

Consultation on Proposal to sell Inalienable Common Good Land at Sandown Lands

Submission from Nairn West and Suburban Community Council

Approved January 25th 2021

Introduction:

The land in question has been the property of the inhabitants of Nairn since 1589 by Charter from King James 6th of Scotland and is by definition inalienable Common Good Land, included in the CG Register as such.

Nairn West and Suburban Community Council hereby submit an **Objection** to the sale of the whole of Sandown Lands for development for the following reasons.

Summary of Sections:

There is apparently no disposal being contemplated at this time

Lack of opportunity for appropriate consultation.

Purposes and Alternatives not studied or costed.

Community Owned Land Use and Projects not considered.

Developer Contributions issue not costed or included.

Economic Meltdown in next few years not taken into consideration.

Trustees Duties neither considered nor adhered to.

Disputed Appropriation of Land by HC. Legality of Title.

Need for volume housing on this site not established.

Use of the CG fund if this land was sold.

Democratic Deficit in CG Management.

1. There is allegedly no disposal being contemplated at this time

- Councillor Heggie has repeatedly stated that there is no decision for disposal of Sandown Lands at this time, and no developer has been approached. He avers that it is a theoretical procedure, but will allow the Highland Council to sell at any time in the future without further permission. Ward Business Minutes over the last year seem to suggest the contrary.
 - a) Proof of extensive discussion at Ward Business Meetings with Allan Maguire about marketing all the land ASAP. 'Time is critical now. There have been several enquiries from developers about the land and now is the right time to market.'
'Members content with discussions and the proposed way forward'
Ward Business Minutes Dec 6th 2019 Item 2.2 and 9.30am discussion (attached)
 - b) 'Peter Saggars spoke with (redacted) about their interest past and present in the Sandown Land. PS suggests passing the information on to Allan Maguire' (Ward Business Minutes 3rd July 2020 AOCB)
- However if there is no disposal there can be no sheriff court application, as this necessitates such issues as benefit and best value to the Common Good (CG) being presented to the court to ensure that the Trustees are acting in the best interests of the CG of Nairn and the generality of its inhabitants.
- If permission to sell at any time in the future was granted under unknown terms and by an unknown purchaser, it is conceivable that HC itself could buy for a fraction of what the land was worth.

2. Consultation or lack of it.

- In the light of the above, we question why consultation is taking place at all without any disposal being proposed. It would appear to be a sham.
- The decision by HC to consult about this disposal has not been taken at any committee enabled by standing orders to take decisions.
- The information provided in the consultation document is completely inadequate as no firm financial details are available, which would be an imperative for local residents to know before coming to any decision about approval or otherwise.
- Covid. Normally consultation would consist of public meetings and exhibitions. A decision to sell a significant proportion of the community owned land assets of the multi-million Nairn Common Good fund

during a pandemic and over the Christmas period with minimal discussion and a flimsy 4 page document is unacceptable to say the least. Specifically if there is no intention to sell at present it is perverse to consult at a time of lockdown.

- This consultation does not fulfil the majority of the requirements of the National Standards for Community Engagement: Inclusion, support, working together, communication, methods that are fit for purpose. (<https://www.gov.scot/policies/community-empowerment/>)
- Impartiality.
Highland council have a major conflict of interest in this case. They are very keen to get housing land as cheaply as possible, and their 74 councillors are the Trustees of the Common Good.
Highland Council actions and minutes strongly suggest that the sale of Sandown is a 'done deal' and that this consultation is a 'box ticking' exercise with no heed being taken of local opinion suggesting alternatives.

Proof of Bias:

- a) A preliminary planning application by Highland Housing Alliance (a HC led consortium) for 70 houses on half of the South field was lodged in 2018, (Environmental Impact Analysis 18/04089/SCRE - see attached image). It was later withdrawn as no proper procedure had been gone through for inalienable common good land, and it was illegal. These houses are still counted in the Strategic Housing Investment Plan for 2020 – 26 (Economy and Infrastructure Committee 4th November 2020 Item 6) indicating an expectation that the land will be sold regardless of local opinion.
- b) Another indicator of bias is that the recent Main Issues Report for the forthcoming Inner Moray Firth Development Plan has put forward only one preferred site for volume housing for Nairn for the next 5 year period – Sandown. This in spite of good land closer to the town at Househill and Balmakeith South being available and put forward. Both of these have been sidelined for spurious reasons.
This appears to indicate that Highland Council want no choice of sites other than inalienable common good land belonging to the people of Nairn for over 400 years.
(https://www.highland.gov.uk/meetings/meeting/4356/nairnshire_committee Booklet A)
'We are preferring the allocation of Sandown as it is within common good ownership and free of major constraints.' What more evidence is needed that they think CG land is theirs to do as they wish?
'We have Non-Preferred the proposal at Granny Barbour's Road as it is slightly more detached from the existing settlement edge' (actually closer to the town) 'and requires a relatively high level of new infrastructure to accommodate the proposed levels of growth.' This seems to be a disingenuous approach to any major long term development.

3. Purposes and Alternatives.

No rationale for the sale at this time has been explained

- No cost benefit analysis has been presented.
There is only one option: Sale of whole lands for volume building. This is likely to be the option bringing in the least money.
It cannot be possible to ensure that the asset is being disposed of in accordance with the law Section 74(2) which states 'must not be disposed of for a consideration less than the best that can be reasonably obtained' or the equivalent 'have regard to the interests of the inhabitants of the area to which the common good formerly related' when only one option has been presented. (Section 222(2) of the Local Government (Scotland) Act 1973, interpreted in 'Common Good Law' Andrew Ferguson p25)
No research has been done on any other options such as :
 - a) Selling plots; This is Scottish government and HC policy and would attract a greater income for the CG than sale of the same area of land as part of the whole where the developer would cash in instead of the community. Plots in Nairn can fetch up to £150,000.
 - b) Leasing to provide long term income stream; this could be for housing and small business opportunities.
 - c) Selling small areas only. The fields have some areas which are much more valuable than others in development terms, so there should have been a full assessment of the value of each area to allow an intelligent decision to be taken.
 - d) Community/tourist uses, which must be prioritised and safeguarded as per HWLDP. Policy 16.
 - e) The possibility of generation of renewable (solar or ground source) energy to provide an income stream.

4. Community Owned Land Use and Projects.

- The South field of Sandown has been earmarked in the Local Authority plans for over 20 years as a wetland nature reserve. The proposed project includes a community building/interpretative centre, playpark, picnic site, café and tourist attraction at the gateway to Nairn, providing employment opportunities also. (LDN architect drawing attached). Sports fields have also been suggested in the past.
There is a significant sum of money from the sale of the Tradespark Hall that is to be used to erect a building for the benefit of the surrounding residents, which could be available to assist in pump priming this development. The plans have not been progressed as HC appear to have focussed on selling the land to a housing developer rather than repurposing Sandown assets for maximum community use as well as financial gain to the Common Good Fund. This is community land and control should be retained by the community.
- Another usage which has been put forward in the past, and there could be more ideas from the public if asked, is for an area to be dedicated to the generation of renewable energy such as solar and ground source. This is environmentally very desirable and also would generate an income stream for other projects. On the sale proposed here, all control of the land goes immediately to a developer. There will be loss of control of options for recreation, leisure and tourist gateway uses of the Sandown land as enshrined within Nairn Local Plans then Local Authority Development Plans and confirmed in 2012 at the Sandown Charrette. Previous experience leaves us with little confidence that any developer or HC planners will honour the land uses discussed with the community in 2012/13, and the EIA of 2018 (see section 2a) illustrates this, in that the proposed housing covered an area which was more than double that agreed at the Charrette (see attached image of boards) and would not leave any meaningful wetlands reserve or tourist facility.
The proposed use of a large proportion of the long term designated recreational area of the Sandown site for housing when there are appropriate alternative areas north of the A96 shows that HC have little interest in what is best for the CG, only what can provide them with the cheapest land to develop.
- It is now Scottish Government policy under the Community Empowerment Act 2015 to encourage community land ownership of which common good land is the original example. That HC should be repeatedly trying to sell this valuable community resource with negligible partnership with, or input from the community who have longstanding ambitious plans for the area contravenes both the letter and the spirit of the Act.

5. Developer Contributions

- If the land is sold for 350 houses, then developer contributions of average £7000 per house (£2.5 million) will have to be paid by the CG fund from the proceeds. This is not at all clear in the consultation document.
- Income to the common good would therefore be around £4 million by HC valuation, with an additional £700,000 deducted if another 100 houses were granted permission. The land was about to be sold for £22 million as recently as 2008. Is this really best value for our community to sell at this time?

6. Economic Meltdown

- The economy is facing the worst recession in 300 years. Investments may be wiped out, and even before Covid really struck, investments (including Nairn CG investments) were on a serious downward trajectory
- This is no time to cash in property assets – cash and investments could lose a huge proportion of their value very quickly while land will provide some income and still be there in a more stable economic environment.
- What is the hurry to do this, other than HC and the developer buying 'at the bottom' and getting themselves a bargain at the expense of our community?

7. Trustees Duties

- Land value. Sandown was valued at £14million in 2006 with a bid of £22 million from one developer. It was £10 million in 2010, £7 million in 2013 and now £6-7 million. (minus developer contributions of £2.4 million)
- Councillors have a duty to ensure that the interests of the CG fund are placed first. This is clearly NOT the time to sell inalienable CG land which we have had for 430 years. Councillors are possibly individually financially responsible if NCG loses most of its value by doing this.

8. Disputed Appropriation of Land by HC

- In 2013 HC appropriated £344,000 worth of Sandown land against the alleged expenses incurred in the process of an attempted illegal land sale in 2008-9. The land was inalienable and court permission should have been sought under section 75 (2) of the 1973 Act. £344,000 value of the land was transferred from the Nairn Common Good account to the HC general account without any legal procedure being undertaken. (HC audited accounts 2013-14 p124) No court permission was sought for appropriation of this inalienable common good land, and the appropriation was clearly in breach of the Trustees fiduciary duties.
- The appropriation is being disputed (with no response so far) and this needs resolved before the sale process goes any further. There is no clean title and the site of the land appropriated has not been identified.
- It would appear that HC may be attempting to sell Sandown Lands because they mistakenly believe that they own a proportionate part of the land and this is their way of claiming it.

Need for Housing

- Housing is a statutory duty of the Local Authority it is most certainly not a function of the Common Good fund which is to benefit the general population of the former burgh, not individuals. Any attempt by Highland Councillors who are CG trustees to provide housing subsidised by the CG in the form of cheap or free land would be financially improper and their conflict of interest is plain. Their duty as trustees of the CG and its management has precedence over their council duties.
- Current Scottish Government and Highland Council policy is to redevelop, renovate or purchase town centre property, not develop greenfield sites on the edge of town.
- No allowance has been made for available and consented alternative sites for affordable housing in and around the town, and the statistics used for housing need are based on an inflated 2015 HNDA.
- The adjacent land at Delnies has permission for 300 houses from 2008 and has not even commenced, showing little demand.
- Road and sewage infrastructure around Sandown is completely inadequate and could be another crippling charge on the CG.

How would the CG fund be used if this land was sold.

- No legitimate case has been made for how the CG receipts from the sale would be used, and the consultation document implies that assets realised would be used for regeneration of the town and Covid recovery. It is not at all clear what this means and it is impossible to judge whether this will be legitimate use for the CG or just a money saving opportunity for HC.
- As with housing, the possible uses such as regeneration, housing, leisure/recreation are likely to be as substitute for HC statutory spend or regeneration grants to which Nairn is entitled and which other communities will receive. The Nairn money saved by plundering the CG fund would go to other communities in Highland who already have their share of funding directly from HC.

Democratic Deficit in CG Management.

- In March 2012, a promise was made to the Nairn Community by William Gilfillan (HC) and Sandy Park (Nairn Area Chair) that representatives from all community Councils would henceforward be included in a liaison body to decide on Common Good issues. This promise has never been honoured in spite of having been confirmed to Danny Alexander and included in a HC press release (both attached).
A follow up letter to Steve Barron in November 2014 from NWCC expressing major dissatisfaction with the management of the CG assets and the need for local representation was ignored. (attached)
- In spite of repeated requests and promises, Nairn has no neutral representatives participating in decisions about the Common Good. Only the four Highland Councillors (who have a major conflict of interest) make all the decisions and this mainly takes place behind closed doors with minutes only available by FOI.
- Only when the Law demands consultation have HC asked the opinion of community bodies.
- The conflict of interest of Highland Councillors and lack of non conflicted representatives in the decision making process for Nairn's Common Good Fund is completely unacceptable.
- Repeated attempts to have proper community appointed non conflicted representatives on the common good management structure for Nairn have been completely rebuffed.

Conclusion:

Nairn West and Suburban Community Council object to the selling of all the Sandown Lands as proposed in the HC consultation document. We feel that the sale is merely for the convenience and financial benefit of Highland Council and not the inhabitants of Nairn. Proceeds from the sale will very likely be frittered away on projects which should be funded from mainstream HC statutory spend (as in other communities) and Nairn residents will have no control over this spend of their heritage.

Nor do we feel that it is coincidence that this consultation is taking place in the middle of a pandemic, without prior discussion and limited opportunities for dissemination of information or proper consultation. It appears to be a 'box ticking exercise' with the decision already made.

The sale of all the land is likely to be the worst value for the Common Good, and no alternatives such as partial sale, leasing and community usage have been considered. The valuation does not take into account a huge payment for developer contributions and the proposal relinquishes control of the areas of land which have long been earmarked for community uses, which are a keystone of Scottish Government policy.

The ownership of part of the land is also disputed due to an illegal appropriation of a proportion in 2013.

This has to be resolved before any sale could be contemplated.

Finally, there could not be a worse time to unnecessarily convert land assets into investments, which could lose value very rapidly in the recession to come.

We trust that sense will prevail and this ill-judged proposal be withdrawn until proper partnership with the community is established and all the alternatives considered in the true spirit of the Common Good of our community.

List of Attachments:

1. Extracts of Ward Business Minutes 2019/20
2. EIA screening application diagram 18/04089/SCRE
3. Wetlands Diagram – LDN Architects
4. Sandown Charrette – photo of Summary Boards.
5. Gilfillan letter to Danny Alexander MP.
6. Sandy Park statement HC press release.
7. Letter to Steve Barron CE of HC November 2014