

SCOTTISH BORDERS COUNCIL

SELKIRK COMMON GOOD FUND SUB COMMITTEE

MINUTES of Meeting of the SELKIRK
COMMON GOOD FUND SUB COMMITTEE
held via via Microsoft Teams on Thursday,
15 September 2022 at 3.00 pm

Present:- Councillors C. Cochrane, L. Douglas and King
Apologies:- Councillor E. Thornton-Nicol
In Attendance:- Principal Solicitor, Property Officer (S. Drummond), Solicitor (J. Webster),
Democratic Services Officer (D. Hall).

1. **CONSULTATION ON HERITABLE AND MOVEABLE ASSET REGISTERS FOR FORMER BURGH OF SELKIRK**

- 1.1 With reference to paragraph 3 of the Minute of the meeting held on 8 December 2021, there had been circulated copies of a report by the Principal Solicitor, which advised on the outcome of the recent consultation under the Community Empowerment (Scotland) Act 2015, and sought approval of the final Common Good Register for Selkirk. The report explained that under the Community Empowerment (Scotland) Act 2015 the Council was required to establish and maintain a register of property which was held by the authority as part of the Common Good ("a Common Good Register"). Before establishing a Common Good Register, the Act required the Council to publish a list of property that it proposed to include in the Register and consult the public on this list. The Selkirk 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. The Sub Committee was required to consider the responses received to the consultation and approve the final register to be recommended to Council for publication.
- 1.2 The Principal Solicitor, Mrs Hannah Macleod presented the report and highlighted that the Register was subject to a review on a five yearly basis. Concerns held by the wider community were raised regarding disputed properties that had not been deemed to be owned by the Common Good, specifically the library, Governor's house, municipal buildings and other industrial buildings. Community Councillor King stressed that the Community of Selkirk had a legitimate desire to protect land/assets which were in dispute from future sale or disposal by the Council. The Principal Solicitor advised that it was beyond the powers of the Sub-Committee to place a moratorium of sale on any of the disputed land/assets, and explained that in the event of the Council seeking to proceed with a sale, it would be for the Community to intervene via court action in the form of judicial review or declaratory action. Mrs Macleod explained that the debate related to the disputed properties had been a point of contention for a considerable period of time, and was largely a matter of legal interpretation. Both sides of the argument had sought independent legal advice, however the matter had not been subject to a decision by any court. The Council had sought advice from Queen's Counsel and the advice received had affirmed Officer's decisions. The exercise to establish the Registers was focused on considering new evidence which arose from the consultation process. No new evidence had been presented as it related to the disputed properties. Mrs Macleod explained that in other instances of disputed assets it had been appropriate to list the land/asset as "under investigation", however the various properties in dispute were no longer under investigation, as no new evidence had come to light. Community Councillor King stressed that he, and the wider community, had very strong reservations about unresolved issues related to community assets which had not been deemed to be Common Good owned, and highlighted that previous sales had potentially deprived the people of Selkirk of considerable positive benefits. The Chair highlighted that the Registers were living

documents which were subject to review and could be altered if any evidence came to light regarding ownership. Mrs Macleod highlighted that the process which had been undertaken was focused solely on establishing the Register, and that other issues as they related to the Common Good such as auditing were still of concern but had been outside the remit of the Register exercise.

- 1.3 The Principal Solicitor provided assurance that the dispute related to the properties which were subject to debate did not pertain to a lack of evidence. The dispute centred on legal interpretations, and was in essence an academic question. Any interested party could seek clarification via court action, at which point a decision would be made. The Council was obligated to follow the legal advice which it had received, which in this instance indicated that the disputed properties were not owned by the Common Good for the reasons outlined in the Appendices to the report. Community Councillor King stressed that he hoped that the Community and the Council could work in a partnership to ensure that the benefit of buildings and assets were used for the people of Selkirk. Ensuring that safeguards were in place to ensure continued community benefit was of the utmost concern, and in response to request from Mr King, the Principal Solicitor agreed to include a note which stipulated that Selkirk Library, the Governor's House, and the Municipal Buildings had been subject to debate between Scottish Borders Council and the Selkirk Common Good Research Group.

DECISION

AGREED:-

- (a) to note the consultation responses and officers' comments thereon, as set out at Appendix 1 to the report;**
- (b) to approve the content of the final list of heritable and moveable property assets held by the Council within the former Burgh of Selkirk, as set out in Appendix 2 to the report, amended to include the Library, the Governor's House and the Municipal Buildings as Other Assets Of Note; and**
- (c) to recommend to Council the said final asset list for publication as a completed Common Good Register for Selkirk.**

The meeting concluded at 3.25 pm