

# Public Document Pack



## MELROSE COMMON GOOD FUND SUB-COMMITTEE THURSDAY, 8 SEPTEMBER 2022

A MEETING of the MELROSE COMMON GOOD FUND SUB COMMITTEE will be held VIA  
MICROSOFT TEAMS on THURSDAY, 8 SEPTEMBER 2022 at 9.00 am

All attendees, including members of the public, should note that the public business in this meeting will be livestreamed and video recorded and that recording will be available thereafter for public view for 180 days.

J. J. WILKINSON,  
Clerk to the Council,

1 September 2022

<b>BUSINESS</b>		
1.	<b>Apologies for Absence.</b>	
2.	<b>Declarations of Interest.</b>	
3.	<b>Consultation on Heritable and Moveable Asset Registers for Former Burgh of Melrose (Pages 3 - 12)</b>  Consider report by Principal Solicitor. (Copy attached.)	30 mins
4.	<b>Any Other items Previously Circulated.</b>	
5.	<b>Any Other Items which the Chairman Decides are Urgent.</b>	

### 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.

**Membership of Committee:-** Councillors J. Linehan (Chairman), D. Parker, J. PatonDay and Community Councillor B. Jackson

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Please direct any enquiries to Declan Hall, Tel: 01835 826556  
Email: [Declan.Hall@scotborders.gov.uk](mailto:Declan.Hall@scotborders.gov.uk)

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## **Consultation on Heritable and Moveable Asset Registers for former Burgh of Melrose**

### **Report by Principal Solicitor**

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## **Melrose Common Good Fund Sub Committee**

**8 September 2022**

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### **1 PURPOSE AND SUMMARY**

- 1.1 This report is to advise on the outcome of the recent consultation under the Community Empowerment (Scotland) Act 2015, and to seek approval of the final Common Good Register for Melrose.**
- 1.2 Under the Community Empowerment (Scotland) Act 2015 the Council is required to establish and maintain a register of property which is held by the authority as part of the Common Good ("a Common Good Register"). Before establishing a Common Good Register, the Act requires the Council to publish a list of property that it proposes to include in the Register and consult the public on this list.
- 1.3 The Melrose Common Good Sub-Committee approved the draft asset register in December 2021 and agreed to the commencement of the public consultation. The consultation ran from December 2021 to 31 March 2022,
- 1.4 The Sub Committee now requires to consider the responses received to the consultation, and approve the final register to be recommended to Council for publication.

### **2 RECOMMENDATIONS**

- 2.1 **I recommend that the Sub-Committee:-**
  - (a) Notes the consultation responses and officers' comments thereon, as set out at Appendix 1 to this report;**
  - (b) Approves the contents of the final list of heritable and moveable property assets held by the Council within the former Burgh of Melrose, as set out in Appendix 2;**
  - (c) Agrees to recommend to Council the said final asset list for publication as a completed Common Good Register for Melrose.**

### **3 BACKGROUND**

- 3.1 Under the Community Empowerment (Scotland) Act 2015 the Council is required to establish and maintain a register of property which is held by the authority as part of the Common Good ("a Common Good Register"). Before establishing a Common Good Register, the Act requires the Council to publish a list of property that it proposes to include in the Register and to consult the public on this list.
- 3.2 A draft list was agreed by the Sub-Committee in December 2021 and a public consultation on that list took place from 21 December 2021 to 31 March 2022. The consultation was available on-line via Citizens Space, with paper copies of the lists being made available on request. The Council advertised the consultation on its website and through each of its Local Area Partnerships. In addition, details of the consultation were issued to every Community Council in the Scottish Borders.

### **4. CONSULTATION**

- 4.1 The consultation published the draft list of assets, together with a location plan for each of the land or building assets. The consultation asked for comments on (i) whether a proposed asset should be included as part of the Common Good; or (ii) whether there should be other assets included in the Common Good asset list.
- 4.2 There were 65 responses to the consultation and 6 of these responses related to Melrose. The responses are set out in Appendix 1.
- 4.3 In considering the responses received, officers from the Council's Legal team have liaised with Estates and Finance colleagues in order to determine the provenance of the assets concerned. The legal tests have then been applied to the information gathered in order to form a view as to the assets' common good status. The legal tests can be summarised as follows:
- All property or land owned by the Burgh in 1975 *may* belong to the Common Good;
  - If the title deeds of the asset contain a 'common good declaration' which clearly indicates that the property should be held for the people of the Burgh, it is likely that the asset belongs to the Common Good;
  - If there is evidence, from the title deeds or the Burgh records that the asset was acquired for a statutory purpose, or using statutory powers, the asset is unlikely to be part of the Common Good.
  - If the asset is part of a separate Trust, it will not form part of the Common Good.
  - Moveable items (such as art and artefacts) again may be Common Good if owned by the Burgh in 1975.
  - Items used principally for the administration of the Burgh (such as minute books) will not be part of the Common Good, whereas ceremonial items such as robes and chains are likely to form part of the Common Good.

- 4.4 Officers' responses to the consultation comments are set out in Appendix 1. If the Sub-Committee agrees that all consultation responses have been appropriately considered, the next step in the process is for the Sub-Committee to approve the asset list set out at Appendix 2, as being the final Common Good Register for Melrose. Any changes from the draft register approved in December have been highlighted.
- 4.5 Following approval by the Sub-Committee of the final Register, Council approval will be sought for publication of the final Registers for all of the Common Good assets in the Scottish Borders. The aim is to have the full Scottish Borders Common Good Asset Register published by the end of September 2022.
- 4.6 It is possible that following this process, further assets may be identified as being Common Good, and where that is the case, the Council will update the Common Good Asset Registers. The Registers will similarly be updated if existing property is disposed of or reclassified. The Council will also ensure that the Common Good Asset Registers are reviewed on a regular basis, and at least every five years.

## **5 IMPLICATIONS**

### **5.1 Financial**

There are no direct costs attached to implementing any of the recommendations contained in this report. However, the Council has a duty to ensure the accuracy of the Council's accounts. It is therefore important that any assets which should properly be classified as being Common Good are contained within the Common Good Registers, and therefore the Common Good Accounts.

### **5.2 Risk and Mitigations**

The Council's primary aim is to ensure compliance with Part 8 of the Act in respect of Common Good assets. If the Council fails to comply with the duties contained in Part 8 of the Act it will be in breach of the legislation and the Council may be subject to adverse public comments and legal challenge. The risk is mitigated by considering this report and the Council carrying out the actions detailed herein.

### **5.3 Integrated Impact Assessment**

Steps were taken to ensure that the consultation was accessible to all. These steps included the publication of the consultation in paper copy issued on request.

### **5.4 Sustainable Development Goals**

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

### **5.5 Climate Change** There are no effects on carbon emissions in accepting or rejecting the recommendation.

### **5.6 Rural Proofing**

This is not a new policy matter.

### **5.7 Data Protection Impact Statement**

There are no data protection implications resulting from the proposed publication of the Registers of Common Good.

### 5.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Council Schemes of Administration or Delegation.

## 6 CONSULTATION

6.1 The Director Finance & Corporate Governance, the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Director People, Performance & Change, the Clerk to the Council and Corporate Communications have been consulted and comments received have been incorporated into the final report.

### Approved by

Director of .....

Signature .....

### Author(s)

Name	Designation and Contact Number
Hannah MacLeod	Principal Solicitor, 01835 825 216

**Background Papers:** Nil

**Previous Minute Reference:** Nil

**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, Legal and Licensing Services, Council Headquarters, Newtown St Boswells, 01835 825216 or email [hannah.macleod@scotborders.gov.uk](mailto:hannah.macleod@scotborders.gov.uk)

## Consultation on Heritable and Moveable Asset Registers for former Burgh of Melrose

### Appendix 1: Responses to Consultation and Officers' Considerations

Consultation Comment	SBC Response	Recommended action
The Gibson Park should be on Common Good Register	This park forms part of land held by the Council as trustees for the Gibson Trust, so cannot be added to the Common Good Register.	No action
The Golf Club should be on Common Good Register	This land was purchased by the Burgh in 1921 in terms of Burgh Police (Scotland) Act 1892 for use as a recreation ground. This statutory purpose precludes the land from being added to the Common Good Register.	No action
The "Triangle " should be on Common Good Register	This land forms part of land held by the Council as trustees for the Ormiston Trust, so cannot be added to the Common Good Register.	No action
Weirhill should be on Common Good Register	This land was acquired by the Parochial Board of Parish of Melrose 1860 in terms of Burial Grounds (Scotland) Act 1855. This statutory purpose precludes the land from being added to the Common Good Register.	No action
Do the cash funds noted on the register include the sum of £1,000 which came from a trust fund to set up a Melrose Common Good fund?	Yes. This was the Fraser bequest, which was transferred to Melrose CG at the time it was established formally in 2014.	No action
Could the Council assist in this exercise the community of Newstead in relation to their attempts to	As Newstead does not have a Common Good, and falls outwith the boundaries of Melrose, this would not be	Refer query to Communities team.

<p>make use of land at The Eddy, Newstead, for the benefit of the community?</p>	<p>relevant to this exercise, but can be referred to the Community Engagement team for consideration.</p>	
<p>A map of Melrose was given to the town council at the beginning of the 20<sup>th</sup> C (18<sup>th</sup> C origin and believed to be in the town hall). Is it still there?</p>	<p>It is possible that this item could belong to the Common Good as it is intrinsically linked to the Burgh itself. The Scout Group has confirmed that this item does not appear to be within the Town Hall and Live Borders have no information on the item.</p>	<p>This item could be added to the Register as 'under investigation' to allow more information to be obtained about the history and whereabouts of the map.</p>



## Consultation on Heritable and Moveable Asset Registers for former Burgh of Melrose

### Appendix 2: Proposed Final Register of Common Good Assets in Melrose

#### BURGH OF MELROSE

<b>LAND</b>			
<b>Name of Asset</b>	<b>Location</b>	<b>Description</b>	<b>Plan</b>
Melrose Town Hall	Hamilton Place, Melrose, TD6 9PZ	The building was gifted to the Burgh in 1896 "for the public uses thereof in all time coming"... "for behoof of the whole body and Community of said Burgh". For use either as Town Hall or for such other public purpose as may be agreed upon by Burgh Commissioners.	See attached pdf
<b>ART AND ARTEFACTS</b>			
<b>Name of asset</b>	<b>Location</b>	<b>Description</b>	
Painting of Leaderfoot	Paton St, Galashiels	Painting by Phoebe Anna Traquair	
Silver bowl, Gorham, USA	Galashiels town hall	Reproduction of an original by Paul Revere, presented to the people of Melrose by the Officials of Melrose, Massachusetts	
<b>COMMON GOOD FUND</b>			
<b>Name of Asset</b>	<b>Location</b>	<b>Description</b>	

Melrose Common Good Fund	N/A	Fund set up for the benefit of the inhabitants of Melrose. The balance of the fund as at 1 April 2021 was £18,596.50.	
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#### ITEMS UNDER INVESTIGATION

Name of Asset	Location	Description	Action
Historical Map of Melrose	Unknown, last believed to be within Town Hall	18 <sup>th</sup> Century map of Melrose donated to the Burgh at start of 20 <sup>th</sup> Century	<p>The Scout Group have confirmed that this item appears not to be within the Town Hall and Live Borders have not been able to assist further.</p> <p>Local knowledge should be sought as to whereabouts of map before it can be added to Common Good Register</p>



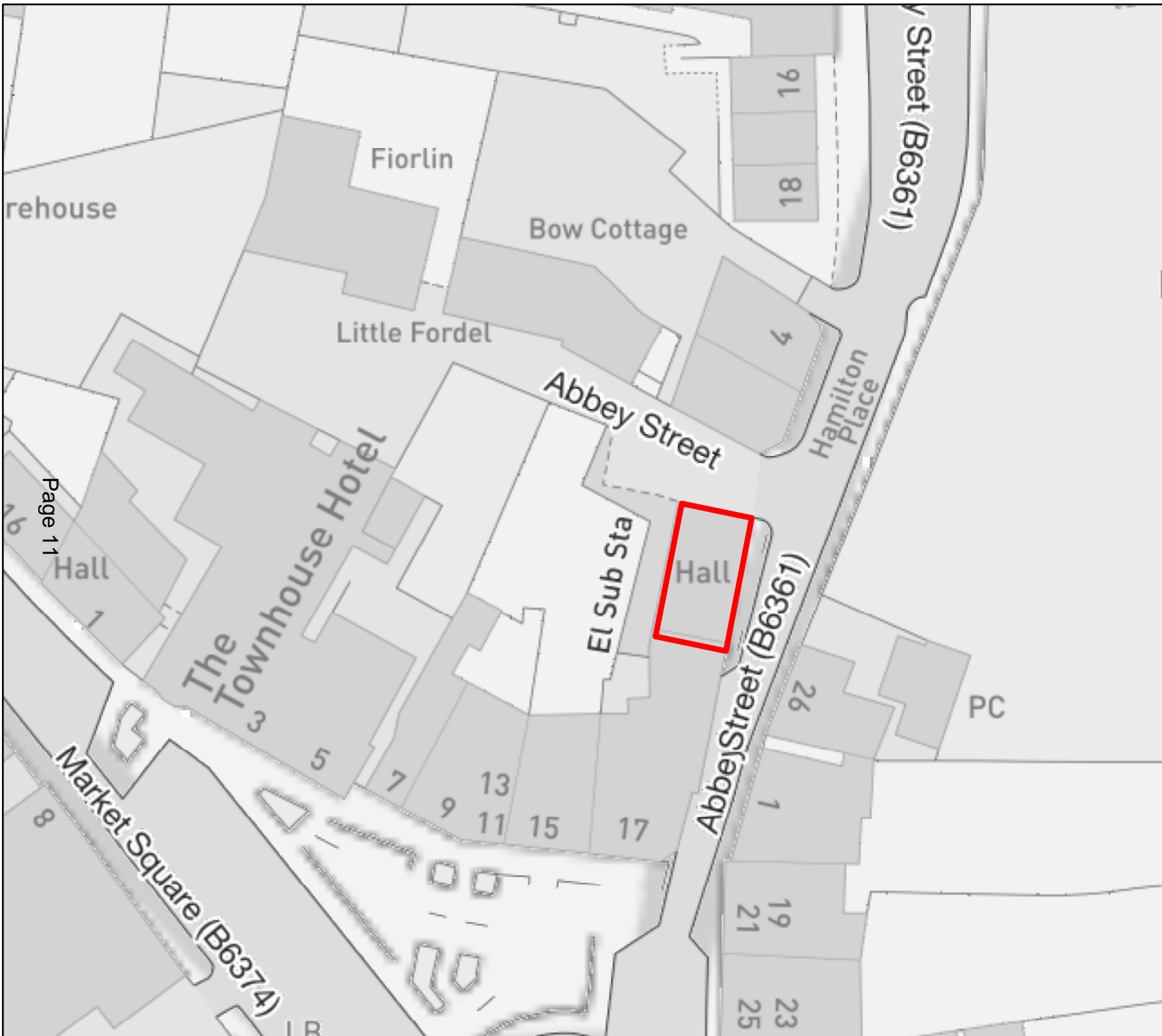
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### Hall

**Melrose Town Hall  
Hamilton Place  
Melrose**

**UPRN: ML013/02**



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