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

Report by Principal Solicitor

Hawick Common Good Fund Sub Committee

15 December 2021

1 PURPOSE AND SUMMARY

- 1.1 **This report is to seek approval of the draft Common Good Registers for the former Burgh of Hawick and to advise on the next steps in the process for consultation and publication under the Community Empowerment (Scotland) Act 2015.**
- 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 Council approved the process for compliance with the Community Empowerment (Scotland) Act 2015 on 31 January 2019, and since that date work has been ongoing in consolidating all information held in respect of heritable and moveable Common Good assets.
- 1.4 From the work carried out, a draft list of assets considered to be a complete list of heritable and moveable assets held by the Hawick Common Good has been prepared, and is produced at the appendix to this report.

2 RECOMMENDATIONS

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

- (d) Notes that the Section 95 Officer will amend the Common Good accounts to include the additional asset identified as Common Good, as indicated at paragraph 3.4 of this report.**

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 consult the public on this list.
- 3.2 Common Good property is property which was owned by the Common Good funds of the former Burghs of Scotland. On the abolition of the Burgh system in 1975, Common Good funds were preserved, and the assets which formed part of these funds remained so. In order to identify which assets form part of the Common Good today, consideration needs to be given to the date and method of acquisition; the use and purpose of the asset; and the historical treatment of the asset in the Council's accounts.
- 3.3 In respect of Hawick this information has been prepared through: consolidating the original inventory held by the Scottish Borders Council; collaboration and consultation with the Hawick Common Good Fund Sub Committee; collaboration and consultation with Live Borders in relation to potential items held within their collections; reference to Minutes of Burgh meetings; reference to original title deeds; and reference to the historical minute books from the Heritage Hub in Hawick.
- 3.4 From the work described above, a draft list has been prepared, which is contained at the appendix to the Report. The assets contained on the list reflect the assets contained in previous Financial Monitoring Reports, with the addition of the following assets: Buccleuch Bowling Club, Cross Wynd Car Park, Backbraes Woodland and the Common Haugh Public Toilet. In the case of the Common Haugh WC, it has previously been noted that the land on which this asset sits was Common Good land. However, it has not previously been noted that the building itself is a Common Good asset. In recognising now the principle of law that land and buildings cannot be owned separately, this building should properly be classified as part of the Common Good. In the case of the Cross Wynd Car Park, Buccleuch and Hawick Bowling Club (including Henderson Gardens) and Backbraes Woodland, these assets have not previously been identified as forming part of the common good. However, the bowling club was gifted to the Burgh by the Duke of Buccleuch in 1919 "for the benefit and enjoyment of the inhabitants of the said burgh for all time to come" and therefore should be classified as Common Good. The Cross Wynd Car Park sits on the same site as the Lothian Street Store and should similarly be classified as Common Good, and Backbraes (or Linnwood as it is otherwise known) was acquired by the Burgh in 1930 and would also appear to be a Common Good asset.

4 CONSULTATION

- 4.1 This report seeks approval of the draft asset list annexed. Following such approval, the list will be published on Citizen Space, together with a consultation survey. The survey will seek representations 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 The intention is to publish the consultation survey before the end of December 2021. In addition to the electronic survey, the proposed lists of Common Good assets will be published on the Council's website and paper copies shall be made available, free of charge, on request. Notification advising of the publication of the lists and the consultation period will be made on the Council's

website and social media. Further, the Council will make all of the Community Councils and other community bodies aware of the publication of the proposed Common Good Asset lists and will invite those community bodies and the public to make representations in respect of these lists.

- 4.3 The statutory minimum period for consultation is twelve weeks. However, it is suggested to extend this period until the start of April 2022.
- 4.4 After the consultation period, the Council will publish all representations received. The Common Good Fund Sub-Committee will then reconvene to consider any representations made, and to agree the finalised Asset Register. The finalised Asset Register will then be published within six months from the end of the consultation period.
- 4.5 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.

4 IMPLICATIONS

4.1 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.

4.2 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.

4.3 Integrated Impact Assessment

Steps will be taken to ensure that the proposed consultation is accessible to all. These steps include the publication of the consultation in paper copy to be available at multiple locations, as well as the availability of large-type formats.

4.4 Sustainable Development Goals

There are no economic, social or environmental effects in accepting or rejecting the recommendation

4.5 Climate Change

There are no effects on carbon emissions in accepting or rejecting the recommendation.

4.6 Rural Proofing

This is not a new policy matter.

4.7 Data Protection Impact Statement

The proposed consultation will involve the processing of personal data. The legal basis for this processing is the undertaking by the Council of tasks carried out in the public interest. Privacy statements outlining the use and retention of personal data provided by any responders to the consultation shall be provided at the point of data submission.

4.8 Changes to Scheme of Administration or Scheme of Delegation

There are no changes required to the Council Schemes of Administration or Delegation

5 CONSULTATION

- 5.1 The Director Finance & Corporate Governance, the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, and the Clerk to the Council have been consulted and comments received have been incorporated into the final report.

Approved by

Director of

Signature

Author(s)

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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.

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