

# Public Document Pack



## DUNS COMMON GOOD FUND SUB-COMMITTEE TUESDAY, 13 SEPTEMBER 2022

A MEETING of the DUNS COMMON GOOD FUND SUB-COMMITTEE will be held VIA  
MICROSOFT TEAMS on TUESDAY, 13 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,

7 September 2022

<b>BUSINESS</b>		
1.	<b>Apologies for Absence.</b>	
2.	<b>Chair</b> Consider appointment of Chair.	2 mins
3.	<b>Vice Chair</b> Consider appointment of Vice Chair.	2 mins
4.	<b>Order of Business.</b>	
5.	<b>Declarations of Interest.</b>	
6.	<b>Minute.</b> (Pages 3 - 4) Consider Minute of the Meeting held on 15 December 2021 for approval and signature by the Chair. (Copy attached.)	2 mins
7.	<b>Consultation on Heritable and Moveable Asset Registers for former Burgh of Duns</b> (Pages 5 - 20) Consider Report by Principal Solicitor. (Copy attached.)	20 mins
8.	<b>Any Other Items Previously Circulated.</b>	
9.	<b>Any Other Items which the Chair Decides are Urgent.</b>	

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## **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.**

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**Membership of Committee:-** Councillors J. Greenwell, D. Moffat and M. Rowley

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Please direct any enquiries to William Mohieddeen  
Tel: 01835 826504; Email: [william.mohieddeen@scotborders.gov.uk](mailto:william.mohieddeen@scotborders.gov.uk)

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**SCOTTISH BORDERS COUNCIL  
DUNS COMMON GOOD FUND SUB-COMMITTEE**

MINUTES of Meeting of the DUNS  
COMMON GOOD FUND SUB-COMMITTEE  
held via Microsoft Teams on Wednesday, 15  
December 2021 at 12.00 pm

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Present:- Councillors J. Greenwell (Chairman), D. Moffat and M. Rowley

In Attendance:- Principal Solicitor, Democratic Services Team Leader, Democratic Services  
Officer (W. Mohieddeen).

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1. **MINUTE.**

There had been circulated copies of the Minute of the Meeting held on 2 September 2021.

**DECISION**

**AGREED to approve the Minute for signature by the Chairman.**

2. **CONSULTATION ON HERITABLE AND MOVEABLE ASSET REGISTERS**

2.1 There had been circulated copies of a report by Principal Solicitor seeking approval of the draft Common Good Registers for the former Burgh of Duns and to advise on the next steps in the process for consultation and publication under the Community Empowerment (Scotland) Act 2015. Following such approval, the list would be published on Citizen Space, together with a consultation survey. The intention was to publish the consultation survey before the end of December 2021. In addition to the electronic survey, the proposed lists of Common Good assets were to be published on the Council's website and paper copies were to be made available, free of charge, on request. Notification advising of the publication of the lists and the consultation period were to be made on the Council's website and social media. The Council was to make all of the Community Councils and other community bodies aware of the publication of the proposed Common Good Asset lists and invite those community bodies and the public to make representations in respect of these lists. The statutory minimum period for consultation was twelve weeks. However, it was suggested to extend this period until the start of April 2022. After the consultation period, the Council was to publish all representations received. The Common Good Fund Sub-Committee would then reconvene to consider any representations made, and to agree the finalised Asset Register. The finalised Asset Register would then be published within six months from the end of the consultation period. It was possible that following this process, further assets may be identified as being Common Good, and where that was the case, the Council would update the Common Good Asset Registers. The Registers would similarly be updated if existing property was disposed of or reclassified. The Council would also ensure that the Common Good Asset Registers were reviewed on a regular basis, and at least every five years.

2.2 The Principal Solicitor advised that Duns Common Good had one item of land on the register. This was the showground public car park. There were no moveable assets however the community may wish to comment on whether items that should be considered Common Good were in any museum. Members agreed that the Dunse Historical Society, the Jim Clark Memorial Group and the Community Council be encouraged to participate.

**DECISION  
AGREED to:**

- (a) Approve the contents of the draft list of heritable and moveable property assets held by the Council within the former Burgh of Duns;**
- (b) Approve the publishing of the draft list to be made available for public consultation for a period of at least twelve weeks; and**
- (c) Note that following the period of consultation all comments will be brought to the Common Good Fund Sub-Committee for their consideration.**

*The meeting concluded at 12.05 pm.*

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

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### **Report by Principal Solicitor**

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### **Duns Common Good Fund Sub Committee**

**13 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 Duns.**
- 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 Duns 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 Duns, 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 Duns.**

### **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 4 of these responses related to Duns. The comments received included a response from Duns Community Council. 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 and any document relating to the transfer or donation should be considered to determine the intention of the acquisition.
  - 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 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 Duns. 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 [hannah.macleod@scotborders.gov.uk](mailto:hannah.macleod@scotborders.gov.uk)



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

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

	Consultation Comment	SBC Response	Recommended action
1	Should the Market/Mercat Cross be CG?	<p>This sits on part of the adopted footpath in the Market Square, adjacent to the Showground Car park.</p> <p>It is not a recorded SBC asset and no title deeds are held for the land.</p> <p>It is understood to date from 1792 but was re-sited in the public park in the 19<sup>th</sup> century to make space for the Town House. The Mercat Cross was returned to the Market Square in 1994.</p> <p>As a symbol of the trading status of the former Burgh, it could be considered a Common Good asset.</p>	Ask Estates to create an 'asset' and add to Common Good register.
2	Should the Public Park be CG, (including gates and railings)?	The public park was acquired in 1905 by the Police Commissioners of the Burgh under the General Police and Improvement (Scotland) Act 1962. As it was acquired under statutory powers it does not fall within the description of what	No action.

		constitutes Common Good property.	
3	Should the Site of Old Town Hall be CG?	<p>This has been an open area since the demolition of the old town hall in 1966.</p> <p>The old Town Hall was built in 1820 and used for town business and as a jail.</p> <p>This open area is not It is not a recorded SBC asset and no title deeds are held for the land. Since it has been used by the public as a meeting place and open area, it is in-keeping with being designated as Common Good.</p>	Ask Estates to create an 'asset' and add to Common Good register.
4	What about Street furniture pre 1974?	Street furniture, if permanently affixed to the land, belongs to the landowner. Where positioned on the adopted footpath, such items are maintained by SBC	No action
5	The Provosts robes and chains should be CG.	<p>Live Borders have confirmed that they hold within their collection the following items:</p> <ul style="list-style-type: none"> <li>Pair of white Provost's gloves</li> <li>Provost of Duns bicorn hat</li> <li>Black quilted collar</li> <li>Full length Provost's robes</li> <li>Provost's Chain of Office [with 2 pendants]</li> </ul> <p>As these items relate to the ceremonial business of the Burgh, they should be categorised as</p>	Add to Common Good register and advise Live Borders accordingly.

		belonging to the Common Good.	
6	The painting of Dunse Scotus in the Burgh Chamber may be CG.	<p>Unable to find any information about the acquisition of this portrait/painting.</p> <p>The subject matter may suggest that it could be Common Good but more information about the terms of the acquisition would be helpful.</p>	Add to Common Good register pending more information on terms of acquisition.
7	There are 3 ceremonial wooden chairs in Council Chamber that should be CG.	If of ceremonial relevance to the Burgh, these could be appropriately classified as belonging to the Common Good.	Add to Common Good register

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

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

#### BURGH OF DUNS

LAND			
Name of Asset	Location	Description	Plan
Showground public car park	The Square, Duns, TD11 3ED	Open area since the mid-19 <sup>th</sup> century. Exact date of acquisition unclear as there appears to be no title deeds for the land.	See attached pdf
The Mercat Cross	The Square, Duns, TD11 3ED	This cross is understood to date from 1792 but was re-sited in the public park in the 19 <sup>th</sup> century to make space for the Town House. The Mercat Cross was returned to the Market Square in 1994.	Plan to follow
Site of Old Town Hall	The Square, Duns, TD11 3ED	This has been an open area since the demolition of the old town hall in 1966. The old Town Hall was built in 1820 and used for town business and as a jail.	Plan to follow
ART AND ARTEFACTS			
Name of Asset	Location	Description	

Pair of white Provost's gloves	Council Chamber, Newtown Street, Duns		
Provost of Duns bicorne hat	Council Chamber, Newtown Street, Duns		
Black quilted collar	Council Chamber, Newtown Street, Duns		
Full length Provost's robes	Council Chamber, Newtown Street, Duns		
Provost's Chain of Office [with 2 pendants]	Museum Store, Library Contact Centre, Newtown Street, Duns		
3 ceremonial wooden chairs	Council Chamber, Newtown Street, Duns		
Painting of Dunse Scotus	Council Chamber, Newtown Street, Duns		
<b>COMMON GOOD FUND</b>			
<b>Name of Asset</b>	<b>Location</b>	<b>Description</b>	
Duns Common Good Fund	N/A	Fund set up for the benefit of the inhabitants of Duns.  As at 31 March 2021, fund consisted of net assets of £19,588.	

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1:500



**Showground Car Park  
The Square  
Duns**

**DN010/02**

**Area: 412m<sup>2</sup> O.T**

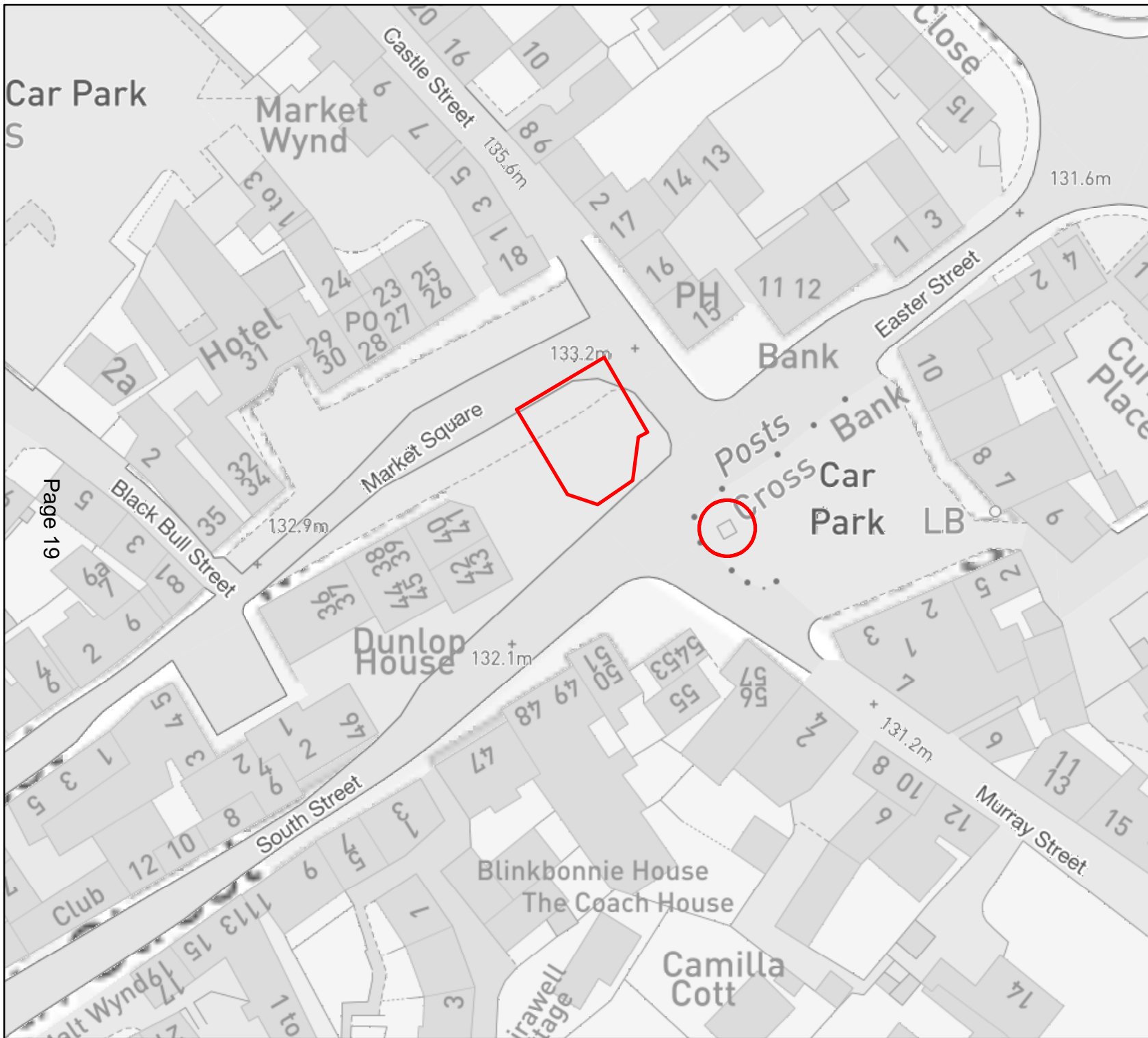


Page 17

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**Locations of  
Former Duns Town Hall  
(Demolished) &  
Mercat Cross,  
MarketSquare,  
Duns**



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