There has been much public debate and a great deal of misconception concerning the status of the role of the ‘Common Good’ in communities across Scotland and that has been particularly true in the Hawick area of the Scottish Borders.

Hawick is steeped in local history and the local community take very seriously their heritage and the customs and traditions that uniquely identify who they are.

That takes the shape of an annual Common Riding where consistently since 1703, when the first ‘Cornet’, the boundaries and common land of the town have been ridden by mounted supporters ensuring that they remain intact and free from raiders. These events have their origin from 1514 when a group of Hawick youths – those left to defend the town following the 1513 battle of Flodden and led by the ‘cornet’ - routed an English raiding party, captured their flag thereby the securing the safety of the town.

So in that context Common land and assets owned and protected by ‘Hawick’s’ residents has and remains an important part of the town’s heritage and its future.

Since the Local Government (Scotland) Act, 1973 brought an end to ‘burghs’ there has been times of confusion concerning ownership of the common good assets and their appropriate management.

It is important that a well-defined and agreed ‘register of all Common Good’ assets is available and able to be easily accessed at all times.

In terms of Scottish Borders Council I believe they are well organised and take seriously the role of the various old ‘Burghs’ and have a structured and organised approach to managing their responsibilities for the Common Good Funds. This is particularly true of land and fixed assets where a defined list is available. There remains a degree of weakness in terms of the ‘moveable’ assets and while a recent audit of museum and council properties has helped fill obvious gaps in the register there remains a degree of confusion concerning ownership of some items.

In terms of the specific questions I have the following comments to make:
1. Are the Common Law rules which define common good property adequate

Response – No. The description of Common Good assets being ‘seen as a special form of property with a public purpose, where title is held by a local authority for the ‘common good’ of the people of the area in question’ remains confusing and does not reassure the ‘people in the area’ that they have any ownership or control’ of the property. This area must be made perfectly clear and where common good property has been registered or evidence is available to confirm that the assets were in the ownership of burghs prior to their abolition in 1973 then this should be properly agreed and stated.

2. Do you think the record keeping of common good property and assets held by local authorities could be improved

Response - Yes. While the detail is regularly published as associated documents to support regular common good sub-committee meetings this could be improved by the publication of a full list in an accessible way on the council’s web-site and held as a physical record in local public libraries.

3. Is there enough openness and direct engagement with local communities on common good property and funds and the use to which common good property and assets are put

Response – While the Common Good sub-committee meetings are advertised and generally held in public, awareness remains very limited and there is a lack of public engagement. I believe it would be beneficial to arrange common good meetings when the public are most likely to be able to attend – at the moment they are held at 1600 hours every 2 months - with much more detail of the specifics.

4. Are details of common good property and assets and income generated by their sale clear and transparent

Response – The detail is available of the public portal of the Scottish Borders Council web-site following the relevant Common Good Sub-Committee meeting. This takes the shape of a ‘financial monitoring report’ that sets out all transactional detail. There is very good detail with a full range of projected income and expenditure, projected balance sheet values, property portfolios and rentals and investment fund returns. In the case of Hawick Common Good this amounts to circa £4 million and the consequential need for prudent financial management is very obvious. There is more work to be done to create a rolling maintenance and investment plan where 5 year projected spend would help to better understand risks and commitments.
5. Any other issues relating to common good property, assets and funds which you wish to bring to the attention of the committee

Response –

a) Recent experience of involving local organisations including the Hawick Callants’ Club, Hawick Common Riding Committee, and the Hawick Archaeological Society to establish probity of items missing from the existing common good register confirms the absolute value of the involvement of such local groups in managing the Common Good. Currently both Community councils representing Hawick are involved as common good trustees. I would have no hesitation in recommending that the groups above be appointed as Common Good trustees and involved in managing the assets.

b) It is important that all ambiguity concerning ownership and control of common good assets is resolved once and for all. I would recommend a clear legislative position be agreed as soon as practicable.

c) The responsibility for large scale common good assets require prudent and effective financial management and skills. I would recommend that common good trustees receive appropriate training and awareness to be able to fully exercise their responsibilities.

d) On occasion there are items that have apparently been gifted to a common good where the ownership or title either cannot be found or is disputed. I would recommend that there is an agreed arbiter or similar process to resolve disputes.

e) There is confusion concerning the ability to ‘sell’ common good assets. That has include debate and some example of high profile civil court action. I would recommend that this issue be clearly stated as part of any legislative framework.

f) The new duties being imposed by the Community Empowerment (Scotland) Act, 2015 have the potential to exacerbate the current position with regard to control by local authorities. Consulting with community councils and certain community groups when proposing to dispose of or change the use of common good property is not an effective approach and this must be much better defined. I would recommend that ‘consult’ be enhanced and replaced by either ‘Agree with’ or ‘Formally engage with’.

There are many misconceptions regarding the status of Common Good assets. The Community Empowerment (Scotland) Act 2015 provides the vehicle to improve this position while ensuring that those communities that ‘own’ assets continue to have the proper safeguards in place to guarantee their heritable position for now and the future.

Watson McAteer
Councillor
Hawick and Denholm Ward