

# HAWICK COMMON GOOD FUND SUB-COMMITTEE MONDAY, 12 SEPTEMBER 2022

A MEETING of the HAWICK COMMON GOOD FUND SUB-COMMITTEE will be held VIA

MICROSOFT TEAMS on MONDAY, 12 SEPTEMBER 2022 at 9.00 AM

J. J. WILKINSON, Clerk to the Council,

7 September 2022

	BUSINESS				
1.	Apologies for Absence				
2.	Order of Business				
3.	Declaration of Interest				
4.	Consultation on Heritable and Moveable Asset Registers for former Burgh of Hawick (Pages 3 - 50)	20 mins			
	Consider report by Principal Solicitor. (Copy attached.)				
5.	Any Other Items Previously Circulated				
6.	Any Other Items which the Chair 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. Ramage (Chair), J. Cox, S. Marshall, W. McAteer, N. Richards, A. Smart, Mr J Campbell (Hawick) and Mr W Fletcher (Burnfoot)

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

### **Report by Principal Solicitor**

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

## 13 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 Hawick.
- 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 Hawick 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 Hawick, 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 Hawick.

### 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 7 of these responses related to Hawick. The majority of these responses merely approved the draft registers. However, the substantive comments 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 Hawick. 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 825002 T or email <u>hannah.macleod@scotborders.gov.uk</u>



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

# Appendix 1: Responses to Consultation and Officers' Considerations

Consultation Comment	SBC Response	Recommended action
The common riding scene painting, donated by Sonny Murray is named "Lest We Forget" and is an oil pastel drawing by Lesley Fraser	This detail has been added to the draft Register at Appendix 2.	Amend the register to add this detail about the named painting.
There are more flags than those listed, which does not include the most recent Common Riding flags.	Collections or moveable items are not normally considered to be Common Good assets if they were acquired after 1975. However, we can consider each item individually, and if the circumstances of acquisition or the nature of the item, are intrinsically linked to the history of the Burgh, or to the boundaries of the Burgh (as opposed to some wider area) it may be appropriate to consider such items as Common Good assets. Given the nature of Common Riding these flags and the use to commemorate the Common Riding, it would seem appropriate to classify these flags as belonging to the Common Good. However, in order to list these flags individually on the Register, further information is required in terms of their description, origin and current location. Some flags may actually be held or owned by the Community Council or other community body, and may not therefore be appropriate for addition to the register.	Seek to obtain further information on any additional flags not currently listed which should be added to the CG register.
More recently donated flags should be included	As above	As above

on the CG register as they are used for ceremonial events and are very precious to the community.	



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

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

#### **BURGH OF HAWICK**

LAND				
Name of Asset	Location	Description	Plan	
Public car park	Cross Wynd Car Park, Cross Wynd, Hawick	This Car Park is on the site of the former Allars Church. The Church was acquired by Hawick Town Council in 1949 "for behoof of the community of the said Burgh".	See pdf	attached
Lothian Street Store	Lothian Street, Hawick	This building is on the site of the former Allars Church. The Church was acquired by Hawick Town Council in 1949 "for behoof of the community of the said Burgh".	See pdf	attached
Moat Park (including the playground)	Drumlanrig Square, Hawick	The park was acquired in 2 parts by the Hawick Town Council, both parts from the Duke of Buccleuch. The initial donation, in 1911, provided that the land was "for the use, benefit and enjoyment of the inhabitants of the Burgh of Hawick for all time to come and to indicate my feelings of goodwill towards the inhabitants of the Burgh of Hawick".	See pdf	attached
Buccleuch Bowling Club	Buccleuch Road, Hawick	The land was acquired by way of gift from the Duke of Buccleuch to Provost etc of Burgh of Hawick 1919 <i>"for the</i> <i>benefit and enjoyment of the</i>	See pdf	attached

(including Hawick Bowling Club and Henderson Gardens)		<i>inhabitants of the said burgh</i> <i>for all time to come</i> ". The bowling greens had been formed some time previously (as evidenced by Council Minutes dating back to 1872, when the land was first made available).	
Hawick Golf Course (including sub-station site)	Vertish Hill, Hawick	The land for the golf course was granted to the Burgh under the Charter of 1537	See attached pdf
Pilmuir Farm Including: 1. Pilmuir Farm Cottage 2. Acreknowe Reservoir (Part) 3. Williestruther Loch And Williestruther Path 4. Williestruther Cottage St Leonards Farm Including: 1.Farmhouse Buildings	Pilmuir Farm, Hawick St Leonards, Hawick	The land of Pilmuir Farm was granted to the Burgh under the Charter of 1537 The land of St Leonards Farm was granted to the Burgh under the Charter of 1537	See attached pdf
<ul> <li>2.St Leonards Cottage &amp; Park</li> <li>3. St Leonards Hut</li> <li>4. St Leonards Grazings</li> <li>5. St Leonards Horse Gallop</li> </ul>			
Public car park (including WCs)	Common Haugh Car	The land at the Common Haugh was granted to the	See attached pdf

	Park, Victoria	Burgh under the Charter of	
	Road, Hawick	1537.	
Underhaugh	Teviot Road, Hawick	Part of the Mill Lade conveyed to the Town council in 1916	See attached pdf
Hawick Moor Racecourse and Buildings	Hawick Moor, Hawick	Granted to the Burgh under the Charter of 1537	See attached pdf
Hawick Moor Shootings	Hawick Moor, Hawick	Granted to the Burgh under the Charter of 1537	See attached pdf
Hawick Burgh Woodlands and Woodend Grazings (including former Nipknowes Stables site)	Hawick Moor, Hawick	Granted to the Burgh under the Charter of 1537.	See attached pdf
Ca' Knowe Monument	Southfield, Hawick	This land was gifted to the town in 1937 by Buccleuch Estates to mark the 400th anniversary of the granting of the Hawick Burgh Charter	
Volunteer Park (including Stand, 3G Pitch and Tennis court)	Buccleuch Road, Hawick	Acquired by trustees for the Hawick Common Riding Committee in 1920.	See attached pdf
Linn (or Lynn) Wood, also known as Backbraes Woodland	Hawick	The wood was acquired by the Hawick Town Council in 1930 along with part of the site of what is now Renwick Terrace/Ramsay Road.	See attached pdf
Haggis Ha/Burnflat Wall	Area between Burnflatbrae and Burnflat Lane, Hawick	Believed to form part of the land granted to the Burgh under the Charter of 1537	See attached pdf
100 Stairs and Adjacent Land	Wilton Path, Hawick	Believed to form part of the land granted to the Burgh under the Charter of 1537	See attached pdf

Millpath Stables	Millpath, Hawick		This property was believed to have been acquired from common good funds.	See a pdf	ttached
Hornshole Memorial	Hornshole, Hawick T 8RT	D9	The site of the 1514 Lest We Forget Memorial donated to the Common Good	See pdf	attached
ART AND ARTEFACTS					
Name of asset	Location		Description		
Ceremonial and related Items					
Official Robes –Provost x 1, Treasurer x 1, Bailies x 2	Hawick To Hall	own	Ceremonial items connected to former Burgh of Hawick		
Provosťs Chain x 2	Hawick To Hall	wn	Ceremonial items connected to former Burgh of Hawick		
Plaque with Hawick Town Crest	Hawick To Hall	wn			
Gavel and base	Hawick To Hall	own	Antique gavel inscribed- 'The hammer is the property of the chief magistrate of Hawickgiven by the inhabitants of Hawick to the hon John E Elliot 20th Oct 1837'		
Gavel and base	Hawick To Hall	wn	Modern gavel		
Inkwell	Hawick To Hall	wn	Granite or marble slab with two glass inkwells		

Bell	Hawick Hall	Town	Brass table bell	
Framed Charter	Hawick Hall	Town	Copy of the 1537 Hawick Town Charter	
Decorative bowl	Hawick Hall	Town	Decorative bowl painted with 'Poznan' to represent link with Poland.	
Framed print of Steve Hyslop	Hawick Hall	Town		
Motor Cycle leathers			Leather clothing worn by Hawick motor cyclist Steve Hyslop	
<u>Art works in Hawick</u> <u>Town Hall</u>				
Portrait of Provost Robert Fraser Watson 1878-1887	Hawick Hall	Town	Portrait by Knighton Warren.	
Portrait of Provost John Melrose 1902- 1919	Hawick Hall	Town	Portrait by Fiddes-Watt, R.S.A	
Portrait of Provost David Fisher, 1931 – 1938	Hawick Hall	Town	Portrait by James Tait	
Portrait of Provost David Aitkinson M.B.E, 1958-1962 & 1968-1975	Hawick Hall	Town	Portrait by unknown artist	
Portrait of Provost Robert Milligan, 1887- 1890	Hawick Hall	Town	Portrait by Frank Wood	
Portrait of Provost John Nichol, 1871- 1874	Hawick Hall	Town	Portrait by unknown artist	
Portrait of Provost George Wilson 1861- 1868	Hawick Hall	Town	Portrait by unknown artist	

Portrait of Bailie Helen Scott	Hawick Hall	Town	Portrait by unknown artist	
"Border Reiver"	Hawick Hall	Town	Painting believed to have possibly been painted by artist John Martyn	
"The Common Riding, an old Borders Custom"	Hawick Hall	Town	Painting by Lionel Edwards	
"Covenanters "	Hawick Hall	Town	Painting by Tom Scott RSA	
"Lest We Forget" by Lesley Fraser	Hawick Hall	Town	Oil pastel drawing of Common Riding Scene	
Common Riding Scene			(donated by Sonny Murray)	
Hawick Town Hall	Hawick Hall	Town	Painting by George Inglis	
Collection of framed photographs of Hawick Provosts from 1861 - 1975	Hawick Hall	Town	Photographs of: George Wilson, 1861 – 1868; George Hardie Fraser, 1868 – 1871; John Nichol, 1871 – 1874; Edward Wilson, 1874 – 1875; Robert Ewen, 1875 – 1878; Robert Fraser Watson, 1878 – 1887; Robert Milligan, 1887 – 1890; George Hogg, 1890 – 1893; Walter Scott Barrie, 1893 – 1896; Robert Mitchell, 1896 – 1902; John Melrose, 1902 – 1919; George Heron Wilson, 1919 – 1922; James Renwick, 1922 – 1928; William Scott Nichol, 1928 – 1931; David Fisher, 1931 – 1938; John Chapman Gray Landles, 1938 – 1940; Thomas Burns Mclagan, 1940 – 1945; George Fraser	

		1945 – 1958; David Atkinson, 1958 – 1962; James A. Henderson, 1962 – 1968 ;David Atkinson, 1968 – 1975.	
Collection of framed photographs of Hawick Honorary Provosts	Hawick Town Hall	David Atkinson, 1975- 1977; Frank Scott, 1977- 1982; John R. Irvine, 1982-1988; Myra S. Turnbull, 1988-1996 ;Tom Hogg, 1996-1999; John Ross Scott, 1999- 2002; John Robertson, 2002-2003; Zandra Elliot, 2003-2005 & 2007-2011; Kenneth McCartney, 2005-2007; Ron Smith, 2011-2013; Stuart Marshall, 2013	
Artworks held by Live Borders			
Hawick Common Riding, 1846	Borders Textile Towerhouse	Painting by Andrew Kennedy	
Hawick from Wester Braid Road	Borders Textile Towerhouse	Painting by John McNairn	
Common Riding Procession at Tower Knowe, 1890	Borders Textile Towerhouse	Painting by James Tait	
Thomas Purdom	Hawick Museum	Painting by Frank Wood	
Hawick from	Hawick	Painting by Andrew	
Crumhaughhill	Museum	Richardson	
Deuchars Hill, Yarrow	Borders Textile Towerhouse	Painting by Tom Scott RSA	
Hermans Law	Borders Textile Towerhouse	Painting by Tom Scott RSA	

Return to Hawick from Hornshole 1514	Borders Textile Towerhouse	Painting by Tom Scott RSA	
River Tweed near Walkerburn	Borders Textile Towerhouse	Painting by Tom Scott RSA	
A Reivers Ride, 1900;	Borders Textile Towerhouse	Painting by Tom Scott RSA	
Rainbow over St Mary's Loch, 1916	Borders Textile Towerhouse	Painting by Tom Scott RSA	
Harbour Lights	Hawick Museum	Painting by Hector Chambers	
Harvest Scene	Hawick Museum	Painting by E A Walton	
Borders Scene	Hawick Museum	Painting by T H Laidlaw	
Neidpath Castle	Hawick Museum	Painting by T H Laidlaw	
Minto Crags	Hawick Museum	Painting by T H Laidlaw	
Other Art works			
Portrait of Sir Gilbert Elliot, 4 <sup>th</sup> Earl of Minto	Currently with the National Galleries of Scotland, but due to be rehoused at Minto Estate in 2022.	Painting by George Chinnery, gifted to the Hawick Town Council in 1893	
<u>Common Riding</u> <u>Flags</u>			
Hawick Common Riding Flag (1908)	Hawick Museum	Flag from Hexham	
Hawick Common Riding Flag (1832)	Hawick Museum	Red, gold and blue flag	

Hawick Common	Hawick	The oldest known existing
Riding flag (1707)	Museum	Common Riding flag
	Maocam	Common Raing hag
Hawick Common	Hawick	Red and blue flag, on wooden
Riding flag, 1865	Museum	pole with metal finial
	L lau dali	
Hawick Common	Hawick	
Riding Flag	Museum	
Hawick Common	Hawick	Flag mounted on thick paper
Riding Flag	Museum	
Hawick Common	Hawick	Blue and gold flag
Riding Flag (1903)	Museum	
Hawick Common	Hawick	Flag with blue and gold
	Museum	swallow tail
Riding Flag	wuseum	Swallow tall
COMMON GOOD		
FUND		
Name of Asset	Location	Description
Hawick Common	N/A	Fund set up for the benefit of
Good Fund		the inhabitants of Hawick.
		The balance of the fund as at
		1 April 2021 was £614,528

# Property which is unconfirmed as common good but is under investigation

Name of Asset	Location	Description
Millpath Stables	Millpath, Hawick	This property currently sits on the common good register. However, it was acquired after the abolition of Burghs, and therefore following the closure of the common good register.
		It was acquired by statutory conveyance from the Hawick Common Riding

Committee in 1993, who acquired it themselves in 1992.
Investigations are underway to try to establish the reason for the property being added to the Common Good.































































