

SELKIRK COMMON GOOD FUND SUB-COMMITTEE THURSDAY, 15 SEPTEMBER 2022

A SPECIAL MEETING of the SELKIRK COMMON GOOD FUND SUB COMMITTEE will be held

VIA MICROSOFT TEAMS on THURSDAY, 15 SEPTEMBER 2022 at 3.00 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 Selkirk (Pages 3 - 50)	60 mins			
	Consider report by Principal Solicitor. (Copy attached.)				
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 C. Cochrane, L. Douglas, E. Thornton-Nicol and Community Councillor I King

Please direct any enquiries to Declan Hall 01835 826556 Email:-- Declan.Hall@scotborders.gov.uk This page is intentionally left blank



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

Report by Principal Solicitor

Selkirk 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 Selkirk.

- 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 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,
- 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 Selkirk, 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 Selkirk.

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 9 of these responses related to Selkirk, including a submission from Selkirk Common Good Research Group. 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 Selkirk. 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. Page 5 Selkirk Common Good Fund Sub-Committee, 15 September 2022

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 825002 T or email https://www.hannah.macleod@scotborders.gov.uk



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

Appendix 1: Responses to Consultation and Officers' Considerations

Consultation Comment	SBC Response	Recommended action
Should Heatherlie Park small play park be on Common Good register?	Part of the play-park sits on the same title as the car park at Heatherlie. This land was acquired by Ettrick and Lauderdale District Council in 1979. As it was not owned by the Burgh pre 1975 it cannot be common good. The remainder of the park site is less clear as during investigations a title deed has not been located. It has therefore not yet been possible to ascertain whether or not the asset should be listed as Common Good.	SBC to investigate the ownership of the remainder of the park, in case this might be common good. This to be noted on CG Register
Should Selkirk Library and adjoin building be on the common good register?	See comments on same query below.	No action
There is an area of land where the tennis courts are (north of A7) – should this be on the register?	It is believed that the only land owned by the Council in this area is the tennis courts, which are not common good, having been acquired by the High school and never owned by the Burgh. The land adjacent to the tennis courts is privately owned.	No action
On the basis of the Ruthin Castle 1944 judgement (Lord Wark) and the Wilson Inverclyde 2003 judgement at the Court of	The land was donated to Burgh Council for specified statutory purpose under Public Libraries Consolidation	No action

Session (Lords Osborne, Drummond Young and Coulsfield) the re- assignation of Selkirk Library and Governor's House to Selkirk CG Fund seems to be irrefutable.	(Scotland) Act 1887 with burden restricting use. It is therefore not Common Good. SBC has been in discussions with some members of the community about this matter for many years and SBC has obtained an Opinion from Senior Counsel on this matter which supports the view of SBC. No new information has been raised during this consultation which would suggest a different conclusion should be reached.	
The Municipal Buildings may well have clear CGF ownership in common with the library. This should be looked into.	The former Fire Station at the north end of the building was acquired by Ettrick and Lauderdale District Council in 1980 the Fire Board. As this was not owned by the Burgh it cannot be Common Good. The remainder of the property was purchased in 1905 by the Burgh Council for the express purpose of conversion to form Municipal Offices and adjuncts for the burgh, authorised under section 315 of the Burgh Police Act 1892. The Finance Committee minute of 4 Sept 1905 shows that Ioan repayments were made from the Police Account as opposed to the CG fund. These factors would suggest that the property is not Common Good.	No action
Selkirk Swimming Pool was built on CG land and should therefore be listed as a CG asset	This property is currently listed as a Common Good asset.	No action

We request a review of the status of Halliwells House museum as the ownership would appear to be Selkirk CG after 15 May 1995	This property was acquired in 1982, after the abolition of the Burgh system. It is not therefore be a common good asset.	No action
We request a review of the status of all the industrial units which were formerly mills, eg: - Dunsdale Mill - Argus Centre - Shepherd's Mill	It is the Council's view that these properties were acquired for industrial development and that this is evidenced by the contemporaneous minutes of the Town Council's Industrial Development Committee.	No action
	Like the library, these assets have been discussed previously and no new information has been made available which would justify reconsideration of the Council's position.	
The civic amenity site at Riverside is noted on the 1899 OS map as Common Good and should be reinstated as such.	This site is on the Common Good register	No action
15 acres at Howdenhaugh are used by Scottish Water but do not appear to be owned by Scottish Water. This needs to be checked.	This land was transferred by Act of Parliament to the East of Scotland Water Authority and is now within the ownership of Scottish Water.	No action
There are numerous listed items (see appendix 2) that are within the National Museum of Scotland.	Items owned by the NMS cannot be Common Good assets. If any information is available about individual CG assets that have been loaned by the CG to the NMS, this information could be considered in order to determine the status of the items. Evidence of CG ownership would be required.	No current action.

Royal Burgh flags – should these be on the list?	A previous consideration of such flags and banners has noted that they are mainly trade banners and flags, not in the ownership of the Common Good. However, if there are specific examples of flags believed to be in the ownership of the Common Good, these can be considered on an individual basis. The Sub- Committee would require	No current action
	information describing the flag, its location, use and history.	
The 700 piece 'Craig Brown book collection' should be Common Good.	Although the collector of these books was local to Selkirk, there is no evidence to suggest that the collection has any particular or specific connection to the town that would mean it belonged to the Common Good, as opposed to the local authority. Firstly, Mr Brown was a resident of Galashiels before Selkirk and secondly, the items within the collection have an interest and relevance that stretches beyond that of the town. The test for establishing whether an item belongs to the Common Good requires the circumstances of the acquisition to be considered (ie was it clear that the donation was only to benefit the people of the town) and secondly, the nature of the item. In both these cases, it is the Council's view that there is insufficient evidence to suggest that this collection belongs to the Selkirk Common Good.	No action

The portrait of James Hogg is privately owned, unless there are two? Common Good. Furthe information has been sought from the respondent.		No current action
James Hogg's bowman's outfit needs to be located	Further information concerning this item and its provenance has been sought from the respondent.	No current action

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

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

ROYAL BURGH OF SELKIRK

LAND					
Name of Asset	Location		Description	Plan	
The Green Hut	West Selkirk	Port,	Acquired by the Burgh in 1969 and initially used as a Housing Department Maintenance Depot.	See pdf	attached
Sir Walter Scott Statue	Market Selkirk	Place,	Site believed to be held under Burgh Charter and therefore Common Good.	See pdf	attached
Pant Well	Market Selkirk	Place,	Site believed to be held under Burgh Charter and therefore Common Good.	See pdf	attached
Victoria Hall Including Caretaker's Flat Fletcher's memorial	Scotts Selkirk, 4LN	Place, TD7	Common Good due to common good dedication in title.	See pdf	attached
Pringle Park and play area	Dovecot Selkirk	Park,	Donated to the Burgh in 1908 as recreation ground for the inhabitants of Selkirk.	See pdf	attached
Selkirk Golf Course	Selkirk Selkirk	Hill,	Part of the Burgh Charter and therefore Common Good.	See pdf	attached
Selkirk Hill Grazings	Selkirk Selkirk	Hill,	Part of the Burgh Charter and therefore Common Good.	See pdf	attached

Victoria Park Including play area, caravan Site, pavilion and swimming pool	Buccleuch Road, Selkirk, TD7 5DN	Majority of the site is held under the Burgh Charter. South western end (between old lade and Selkirk Bridge) was acquired by the Burgh Council in 1892 with a common good dedication in deed. Swimming pool currently operated by Live Borders	pdf	attached
Selkirk Town Hall And clock Including 26 & 28 Market PLace	Market Place, Selkirk, TD7 4BL	The Town and County Hall and Steeple was acquired in 1871 from the Sheriff of Roxburgh and Selkirk and others as trustees for behoof of heritors of the County by Provost and Magistrates of Burgh on behalf of themselves and the community of the Burgh of Selkirk.	See pdf	attached
South Common Farm Including South Common Plantations And South Common Shootings	South Common, Selkirk	Part of the Burgh Charter and therefore Common Good.	See pdf	attached
Smedheugh Farm Including Smedheugh Farm – Shootings Smedheugh Plantations	Smedheugh, Selkirk	Part of the Burgh Charter and therefore Common Good.	See pdf	attached
Linglie Farm Including Linglie Plantations Linglie Farm Shootings	Linglie, Selkirk	Part of the Burgh Charter and therefore Common Good.	See pdf	attached

Linglie Mast Site				
Civic Amenity Site	Riverside Road, Selkirk, TD7 5DN	Part of the Burgh Charter and therefore Common Good.	See pdf	attached
Rosebank Quarry Former Tip Site And play area	Selkirk	Part of this land (original site) was bought in 1901 with a view to provision of public water supply, with the price coming from Common Good funds. Two additional areas (1124 sq yds acquired in 1958 and 151.8 sq. mtr acquired in 2004) are not Common Good.	See pdf	attached
Shawpark Road Development Site	Shawpark Road, Selkirk	No common good dedication in the title deeds, but equally no reference to acquisition for statutory purposes and no information found in Burgh Council Minutes so presumed to be Common Good.	See pdf	attached
Salmon Fishings	Ettrick Water	Title reacquired from Crown Estate Commissioners 2006 by the Scottish Borders Council "as Trustee of the Common Good".	See pdf	attached
Bog Park Recreation Park and Playground	Selkirk	The land was acquired by the Burgh Council in 1942 using Common Good funds.	See pdf	attached
Park/Garden At Shawburn Road/Raeburn Place	Raeburn Place, Selkirk	The land was acquired in 1970 by the Burgh Council for £153. No Common Good dedication in title. Nothing found in Minute Books.	See pdf	attached
Shawburn Toll Embankment	Ettrick Terrace, Selkirk	The land was acquired in 1930 by the Burgh Council (at junction of Raeburn Place and Ettrick Terrace) so that the property could be reserved for public use during the Common Riding.	See pdf	attached

ART AND			
ARTEFACTS			
Name of asset	Location	Description	
Ceremonial and related Items			
Provosts Badge & Chain	Selkirk courthouse	Insignia and Chain of the Provost of Selkirk, comprising badge suspended from chain, applied with shield-shaped panels. Presumed to be gold.	
Baillies Badges & Chains	Selkirk courthouse	Two Silver and enamel badges and chains of office, presented to the Royal burgh of Selkirk, May 1937	
Burgess Cup			
Silver Cup and cover	Selkirk courthouse	Edinburgh 1815, deep cup shaped on pedestal foot, lid surmounted with the Madonna inscribed "Given by The Right hon. Walter Earl of Dalkeith to the Ancient Burgh of Selkirk, 1816"	
Burgess Roll	Selkirk courthouse	Bound volume commencing 1913	
Silver Arrow Display Case			
Copy of Royal Charter	Sir Walter Scott's courtroom	Photocopy of Selkirk's oldest existing Royal Charter, granted in 1535 by King Kames V, accompanies with modern translation	
Air view map of Royal Burgh of Selkirk, framed	Sir Walter Scott's courtroom	Donated by Selkirk Antiquarian Society, 1960	
List of householders in Selkirk and	Sir Walter Scott's courtroom		

vicinity, 1873, framed			
Certificate pf Matriculation of the Arms of the Royal burgh of Selkirk	Sir Walter Scott's courtroom		
Ceremonial Burgh hallberds	Sir Walter Scott's courtroom		
Paintings and Photographs			
James Hogg "the Ettrick Shepherd"	Sir Walter Scott's courtroom	Oil portrait by Nicholson	
After the Battle of Philiphaugh	Sir Walter Scott's courtroom	Watercolour by Tom Scott RSA	
Flowers of the Forest (or Return from Flodden)	Sir Walter Scott's courtroom	Watercolour by Tom Scott RSA (name of painting uncertain)	
The Legend of Ladywoodedge	Sir Walter Scott's courtroom	Watercolour by Tom Scott RSA	
Yarrow Valley	Sir Walter Scott's courtroom	Watercolour by Tom Scott RSA	
Selkirk: memories of Flodden	Sir Walter Scott's courtroom	Watercolour by Tom Scott RSA	
Thomas Anderson, surgeon, Selkirk	Sir Walter Scott's courtroom	Oil portrait by Colvin Smith RSA	
Henry Scott Anderson, MD, Provost 1868 - 80	Sir Walter Scott's courtroom	Oil Portrait by George Reid RSA	

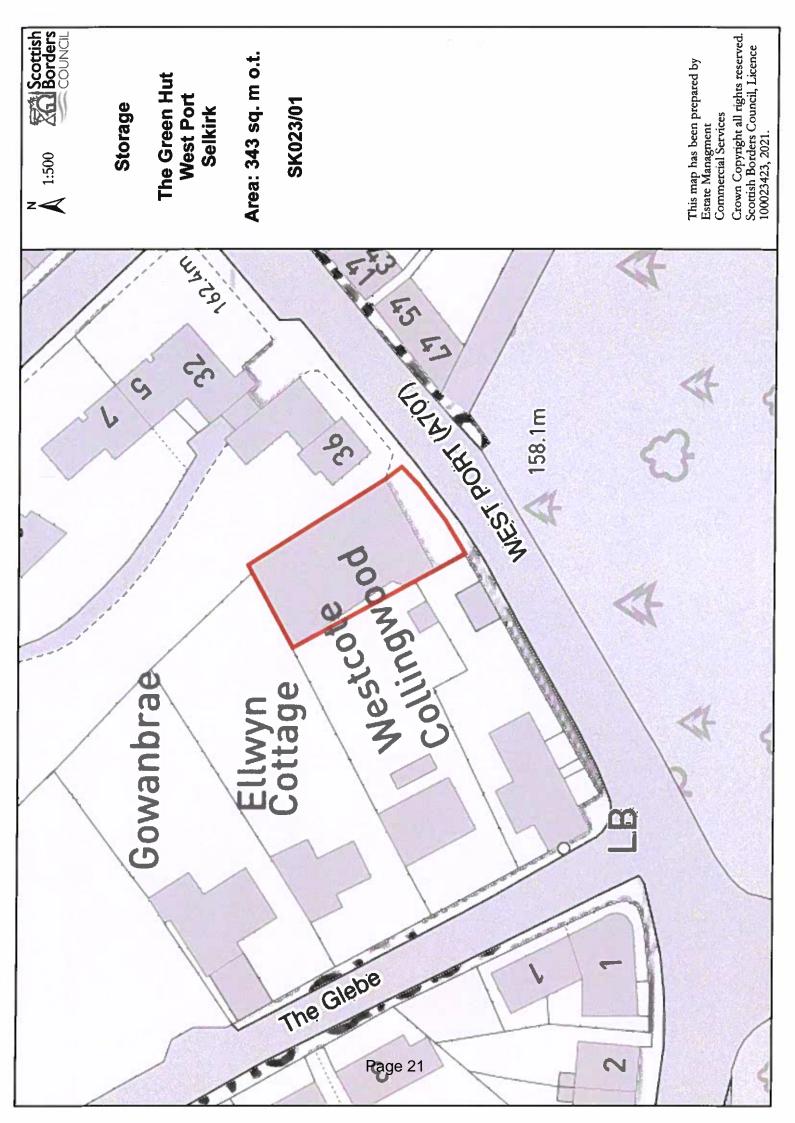
Sir Walter Scott	Sir Walter Scott's courtroom	Copy portrait by Sir John Watson Gorden, 1830, together with plan of Abbotsford estate drawn by Sir Walter Scott	
Sir Walter Scott	Sir Walter Scott's courtroom	Copy engraving of portrait by R M Hodgetts	Live Borders to confirm location
Sir Walter Scott	Sir Walter Scott's courtroom	Copy engraving	
Sir Walter Scott	Sir Walter Scott's courtroom	Engraved sketch	
Sir Walter Scott	Sir Walter Scott's courtroom	Engraving by RW Sierier after Slater	
Sir Walter Scott	Sir Walter Scott's courtroom	Engraved by Edward Mitchell after Sir Henry Raeburn	Live Borders to confirm location
Sir Walter Scott	Sir Walter Scott's courtroom	Copy oil portrait by W. Yellowlees	
Framed photograph of Andrew Lang	Sir Walter Scott's courtroom		
Copy engraving of Mungo Park	Sir Walter Scott's courtroom		
Engraving of Robert Burns	Sir Walter Scott's courtroom	Engraved by Edward Mitchell after Alexander Nasmyth	
Conferment of the Freedom of Selkirk on the Royal Company of Archers, 1971	Sir Walter Scott's courtroom	Framed photograph	
Conferment of the Freedom of Selkirk on the Duke of	Sir Walter Scott's courtroom	Framed photograph	

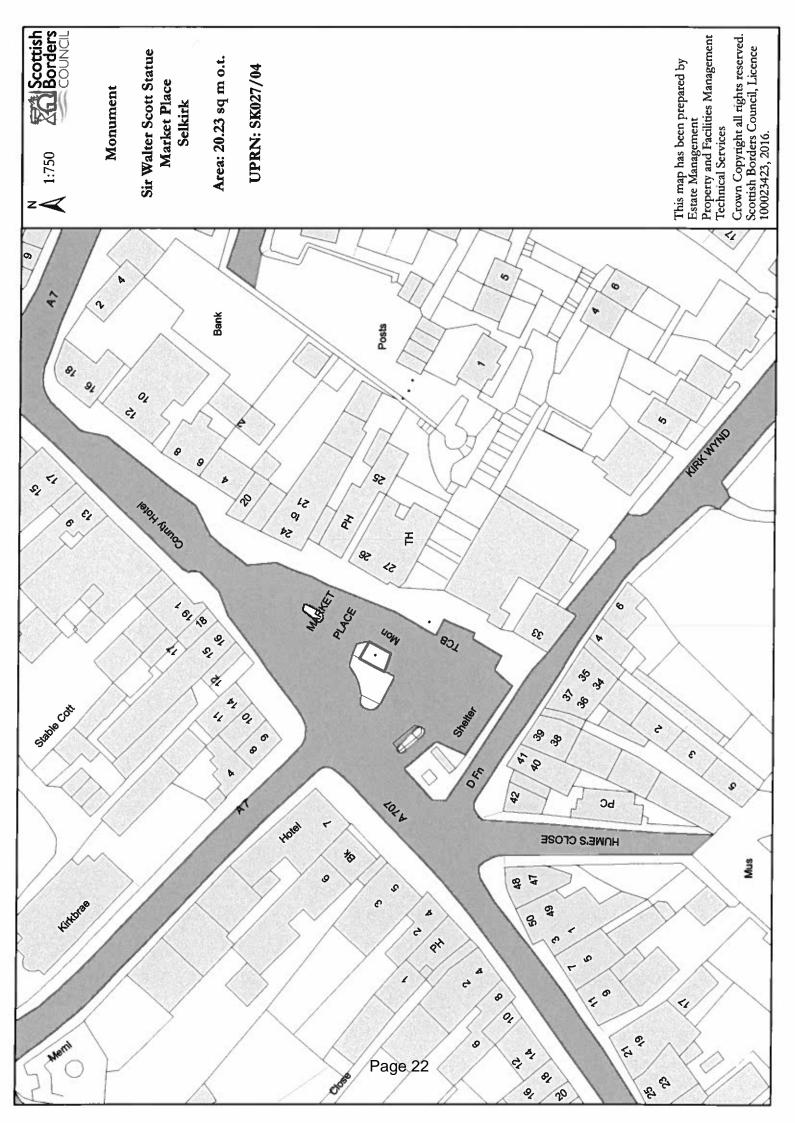
Buccleuch and earl Home, 1963			
Conferment of the Freedom of Selkirk on the Kings own Scottish Borderers, 1953	Sir Walter Scott's courtroom	Framed photograph	Live Borders to confirm location
Dance of the Fairies, 1935	Sir Walter Scott's courtroom	Photograph from Linglie Glen, of 400 th anniversary celebrations	
Engraving- Prince Leopold of Belgium	Sir Walter Scott's courtroom		
Handwritten letters			
Letters from Walter Scott's daughter Charlotte	Sir Walter Scott's courtroom	Letter to Mr Archibald constable asking for the loan of some books	
Letter from Sir Walter Scott	Sir Walter Scott's courtroom		
Letters from Andrew Lang	Sir Walter Scott's courtroom		
Letter from Mungo Park	Sir Walter Scott's courtroom		
Signed copy of "Nithsdale"	Sir Walter Scott's courtroom	Signed copy of song "Nithsdale" by Robert Burns, dated 1795	Live Borders to confirm location
Other items			
Bust of Sir Walter Scott	Sir Walter Scott's courtroom		

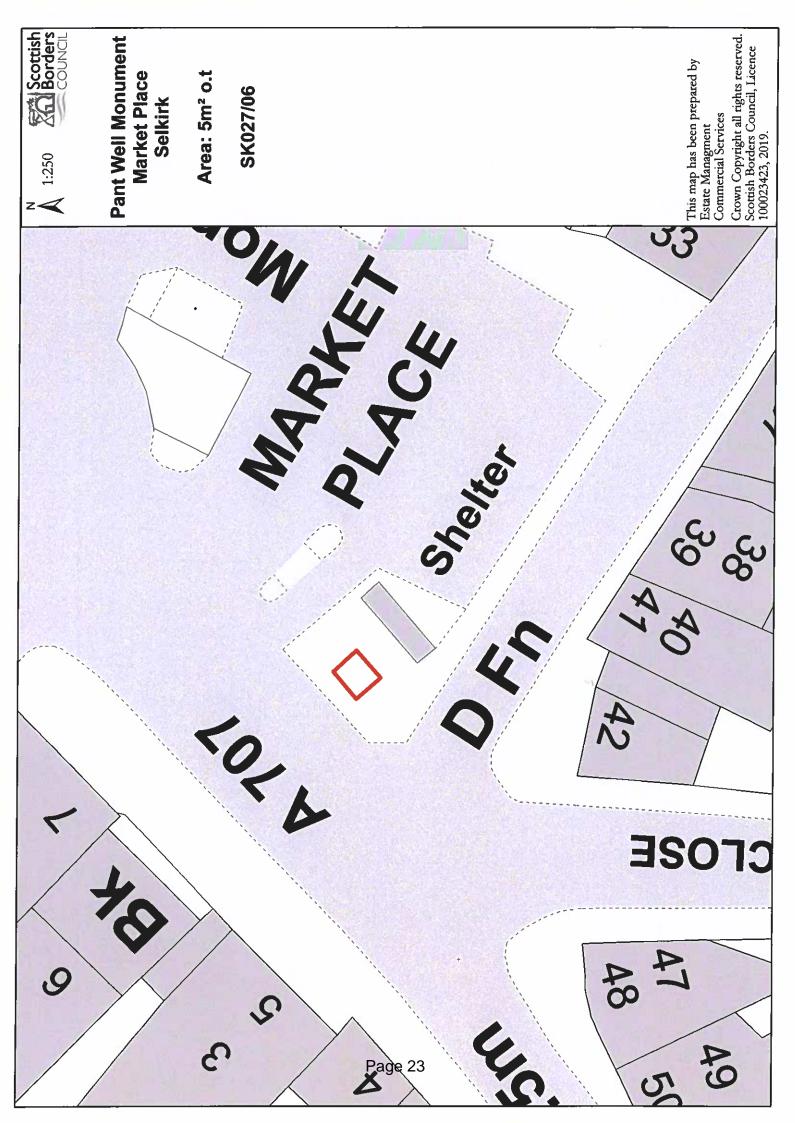
Shield	Sir Walter Scott's courtroom	Presented to the Burgh of Selkirk by the Kings Own Scottish Borderers	
Shield	Sir Walter Scott's courtroom	Presented to the people of Selkirk by the National Small Bore Rifle Association, in 1968	
COMMON GOOD FUND			
Name of Asset	Location	Description	
Selkirk Common Good Fund	N/A	Fund set up for the benefit of the inhabitants of Selkirk. The balance of the fund as at 1 April 2021 was £298,688.	

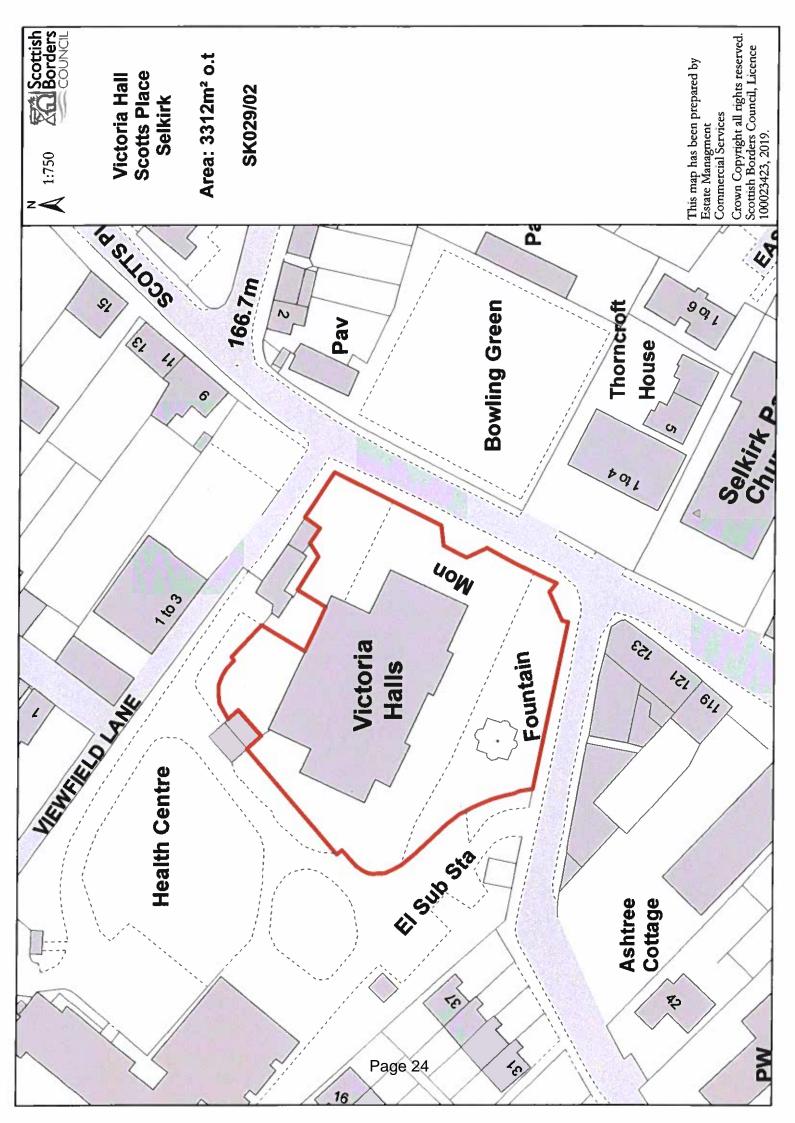
ASSETS UNDER INVESTIGATION

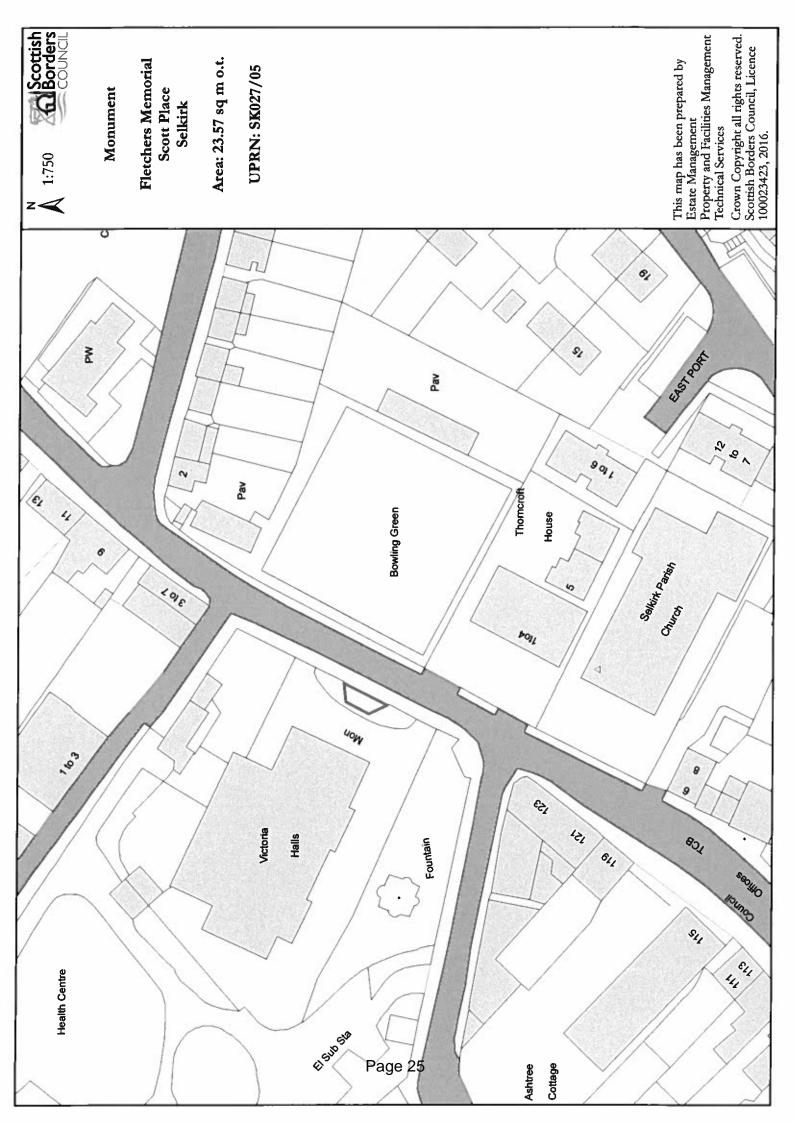
NAME OF ASSET	DESCRIPTION
Heatherlie Play Park	The Council title for the play park at Heatherlie Park covers only part of the land area. SBC to investigate whether the remaining ownership can be ascertained in order to determine whether or not Common Good.

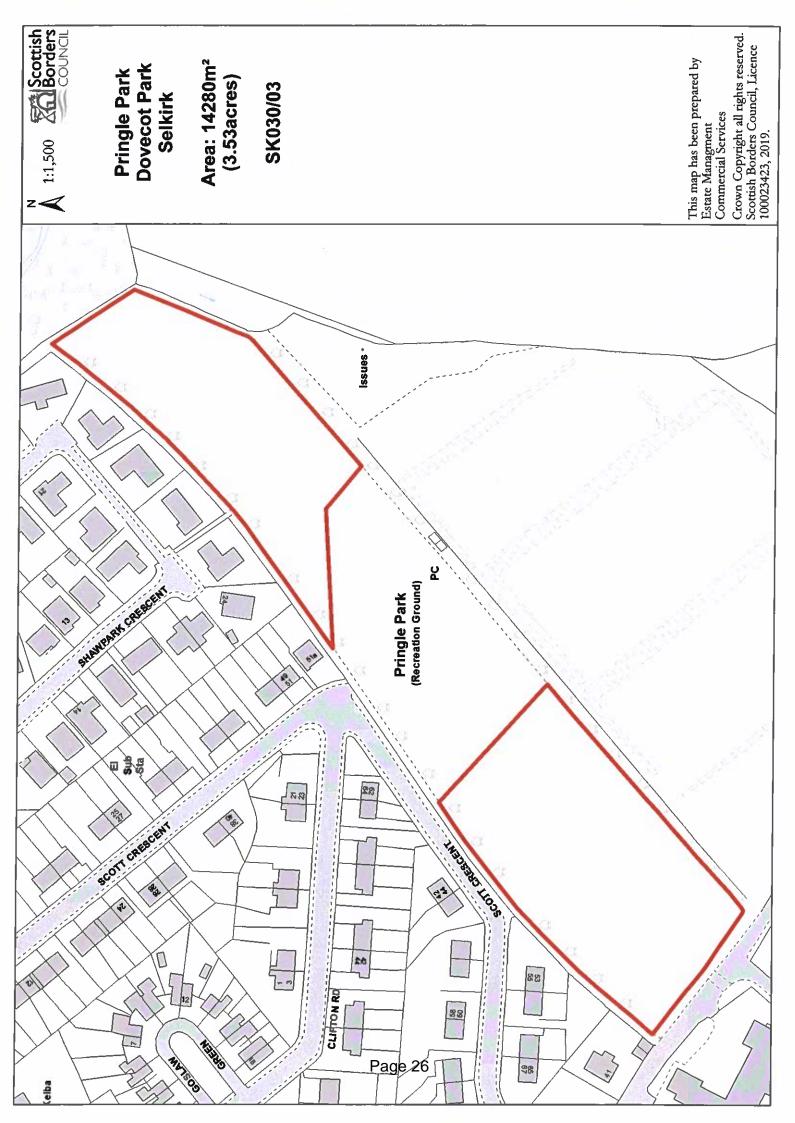


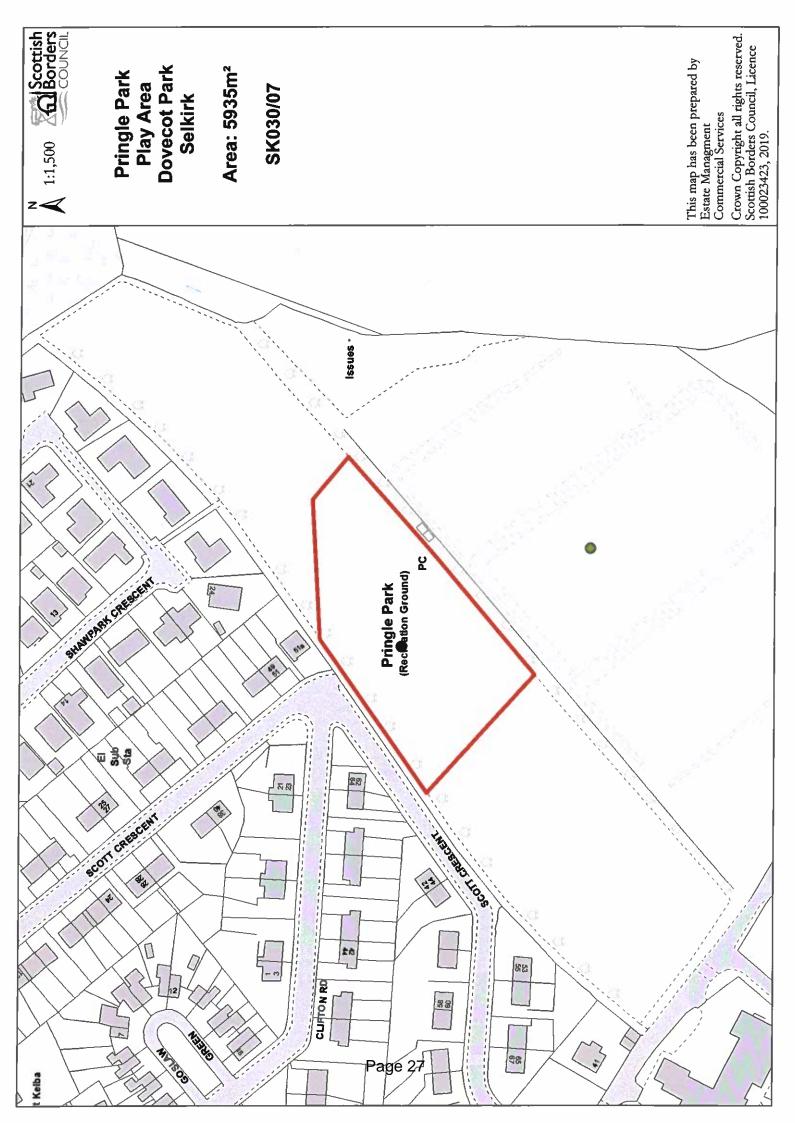


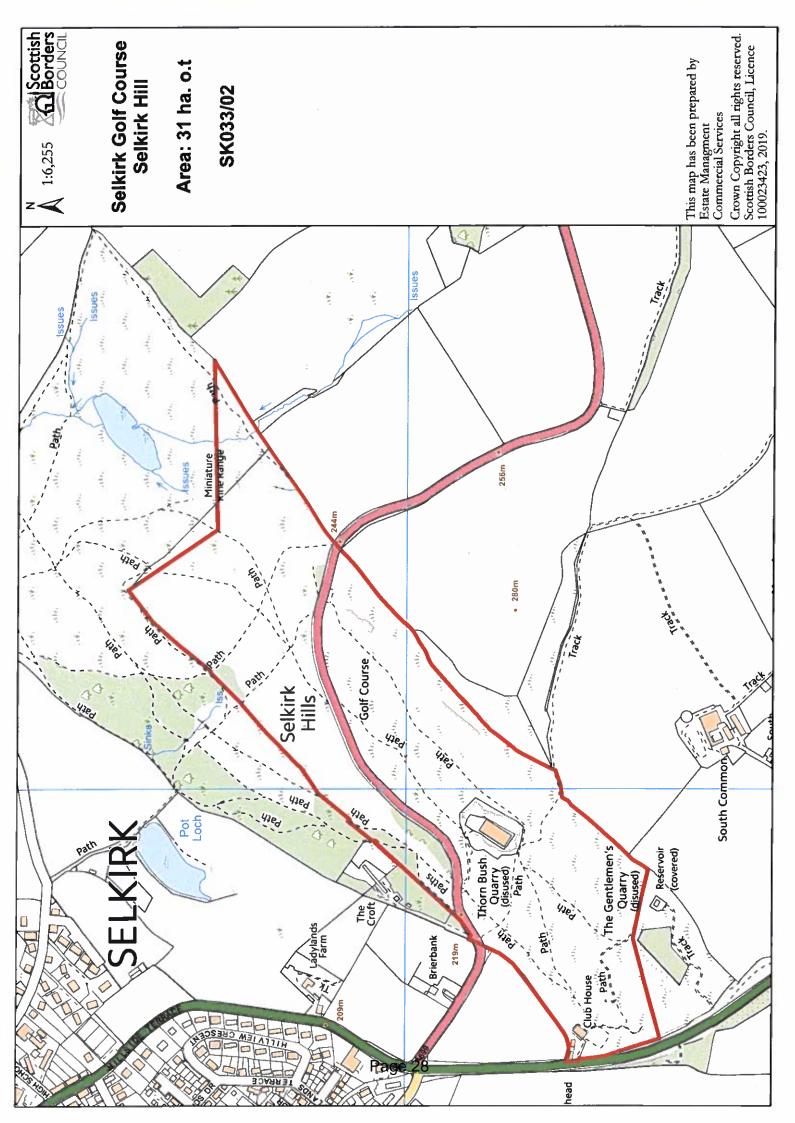


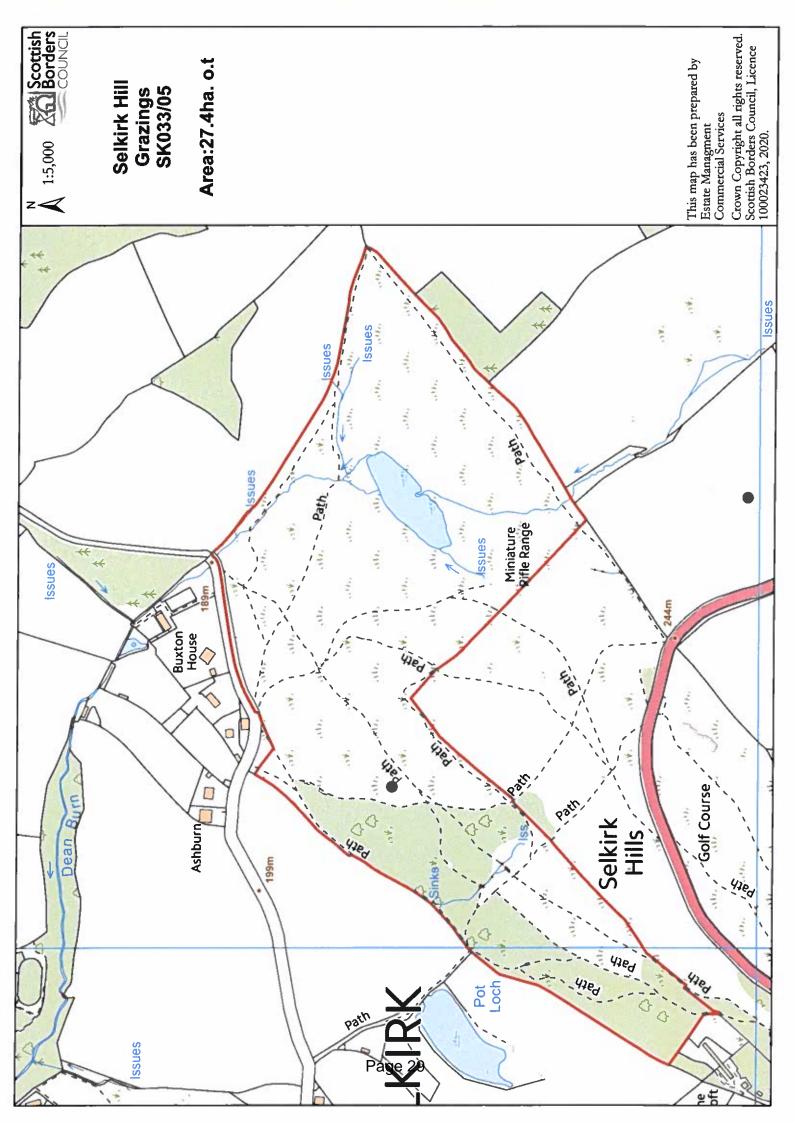


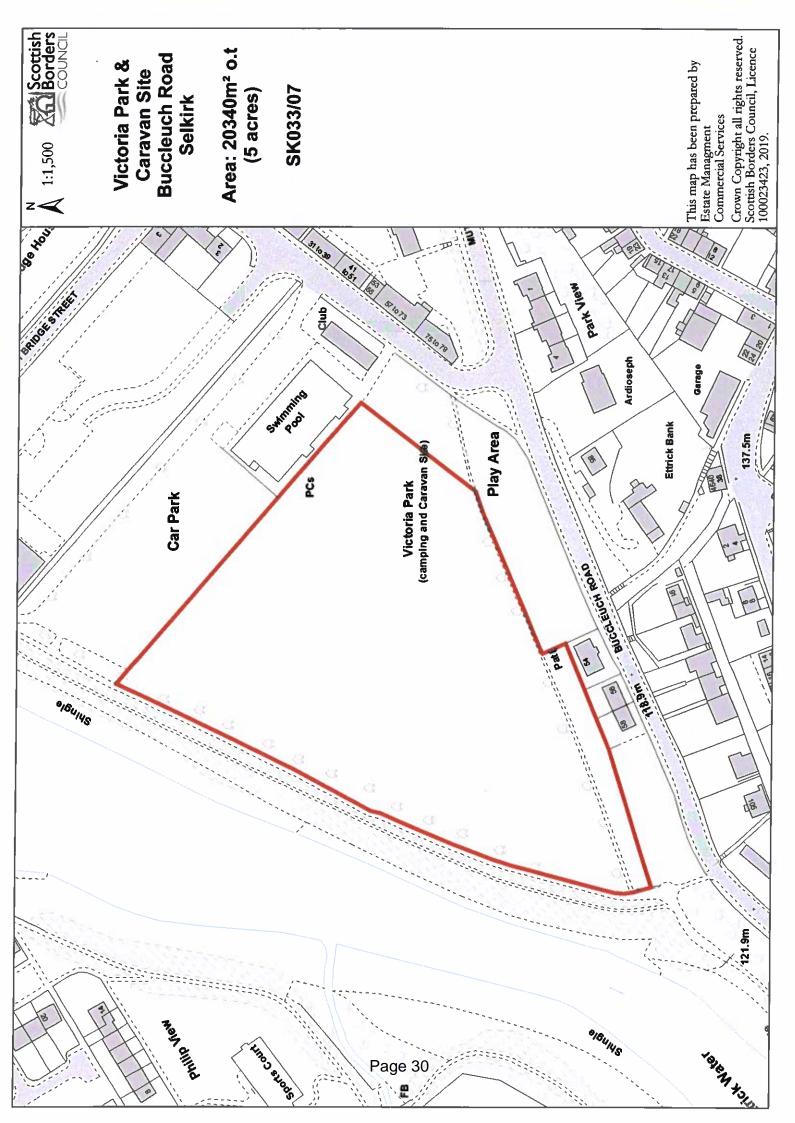


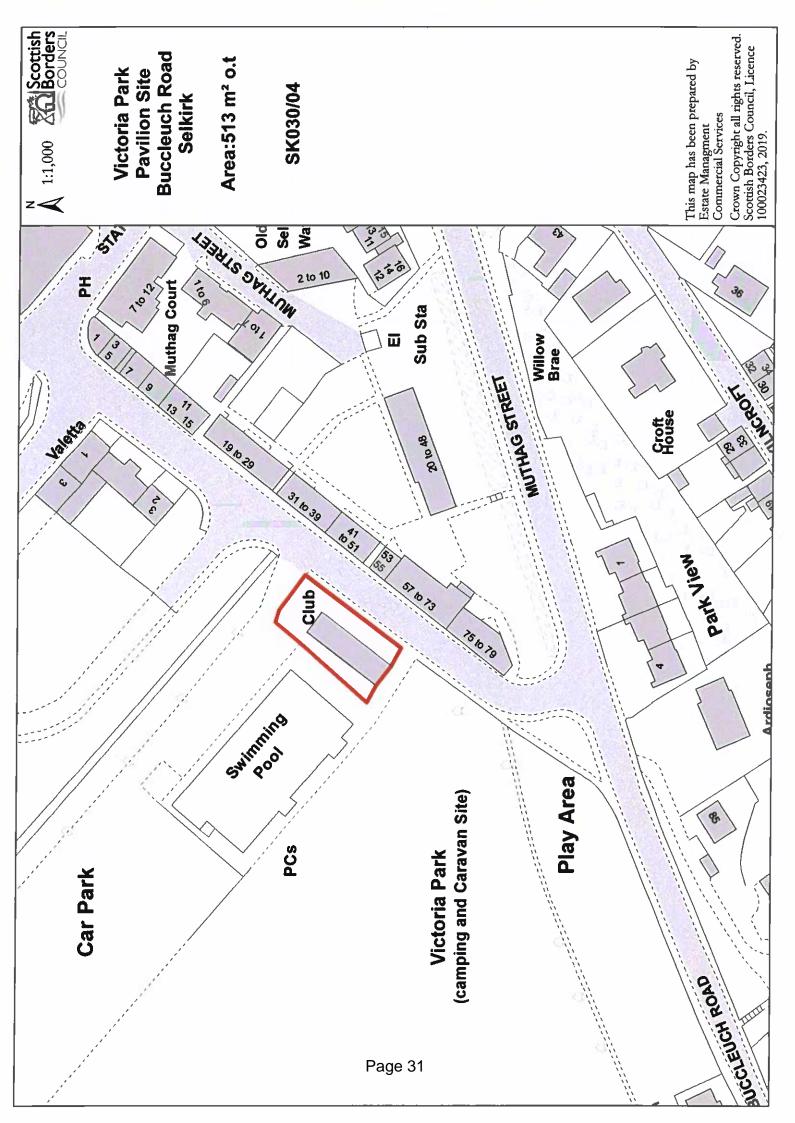


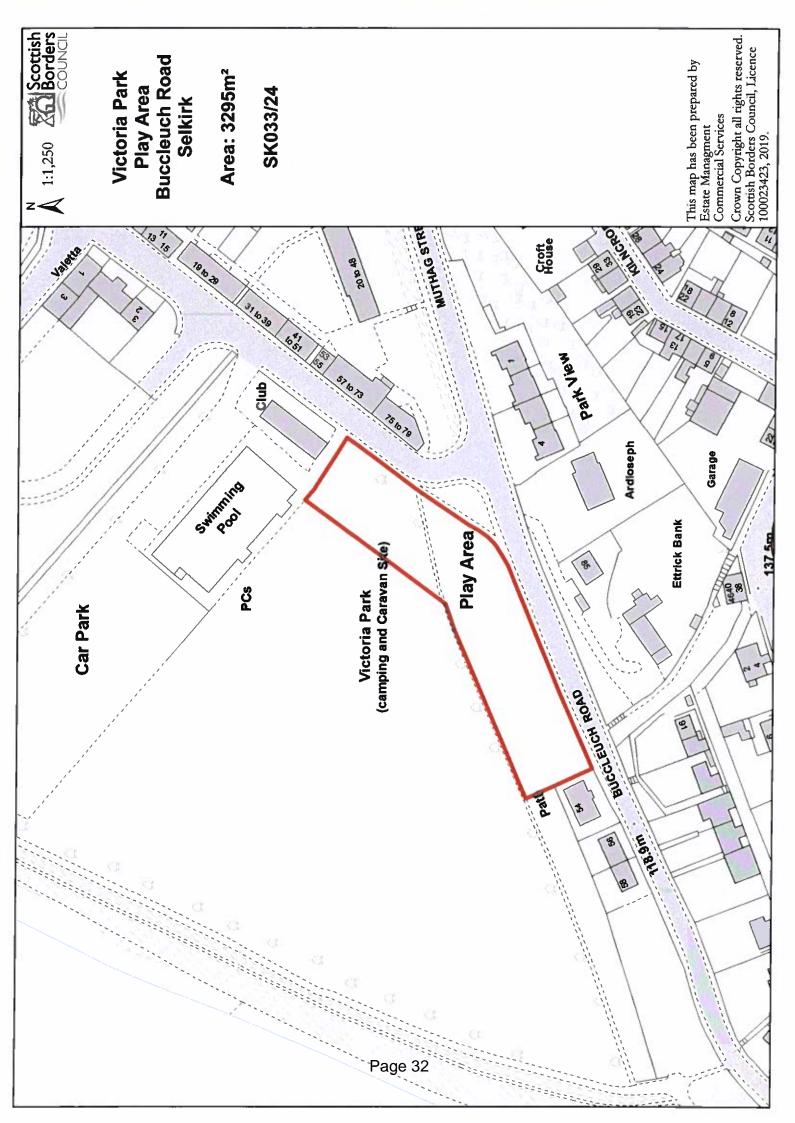


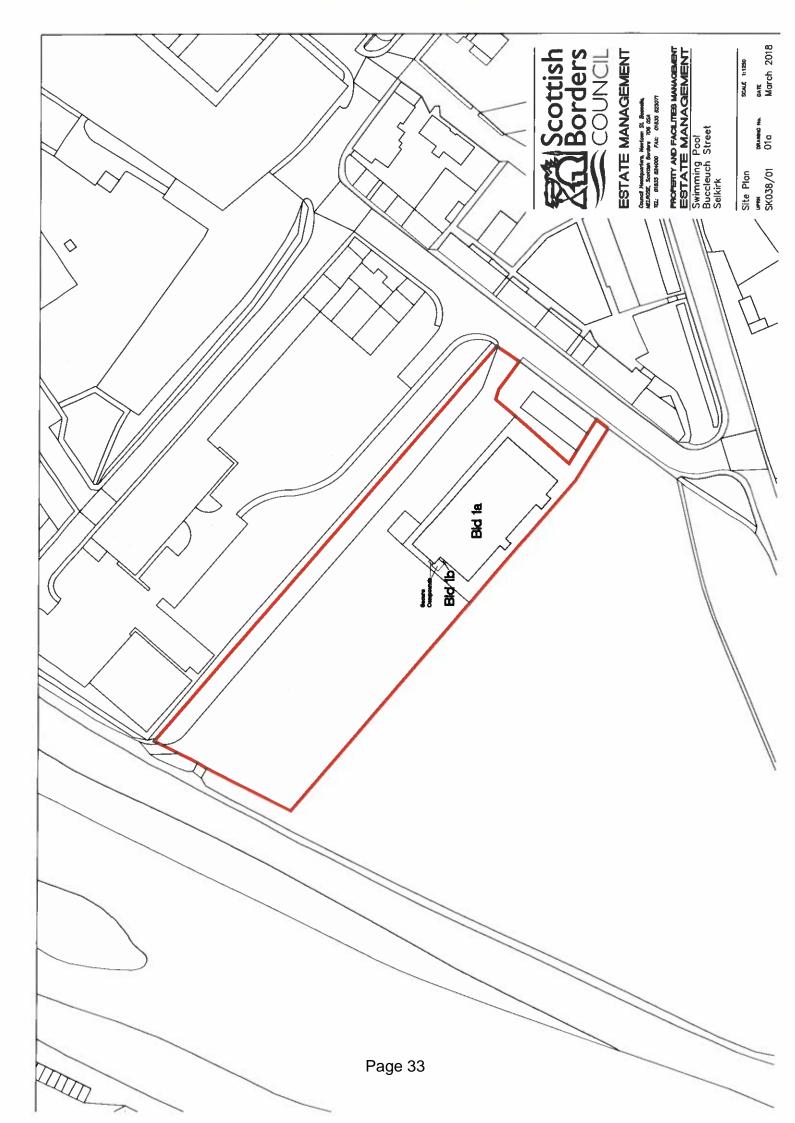


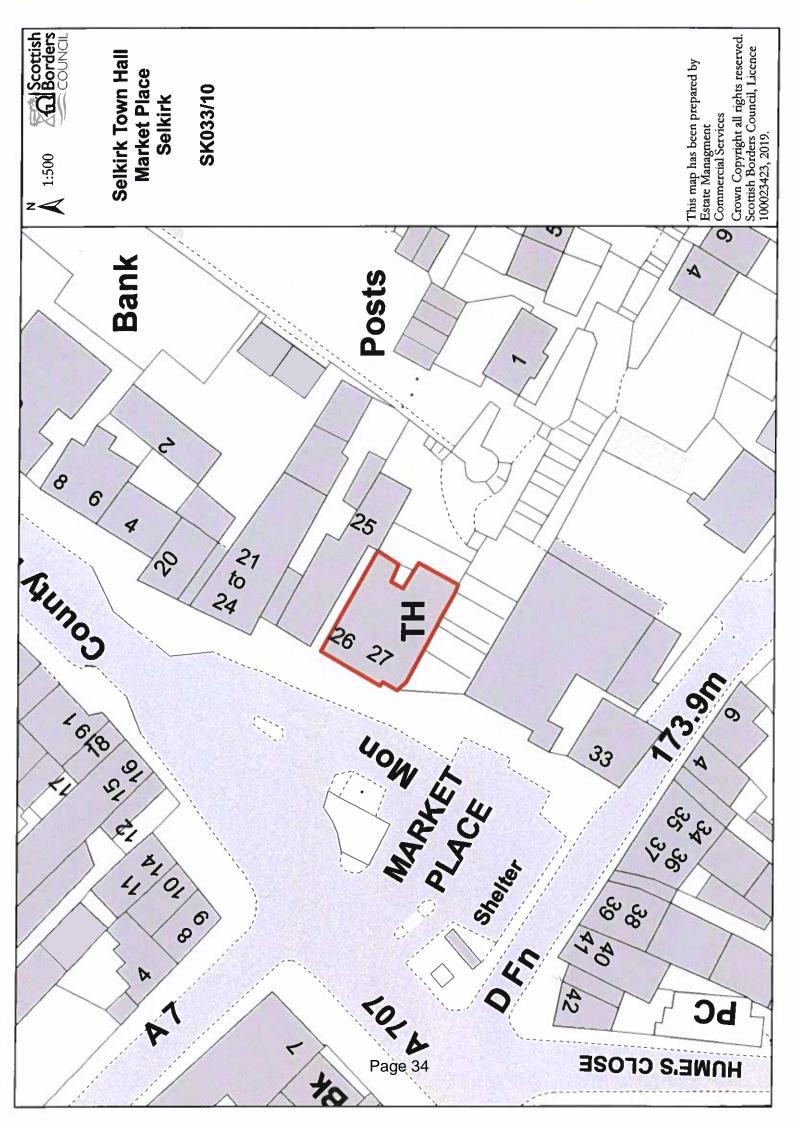


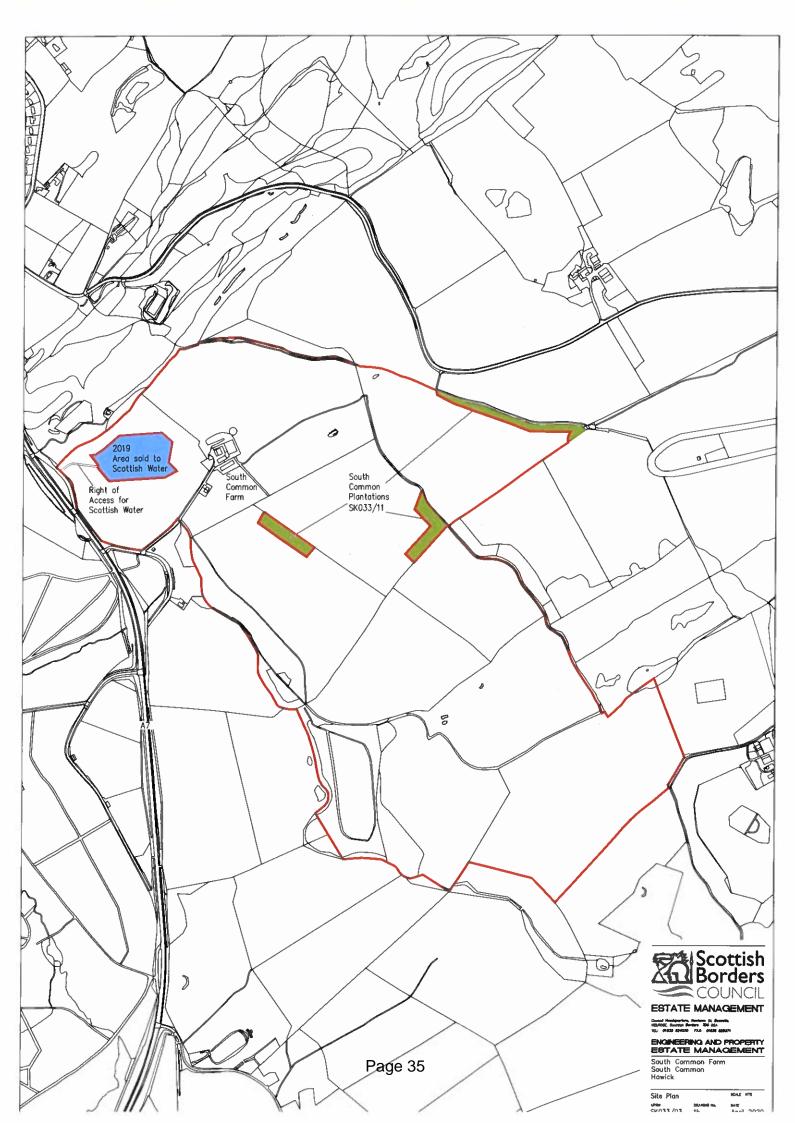


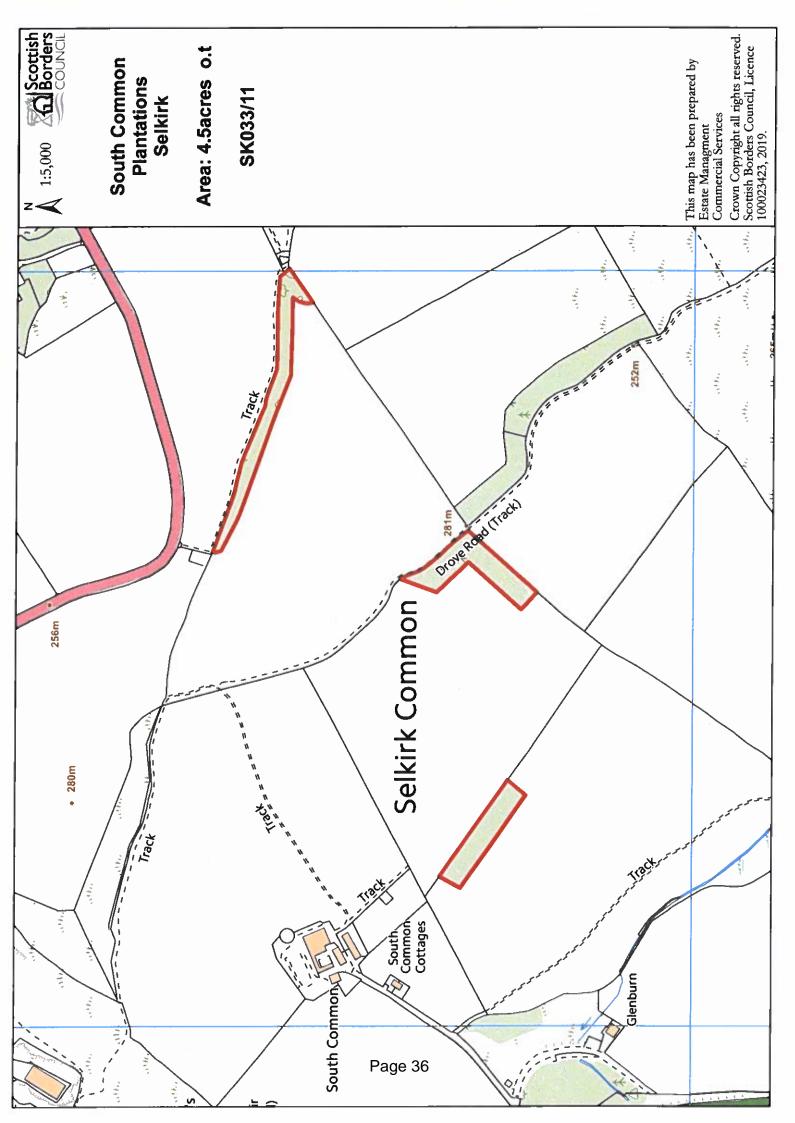


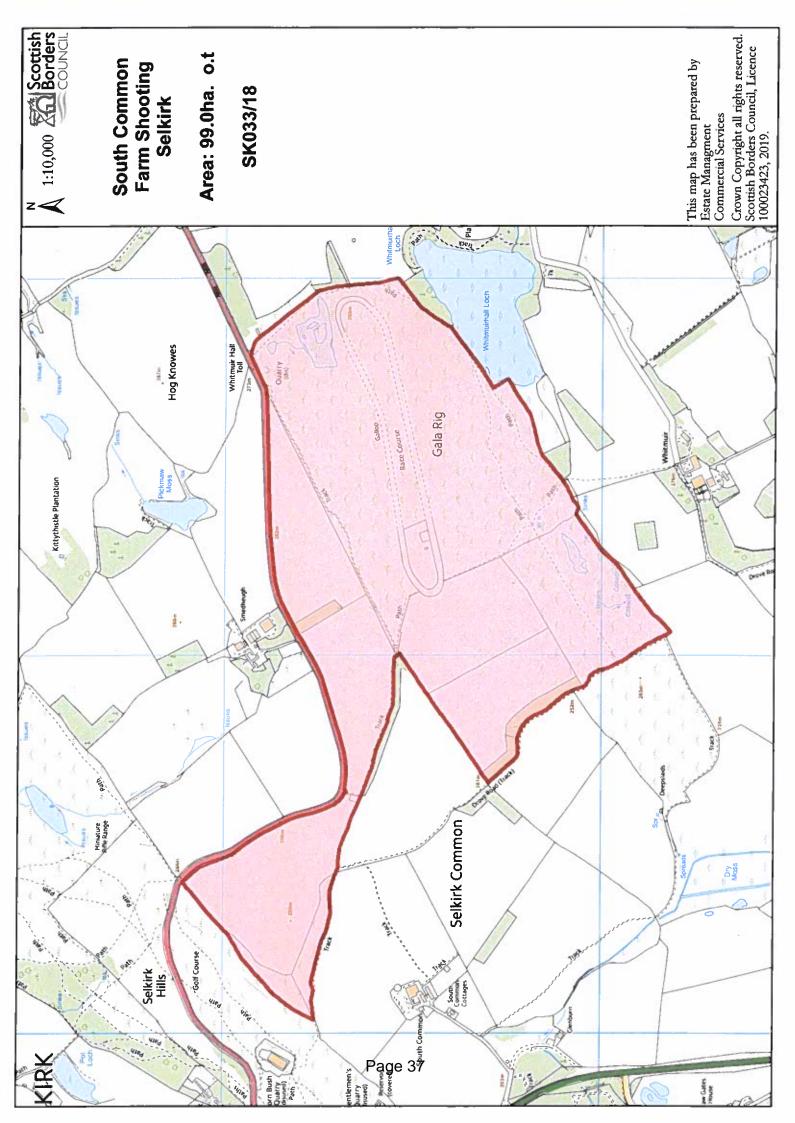


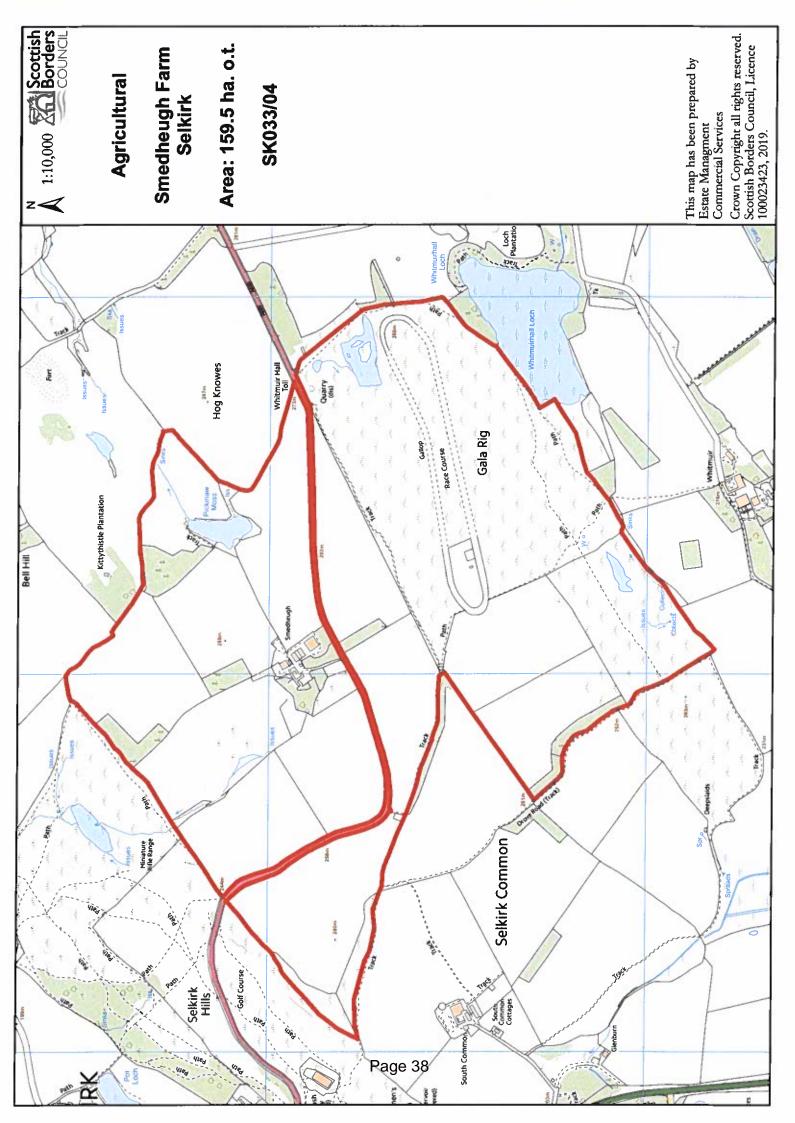


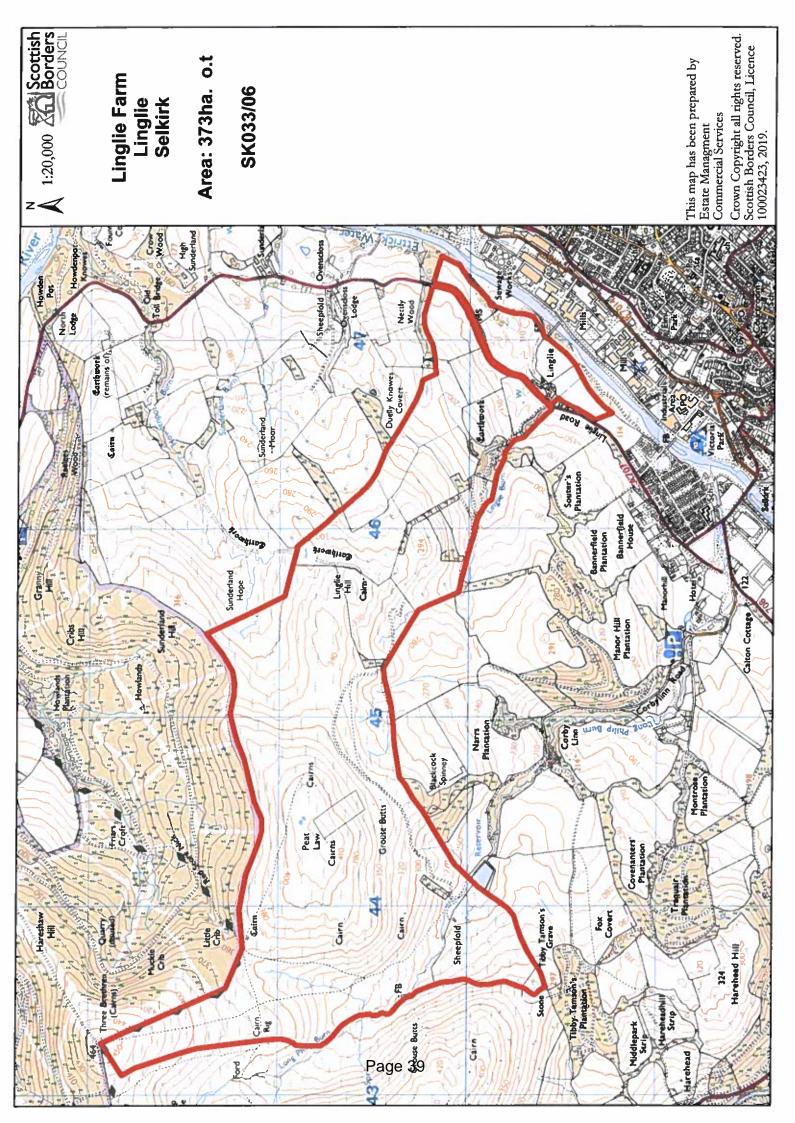


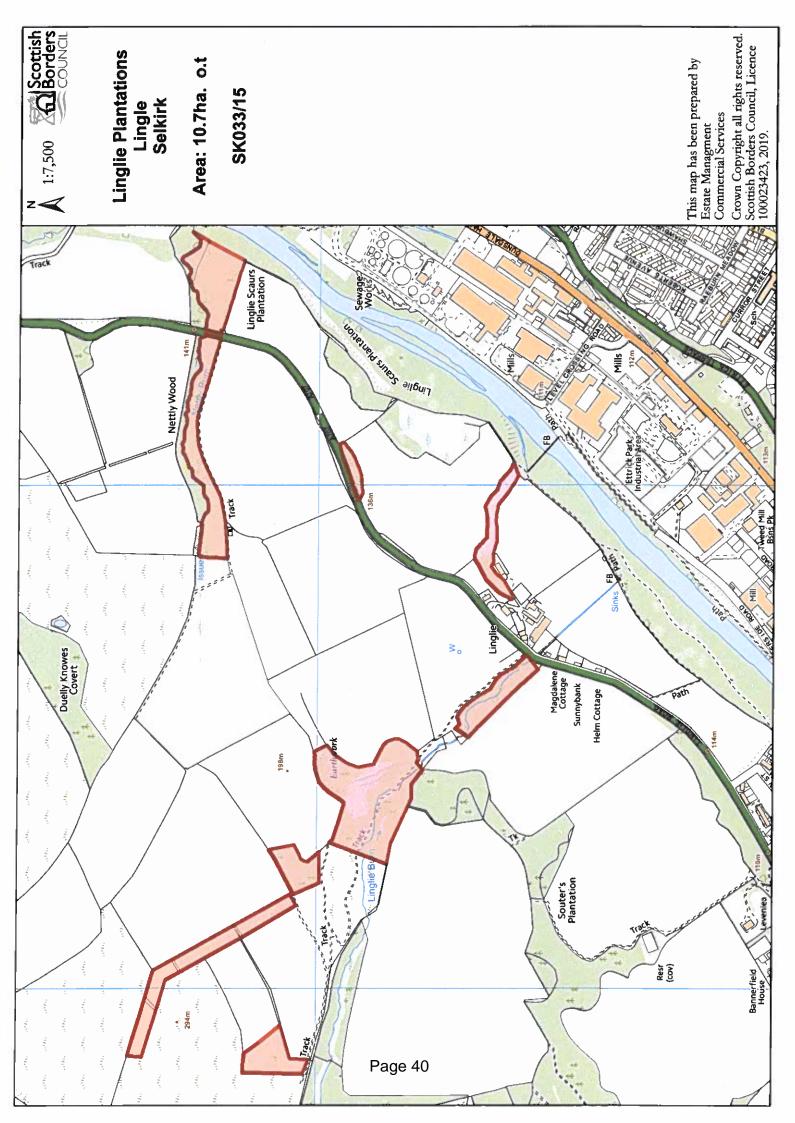


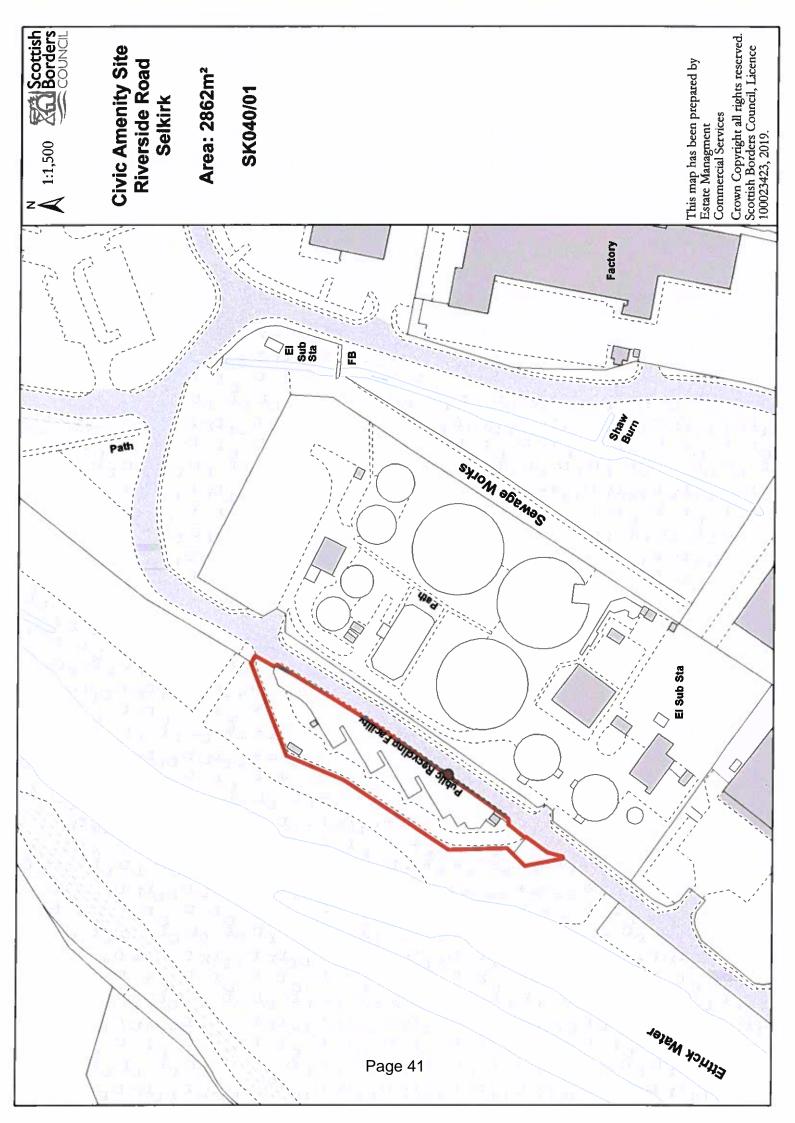


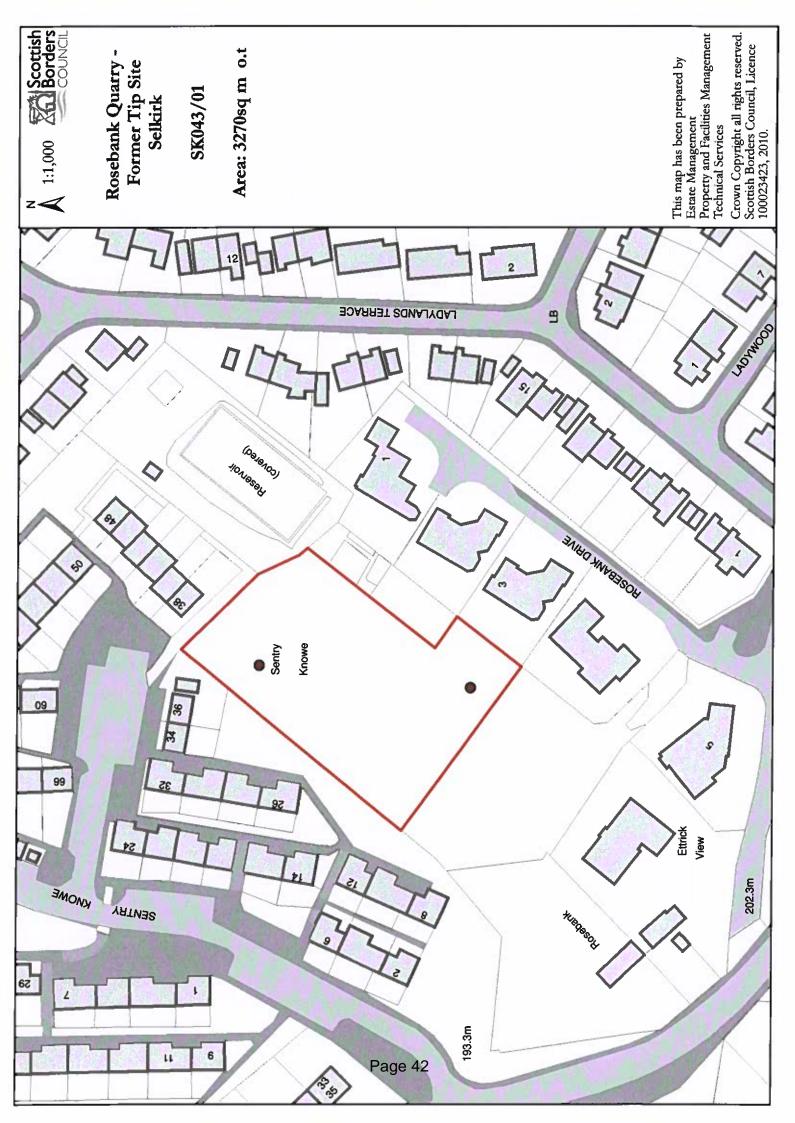


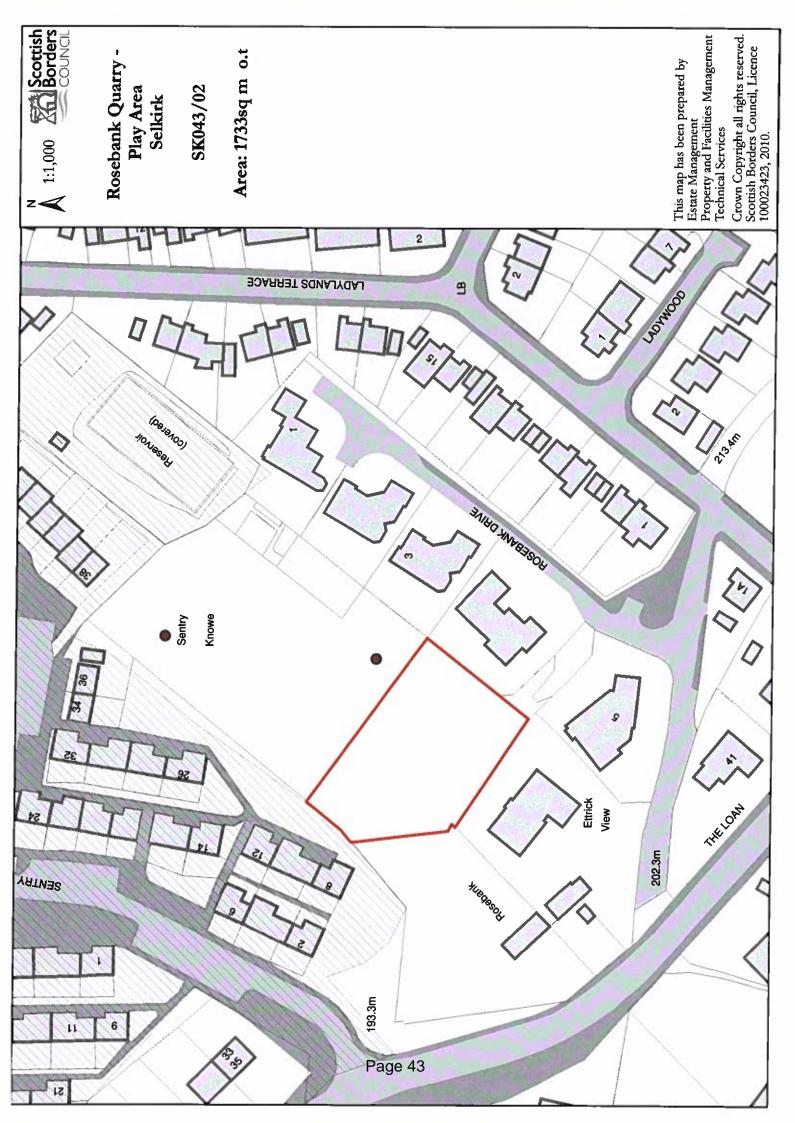


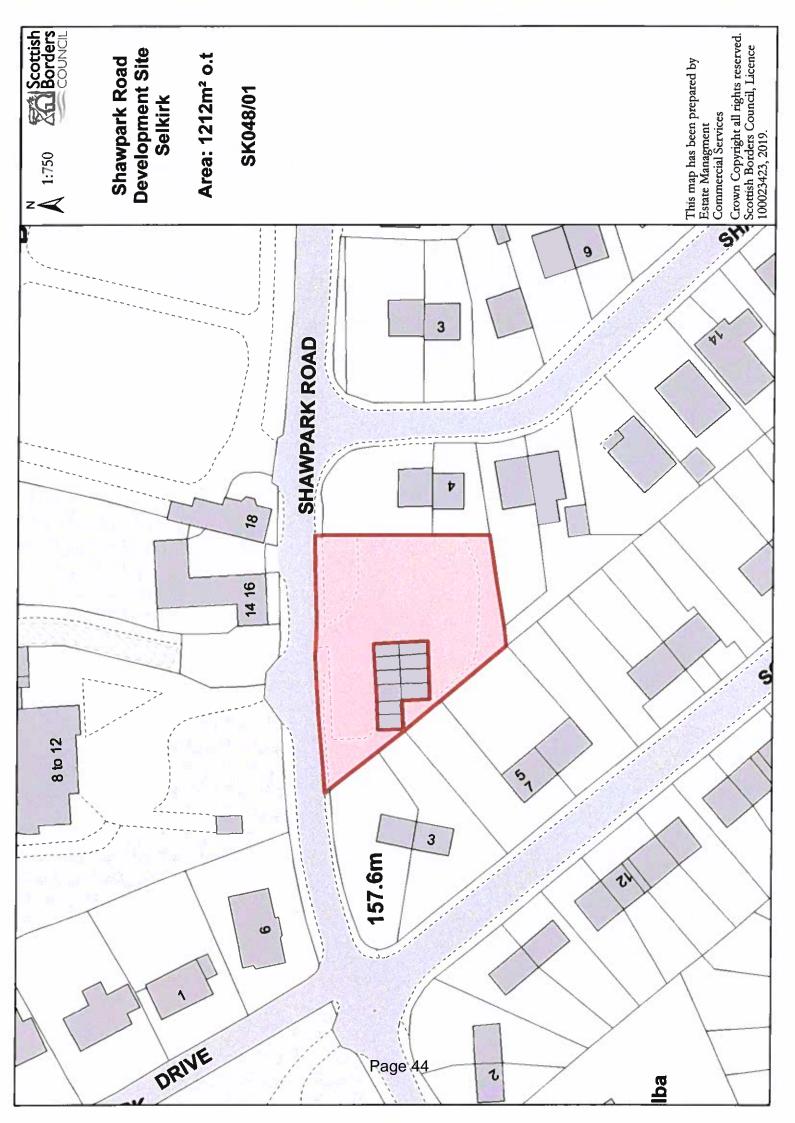


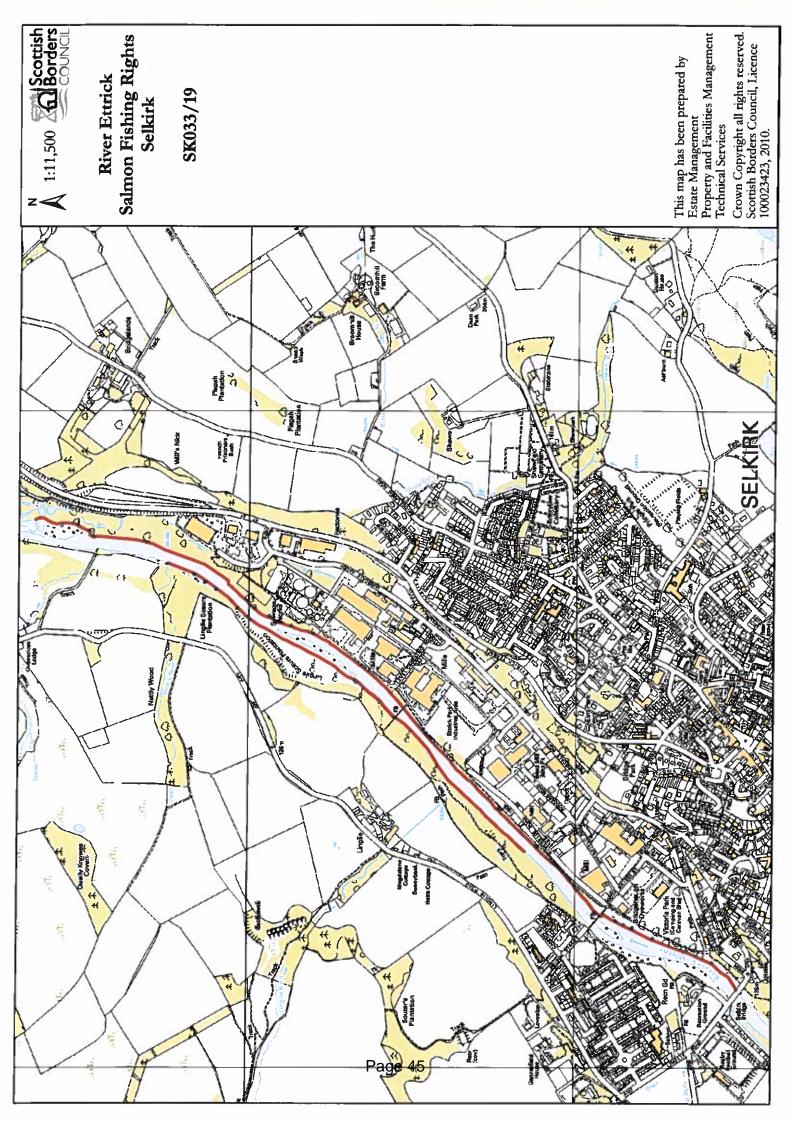


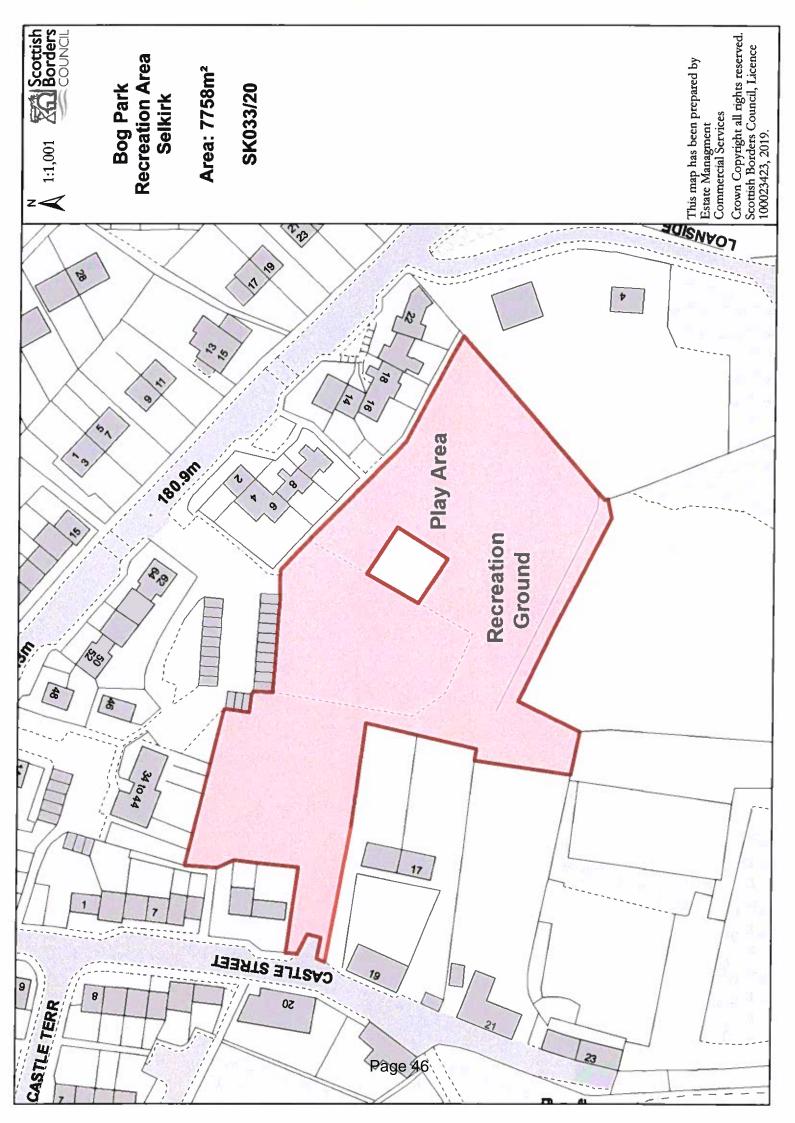


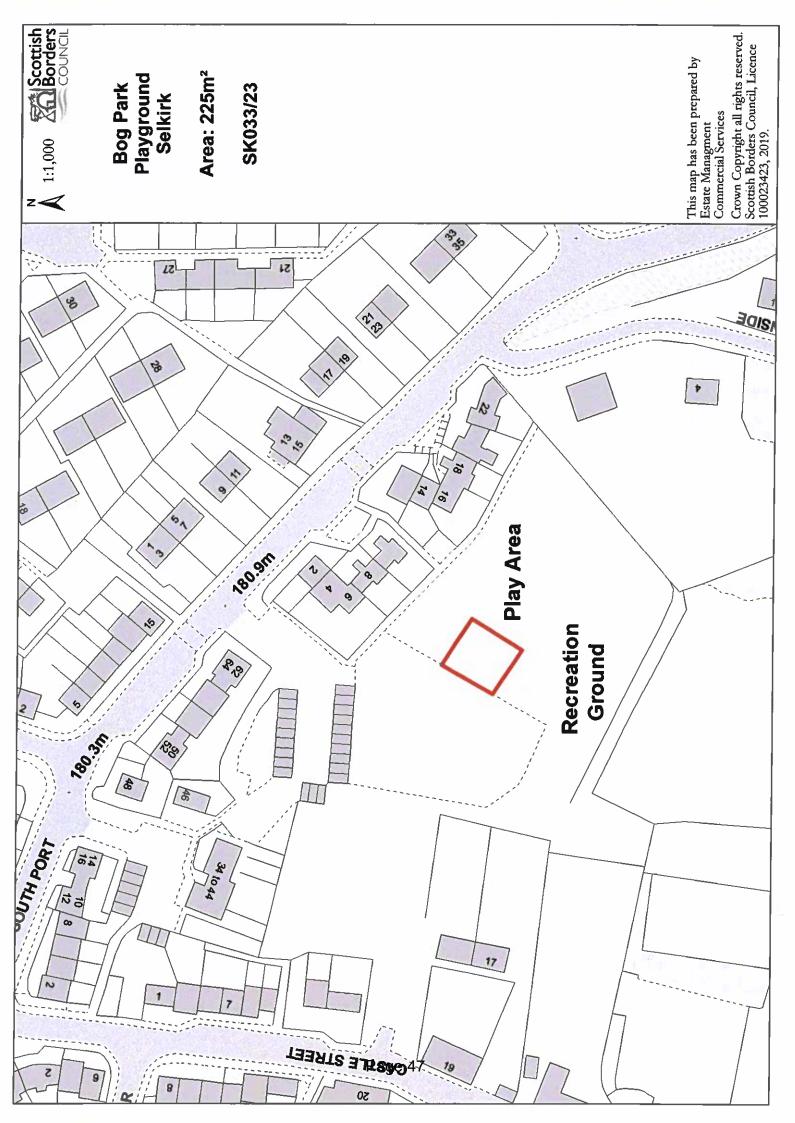


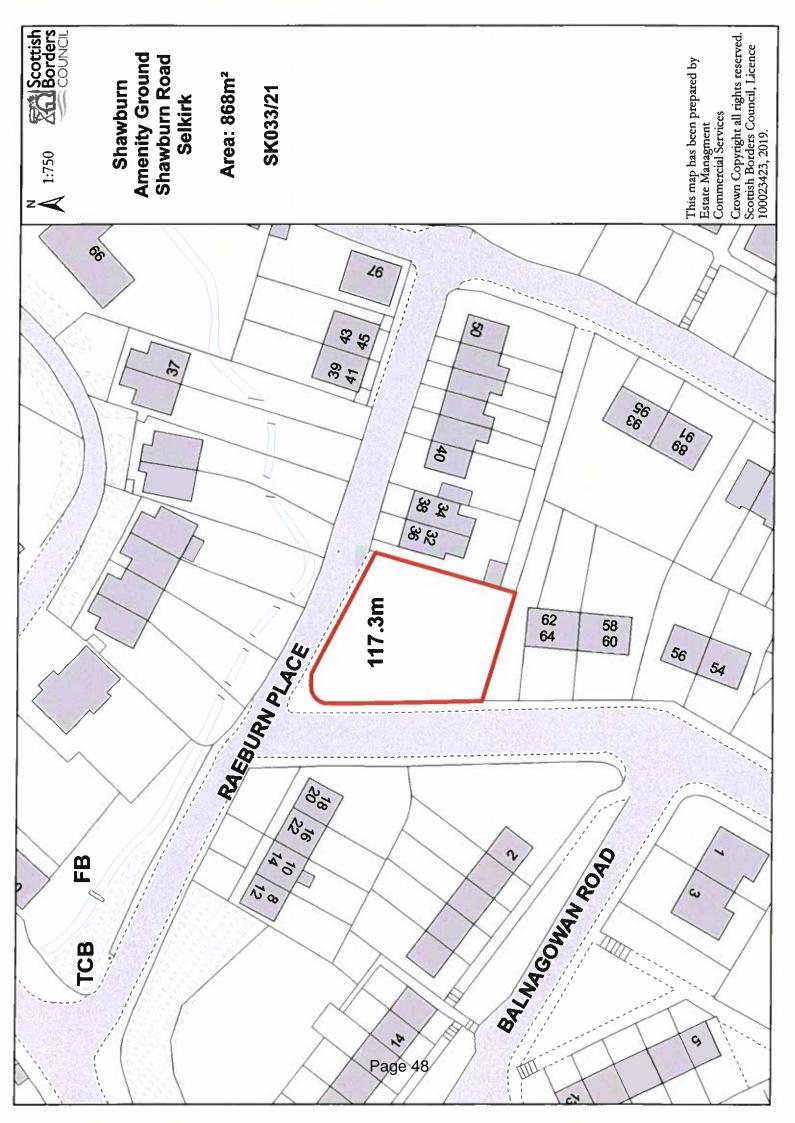


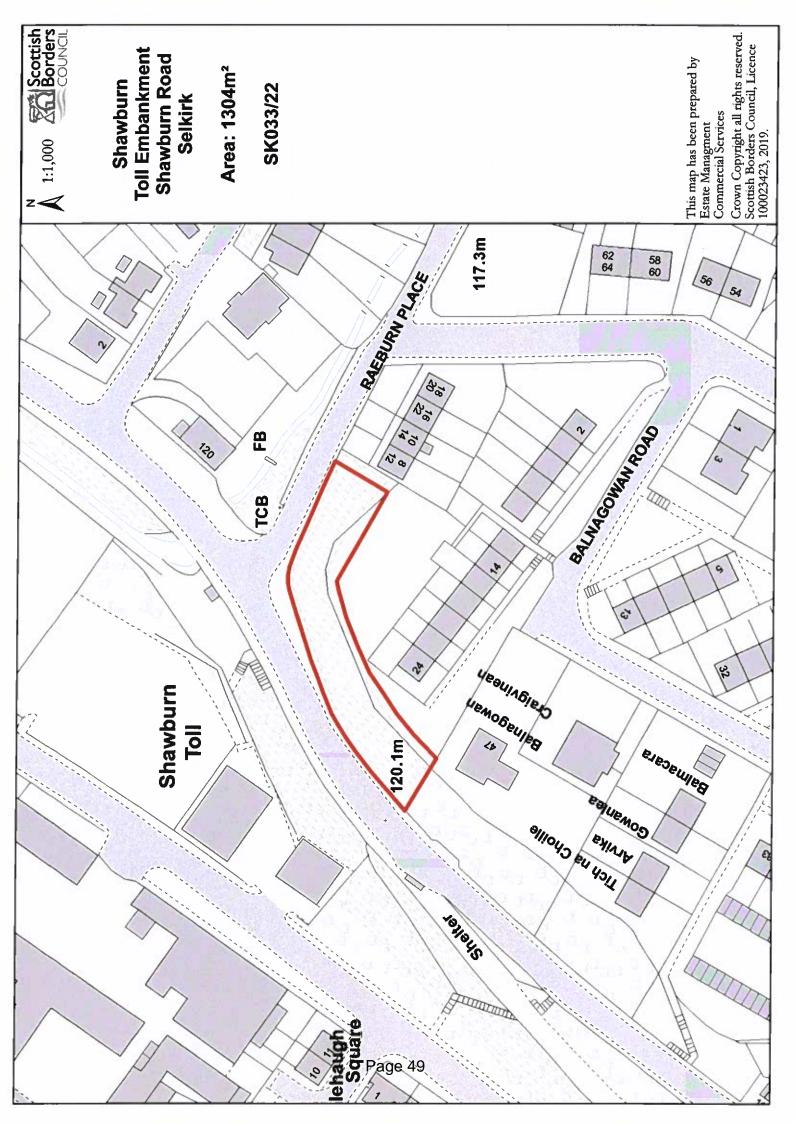












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