

The Common Good

500 years of community ownership

Andy Wightman
andy@andywightman.scot

BACKGROUND

Common good land is the oldest form of community land for which formal and legal records exist. It dates from the establishment of Scotland’s Royal Burghs and forms a vital part of the resources available to communities. Its history is one of communal endeavour but also of the struggle between residents and the Town Council with widespread corruption and nepotism leading to extensive losses of common lands over the centuries.

Despite the abolition of Town Councils in 1975, common good land endures across Scotland with thousands of hectares of land and thousands of properties still forming part of the common good funds of Scotland’s 192 burghs. They are varied in character ranging from urban green spaces such as the Meadows in Edinburgh and Glasgow Green to the Tullos Industrial Estate and extensive rural landholdings in the Scottish Borders.

The legal framework for its governance, however, has not kept pace with the broad framework of contemporary community landownership. This framework is complex with much of it defined by case law rather than statute. Communities have lost control of their commons when Town Councils were abolished in 1975. Fife’s 26 burghs for example no longer control their own common lands which are instead the responsibility of Fife Council.

RESEARCH QUESTIONS

- What is the status of Common Good land today?
- Do we need a new statutory definition of the Common Good?
- What questions arise as to how it should be governed?
- What role can Common Good play in expanding opportunities for community land ownership?
- How could a statutory scheme of returning control of Common Good Funds to communities be framed?

HISTORY

Common good land consists of land and property that was originally acquired by Scotland’s burghs either by Crown Charter (Royal Burghs) or Feudal grants (Burghs of Barony). Originally the land was an essential component of the burgh’s economic life providing land for growing crops, grazing animals, bleaching linen and other aspects of urban living.



Since land in a Royal Burgh was valuable, it became the focus for dispute and legal wrangling over the centuries.

The “Rabbit Wars” (illustrated above) describes a conflict between the townsfolk in St Andrews who enjoyed playing golf on their common lands and rabbit farmers to whom the Town Council had leased the land for the farming of rabbits. As the golf courses developed many new holes and bunkers appeared due to the rabbit’s activities. Physical violence broke out at times followed by years of legal dispute which was eventually settled after 20 years in 1821.

Before the Reform Acts of the 19th century, owners of land within a Royal Burgh were eligible to vote being vassals direct of the Crown. Common Good was often appropriated by neighbouring landowners or succumbed to municipal corruption and nepotism.

The Common Ridings of the Borders have their origins in the



practice of an annual inspection of the town’s marches to ensure no encroachment from powerful noble neighbours

Municipal corruption was facilitated by the Officers of Burghs Act 1469 which abolished what modest democracy existed and allowed existing councillors to choose their successors. This led to rampant corruption up until the Representation of the People (Scotland) Act 1832.

A Parliamentary Inquiry into the State of Municipal Corporations in Scotland was published in 1835 and laid bare the losses. As Johnston writes,

At one time Tain owned 3,000 acres of moorland, but on ‘the conterminous proprietors making considerable encroachments,’ the magistrates concluded that in whatever encroachments there must be, they, the magistrates, should

be the encroachers, and so they feued out the moor among themselves at 6d per acre.
Johnston, T. 1929 The History of the Working Classes in Scotland, Forward Publishing, Glasgow.

The 19th century witnessed the revitalisation of Scotland’s burghs and the acquisition by the common good funds of extensive parks and gardens as well as the construction of new town halls and libraries all of which today comprise the core of many common good fund portfolios.

STATUS

Common good land land acquired by Town Councils over the centuries (see legal definition below) was, until 1975 owned by Scotland’s Town Councils of which there were over 190. The land comprising the common good was varied in character

It (common good property) was thus the ordinary property of a burgh, held for the general purposes of the community. It is owned by the community, and the town council or other local authority is regarded in law as simply the manager of the property, as representing the community. Typically, the common good included public buildings such as churches and the municipal chambers, the streets of the burgh, public open spaces and markets. It might also include lands, houses and other forms of property. In a coastal burgh, the harbour would typically form part of the common good.

Lord Drummond Young in Andrew Wilson and Others v Inverclyde Council 2003 at [4]

The Local Government (Scotland) Act 1973 abolished town councils on 15 May 1975. The new unitary authorities established in 1996 manage it on behalf of the communities of Scotland’s former burghs today.

LEGAL

The Common Good Act of 1491 was passed to ensure that the common lands of the town be managed for the benefits of the community. The Act remains in force.

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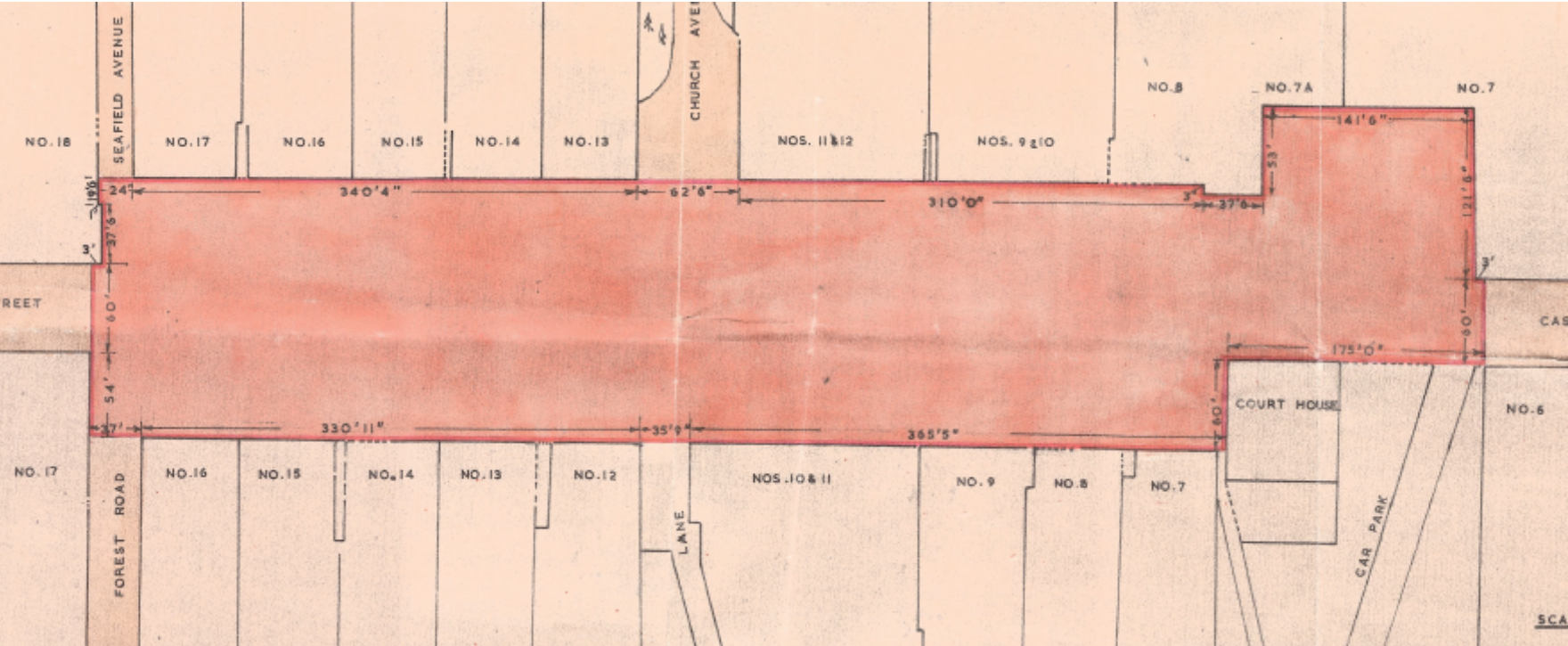
From 1491 to the abolition of local government in 1975, there were no significant statutory provisions passed by Parliament. The courts developed the common law.

*there was in the end no dispute between the parties that all property of a royal burgh or a burgh of barony **not** acquired under statutory powers or held under special trusts forms part of the common good.*

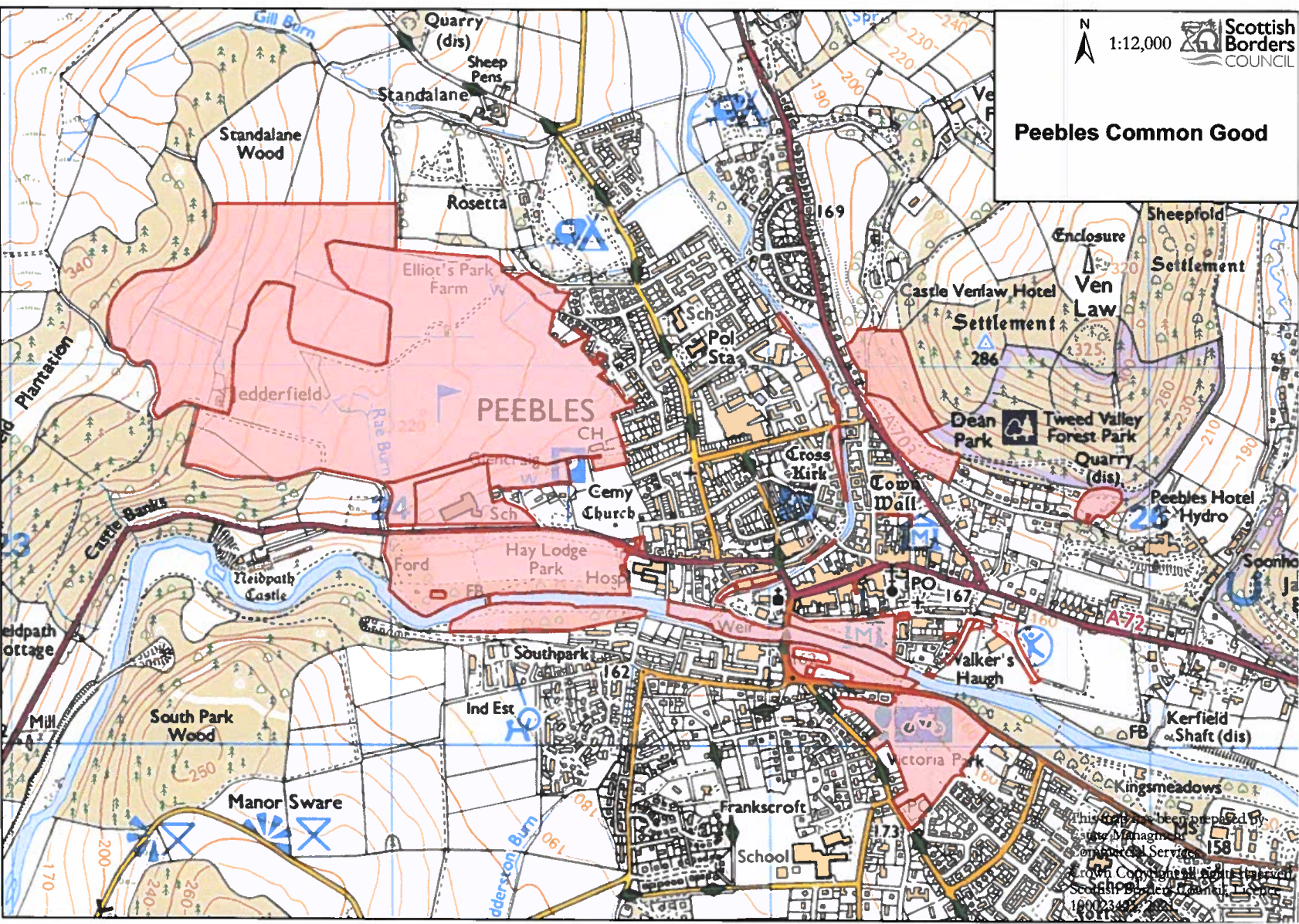
Lord Wark in Magistrates of Banff v Ruthin Castle Ltd. 1944 SC 36

COMMON GOOD TODAY

The map below shows the Square in the centre of Grantown-on-Spey. In 2024, Highland Council resolved to start charging



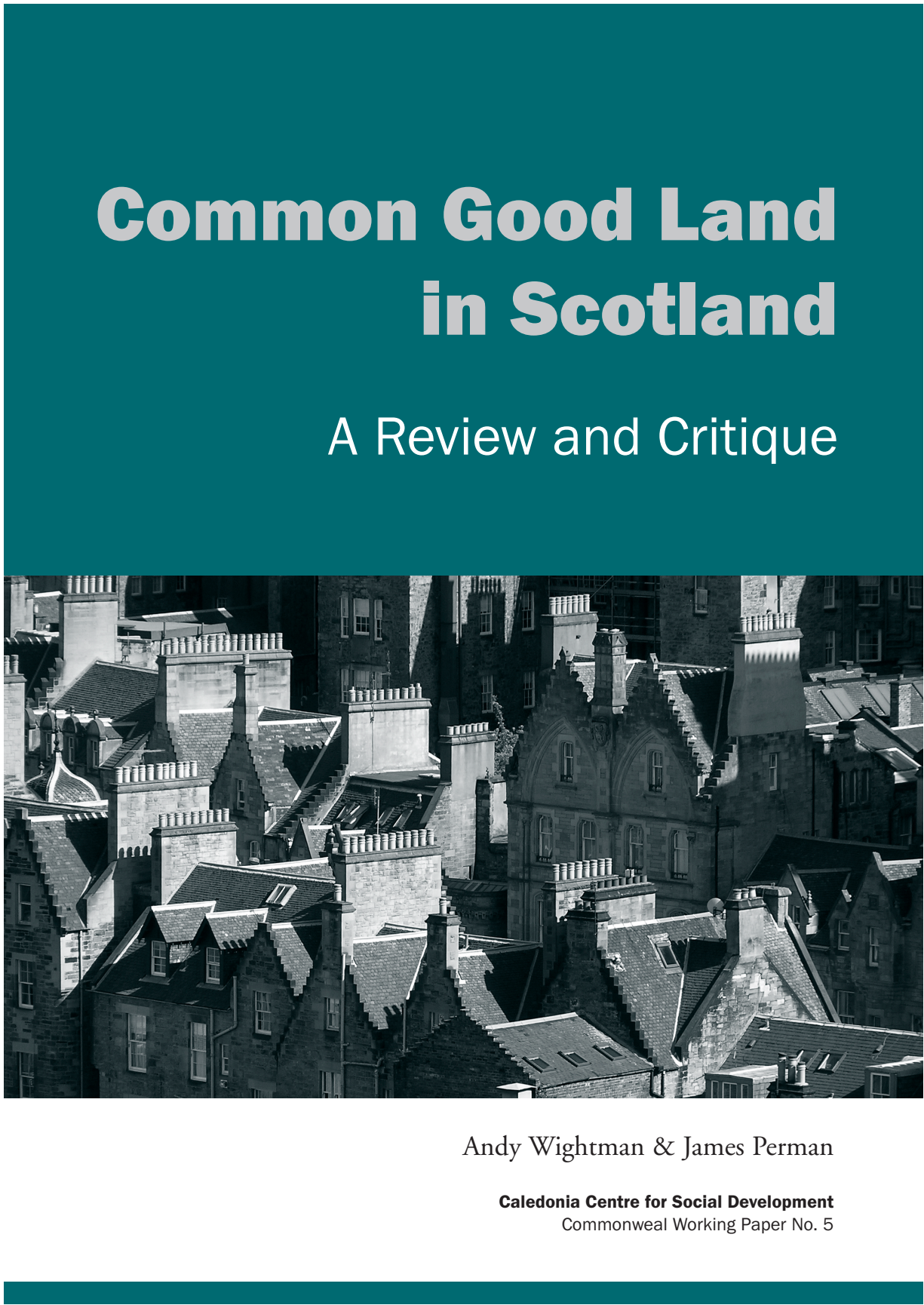
for use of the Square for the regular Saturday markets. Local people objected and took legal action. Highland Council dropped the proposals.



Map of the Common Good of Peebles



Above is the recently discovered sculpture by Edmé Bouchardon valued at over £3 million and which belongs to the community of Invergordon as part of their Common Good Fund. It was mislaid for decades being used as a doorstep in a Highland Council building on an industrial estate.



RESEARCH AND REFORM

As Scotland’s oldest form of community land, Common Good has been neglected and marginalised in debates about land reform and community landownership. Outside of some legal scholarship, no academic research has been undertaken for many years.

That needs to change.