to the use of motorised vehicles, you can still use a vehicular right of way where it has been established.

- 2.17** Existing public rights of navigation will continue on navigable lochs and rivers.

### **What about public rights on the foreshore?**

- 2.18** Public rights on the foreshore<sup>18</sup> and in tidal waters will continue to exist. These have not been fully defined but include shooting wildfowl, fishing for sea fish, gathering some uncultivated shellfish, lighting fires, swimming, playing on the sand and picnicking. Access rights also extend to these places.

### **What about activities and places not covered by access rights?**

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- 2.19** Provided you exercise them responsibly, access rights established by the Land Reform (Scotland) Act 2003 are wide-ranging in terms of the places and activities that they extend to. Nonetheless, access rights do not apply to some places where the public have enjoyed access perhaps over a long period of time. Examples include passing through some farmyards and across some dams. Certain activities that are not included in statutory access rights have also been practiced for a long time by the public, such as gathering natural berries or fruit for personal use or sledging on some golf courses. Such access and activities are not affected by the Land Reform (Scotland) Act 2003.

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<sup>18</sup> The foreshore is the land between the upper and lower ordinary spring tides.



## **HAWICK COMMON GOOD FUND SUB-COMMITTEE– 17 NOVEMBER 2015**

### **Property Update**

#### 1. Williestruther Cottage.

Lisa Bell and Scott Richardson signed the lease on 30<sup>th</sup> October and took entry direct from Jackie Wilson on 30<sup>th</sup> October.

#### 2. Woodlot at the Burgh Woodlands.

Attached is a draft advert which would cost £368 for Hawick News, Southern Reporter and Berwickshire News. £210 for The Scottish Farmer giving a total cost for one week of £578. If these costs are acceptable, I could have a list of potential tenants for the next meeting.

James Morison, Estate Management

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Our Scottish Borders  
Your community



[www.scotborders.gov.uk](http://www.scotborders.gov.uk)

## To Let

Woodlot Opportunity, Hawick Burgh Woodlands, Hawick.

10 year Woodlot licence for 51 Ha of mixed species woods.

Applicants must have experience in woodland management and hold appropriate qualifications.

Further details from Estate Management, Scottish Borders Council,  
Newtown St Boswells, TD6 0SA. Tel: 01835 824000 Ext. 5295.

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