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INNERLEITHEN COMMON GOOD FUND SUB-COMMITTEE THURSDAY, 15TH SEPTEMBER, 2022

A SPECIAL MEETING of the INNERLEITHEN COMMON GOOD FUND SUB-COMMITTEE will be held VIA MICROSOFT TEAMS on THURSDAY, 15 SEPTEMBER 2022 at 1.30 pm

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,

8 September 2022

BUSINESS		
1.	Apologies for Absence	
2.	Declarations of Interest	
3.	Consultation on Heritable and Moveable Asset Registers for former Burgh of Innerleithen (Pages 3 - 14) Consider report by Principal Solicitor. (Copy attached.)	30 mins
4.	Any Other Items Previously Circulated	
5.	Any Other Items which the Chairman Decides are Urgent	

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 M. Douglas (Chairman), J. Pirone, R. Tatler and
Community Council Representative

Please direct any enquiries to Declan Hall 01835 826556
Email:- Declan.Hall@scotborders.gov.uk

Consultation on Heritable and Moveable Asset Registers for former Burgh of Innerleithen

Report by Principal Solicitor

Innerleithen Common Good Fund Sub Committee

15 September 2022

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 Innerleithen.**
- 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 Innerleithen 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 Innerleithen, 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 Innerleithen.**

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 3 of these responses related to Innerleithen. Two respondents simply confirmed the draft Register. The third respondent provided comments which 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 Innerleithen. 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. However, any assets owned by the Common Good but operated by the Council, remain in the Council's accounts with appropriate disclosure notes included in both sets of 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 which was made available 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

Appendix 1: Responses to Consultation and Officers' Considerations

Consultation Comment	SBC Response	Recommended action
<p>The Queen Victoria Jubilee Clock housed in what is now called Cleikum Mill should be a Common Good asset as the funds for it were raised by public subscription.</p>	<p>Once affixed to a building, a clock such as the Jubilee Clock becomes part of the building, and owned by the owner of the building. This is the case regardless of who pays for clock or its maintenance.</p> <p>It is not therefore possible for the Common Good to own the Jubilee Clock. However, the Common Good does maintain the clock, and its provenance is acknowledged by the Innerleithen Common Good.</p>	<p>It is suggested that a note is added to the Register to preserve the knowledge and history of the clock.</p>
<p>The Cameron Memorial in Leithen Road which was erected in 1906 should be Common Good. It states on the memorial it was erected by public subscription and there is a fund from Constance Mackie Stenhouse to maintain this memorial.</p>	<p>Memorials such as the Cameron Memorial, once erected are not capable of being owned separately from the land on which they are built. Accordingly, it is not possible for the Common Good to own this memorial as it sits on privately owned land.</p> <p>The history of the memorial is clear from the memorial itself.</p>	<p>No action</p>

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Consultation on Heritable and Moveable Asset Registers for former Burgh of Innerleithen

Appendix 2: Proposed Final Register of Common Good Assets in Innerleithen

BURGH OF INNERLEITHEN

LAND			
Name of Asset	Location	Description	Plan
Memorial Hall, including the clock, offices and War Memorial	Leithen Road, Innerleithen, EH44 6HU	<p>This property was originally acquired by the Innerleithen Burgh Council by donation from Henry Ballantyne in 1919. The title contains a declaration that the land is "for behoof of the community of the said Burgh" and a 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".</p> <p>The Memorial Hall is currently operated by Live Borders.</p>	See attached pdf
Damside Play Area	Bond Street, Innerleithen	The play area is situated on land donated to the Burgh Council in 1919 from Henry Ballantyne, on which the Memorial Hall was built.	See attached pdf
Damside Park	The Strand, Innerleithen	This area of ground was donated to the Burgh Council in 1947 to be used for amenity purposes for benefit of inhabitants of Innerleithen - to be laid out with flower beds, shrubberies or other decorative	See attached pdf

		plots and planted with suitable trees.	
ART AND ARTEFACTS			
Name of asset	Location	Description	
Provost's chain and medal	St Ronans Wells Visitor Centre	Gold chain and medal used for ceremonial purposes.	
OTHER NOTABLE ASSETS			
Name of asset	Location	Description	
Jubilee Clock	Cleikum Mill	This clock was purchased by public subscription to commemorate Queen Victoria's Golden Jubilee in 1887. Although it is now sited on private property, the Common Good maintains its operation	



ESTATE MANAGEMENT

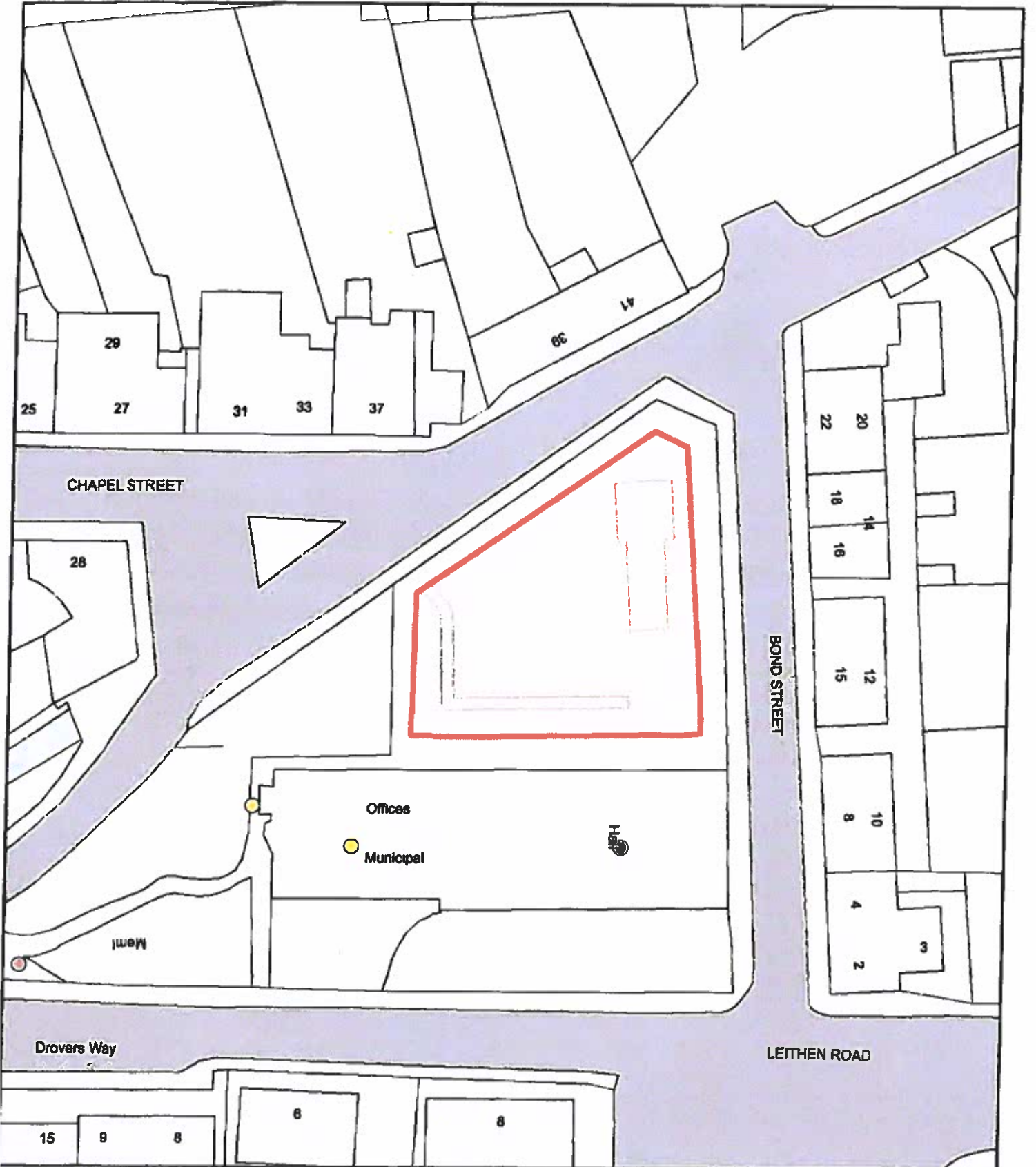
Council Headquarters, Northam St, Bonvale,
Melrose, Scottish Borders TD8 0SA
TEL: 01833 624000 FAX: 01833 623071

**ENGINEERING AND PROPERTY
ESTATE MANAGEMENT**

Innerleithen Memorial Hall
Leithen Road
Innerleithen

Site Plan
UPR: IN014/01 DRAWING NO: 04 SCALE 1:500
DATE: May 2020





N
1:500
Scottish Borders COUNCIL

IN G23/G1

New Assesmt

Play Area
Damgate
Innerleithen

IN??7777

Area: 652m²

CoOrds:
333196, 636869

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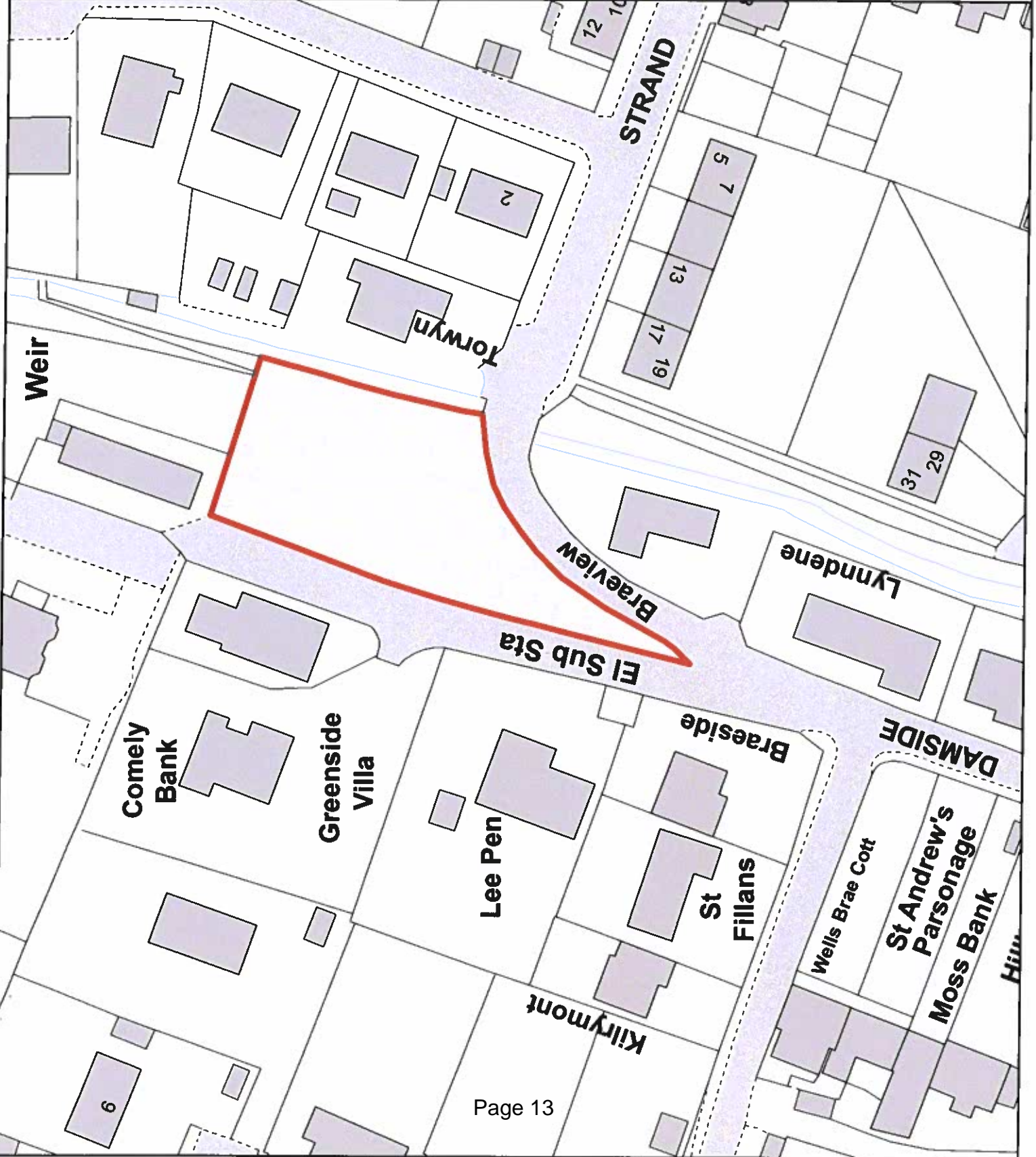
Park

**Damside Park
Damside
Innerleithen**

Area: 1232.50 sq m o.t.

UPRN: IN024/01

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