

# NAIRN RESIDENTS CONCERN GROUP

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Date: 29<sup>th</sup> May 2009

(See Letter distribution below)

Dear Cllr. (named councillor),

**Subject: Proposed Development of Sandown Common Good Land**

First of all we would like to record our appreciation of the outcome of the planning hearing on 12 May, which considered the proposal from Deveron Highland for a development on the Sandown Common Good Land. We welcome the committee's decision to turn down the application in its present form.

Further proposals for the development of Nairn – not just the Sandown lands but also other possible sites – will no doubt surface again. So, given the practical time constraints at the hearing, we feel it is important to set out both our continuing concerns and our expectations now. This is so that (a) all options are considered on their merits and (b) the best possible option, compatible with the character and style of Nairn, is adopted.

Our immediate focus is, inevitably, on the future of the Sandown land. But recent events have highlighted more fundamental concerns about the development planning process, about the quality and validity of planning assessments, and about the integrity of local decision-making. As our local councillors and the elected representatives of the people of Nairn, we feel it is important to make you fully aware of these concerns, and to seek your support in addressing them.

I. The planning framework

The application in respect of Sandown was quite properly refused because – among other reasons – it did not comply with the local plan. But the debate about Sandown revealed a range of forecasts and figures for population growth and housing numbers, cited in various planning documents and studies. Forecasts for the growth of Nairn's population seem to be a general aspiration, not based on sound research and factual evidence nor properly considered through the normal process of public consultation. Consequently we regard the zoning of Sandown (and indeed certain other areas in and around Nairn) for housing as unjustified and the brief given to the developers flawed.

**Should another developer's proposal be submitted – or indeed should the current applicant appeal the decision on outline planning permission – then we would expect this to be supported by a proven, evidence-based, Planning Needs Assessment carried out by the planning specialists in Highland Council.**

It is in any case widely recognised that the existing (Nairnshire) Local Plan is becoming out-of-date and does not take account of changing circumstances. A new Inner Moray Firth Plan is due to be drafted in 2009-10 as a component part of the new Highland-wide Development Plan.

**Our view is therefore that NO new housing development briefs should be drawn up for Nairn, and no development proposals considered, until the new Local Development Plan has been fully discussed, agreed and published, and the evidence brought forward in support of that plan fully and independently assessed.**

II. The decision-making process

Against the background of current press headlines and widespread public anger about MPs' conduct at Westminster, it hardly needs emphasising that transparency and accountability are of paramount importance in all decisions made by local, as well as national, authorities. This is particularly important in respect of Common Good land that the Council holds in trust for the people of Nairn [see Section V. below]

Yet the planning application for the Sandown lands has raised serious questions about the integrity and transparency of the decisions that led – ultimately – to the selection of Deveron as preferred bidder, and about the terms of the agreement reached with them. While we recognise the sensitivity of specific bid-figures prior to the conclusion of an agreement, we do not accept that “commercial confidentiality” is a valid reason for concealing from the public all the terms and conditions of whatever agreement(s) may have been reached between Council and prospective developer. This is especially pertinent as the land at Sandown is held in Trust for the people of Nairn and as such, they should be kept aware of proposals that would affect the land and ultimately the people.

We are especially concerned about the recent remarks by Deveron's spokesman to the press in which he alluded to “*options which Deveron still has.... and the company still has years in which to decide what to do*”.

**Our view is that it is unacceptable for the Council to put any developer in a position where it can block, delay, or prevent review of, decisions on the development of Common Good land. If in fact this is the case, we believe the Council may have acted *ultra vires* in agreeing to such terms;**

**accordingly we consider that the exchange of missives, and/or the content of the agreement made with Deveron (or any other potential developer) should be publicly available for scrutiny, and we will be taking formal steps to seek such disclosure.**

III. The adequacy of consultations

The Scottish Government has made very clear – most recently in its Planning Advice Note PAN 81 [and others] that public consultation and the involvement of local communities is a central requirement of the planning process. We believe that the evidence shows that even where the Council, and individual developers, have observed the formalities of public consultation, they have not adequately responded on the substance.

There are many recent examples. You will be aware that the status and validity of the “A96 Corridor Masterplan” is already being challenged by individuals and organisations that believe it has not been subject to proper consultation and scrutiny. In the case of the Sandown application, the developer actively sought to limit public attendance at consultation-meetings, and to permit selected representatives to attend, and only by invitation. Moreover, at the planning meeting on 12 May Deveron openly admitted that they had completely ignored the widespread objections – from the public and from the Community Councils – to the number and density of housing units proposed, since they regarded the 550 units as “non-negotiable”. The role of the Council as custodian of the Common Good land, as well as party to the development agreement and planning authority for its development, makes consultation and accountability particularly critical.

**Our view is exactly reflected in the latest PAN 82 guidance, which says (paragraph 17) that**

*“Proposals where the local authority has some involvement in the development, but is also the decision-maker, can naturally lead to some suspicion or scepticism by local people. Therefore it is particularly important that people have an understanding of what is being proposed, and why. The quality of local consultation will be a factor Scottish Ministers will consider when deliberating over planning applications that have been notified to them”*

and (in paragraph 42) that

*“Scottish Ministers will want to be satisfied that a thorough planning assessment has been carried out and recorded, that the Development Plan and all material considerations have been reasonably applied, that local consultation has been sufficient and that all relevant views expressed have been suitably taken into account...”*

**We are not satisfied that the consultation undertaken (i) at the time the Sandown Common Good lands was zoned for development, (ii) at the time of the tendering and negotiation of the development agreement, and (iii) on the Deveron proposal once it had been formulated – were sufficient, nor do we believe the views then expressed were suitably taken into account.**

IV. The quality of planning evaluation

Those who attended the Planning Committee Hearing on 12 May were surprised that councillors did not raise more questions about the evaluation and analysis contained in the Planning Officer’s report on the Sandown application. The absence of questions, (other than one query from Cllr Fraser) after officials, applicants and objectors had all spoken, and the rapid and unanimously agreed decision of the committee, served to further undermine public confidence in the process; by what we perceived to be an insufficiently rigorous examination of the issues.

**Our view is that the competence and thoroughness of the planning appraisal of any development application is crucial to reaching an informed decision. If the analysis is insufficiently thorough and rigorous, there is no proper basis for a decision to be made. In the specific case of the Sandown application, we believe the Planning Officer’s report failed to address most of these key issues.**

V. Specific issues related to Common Good land

Most of the points outlined above refer to the planning process in general, and to the handling of all development proposals for Nairn or indeed elsewhere in the area. Where the land in question is Common Good Land, a number of additional factors have to be taken into account.

This is a complex subject, in which history and legal considerations play a role. But Sandown has forced this aspect to the top of the agenda in Nairn. The Planning Committee Chair ruled that the 12 May meeting could not go into the details at that time. But the status, management and future of Common Good land remains a key consideration, not just for the Sandown lands but for other Common Good land in Nairn.

**We believe that there are some serious issues related to the Council's stewardship of Nairn's Common Good land, which need to be considered, and which will certainly attract the attention of Ministers if – as the Planning Officer’s report recognised – the Sandown application is referred to them.**

**We will be submitting separate and more detailed enquiries on the subject of Common Good. In summary, our concerns relate to**

- **The potential conflict of roles, and of interest, of Councillors who are simultaneously trustees of the CGL, managers of the land, and planning authority for any proposed development on it;**
- **The question as to who should be trustees of Common Good land, and whether Councillors who are non-resident can appropriately assume such a role;**
- **The Council’s policy and management of CG land in general, and particularly as regards the registration of the Common Good Fund and/or land under charity law;**
- **The valuation of CG land, whether realisable or non-realisable.**
- **The appropriate use of the proceeds of any sale or development of CG land – and specifically the use of any such proceeds for compensation payments, legal costs or wider regional project or infrastructure expenditure.**

**In relation to the Sandown land in particular, we are concerned that there may be a question of possible negligence or maladministration in relation to the Council’s negotiation and management of the lease and tenancy of the Sandown Common Good land; and that if this gives rise to any requirement for payment of compensation or legal costs, that such costs should not be borne by the people of Nairn via the Common Good Fund.**

In conclusion, we recognise that the various points listed above add up to a considerable, and in some respects challenging, agenda. But we believe that the recent discussion of the Sandown development application, when seen in the context of other recent or prospective proposals for Nairn and its immediate region, represents an opportunity to explore the issues and develop a constructive dialogue with all parties who have a role in, or who may be affected by, the process of planning and development.

We are encouraged in this initiative by the guidance in the Scottish Government's recent document "Community Engagement - Planning with People" (PAN 81), which says

*"Scotland's planning system is undergoing its most radical overhaul in 60 years. Scottish Ministers are determined to make the planning system more inclusive and accessible to people, with greater openness and accountability in the decision-making process. This cannot be achieved without reforming how planning involves people - but more importantly how people are involved in planning. It also requires real culture change - from everyone involved in the planning process".*

As residents of Nairn, we are prepared to become involved. We hope, and believe, that we will be able to look to you, as our elected councillors, to respond and to support such efforts, and to pursue the goal which we all share, of a Nairn which retains its unique character and qualities, and where development is appropriate and proportionate, and reflects the views and aspirations of the town's residents.

Copies of this letter are being sent other members of the planning committee and to the MSP's for the Highland area: and the text will be made available to the media.

Yours sincerely,

Signatories as per attached list

# NAIRN RESIDENTS' CONCERN GROUP

## DISTRIBUTION LIST

Letter addressed to: Mr. Sandy Park, Convenor, Highland Council  
Mrs. Liz McDonald, Councillor & Provost of Nairn  
Mr Graham Marsden, Councillor, Nairn  
Mr Laurie Fraser, Councillor, Nairn

Electronic Copy to: Fergus Ewing, MSP  
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David Stewart, MSP  
Dave Thompson, MSP  
Rob Gibson, MSP  
Jamie McGrigor, MSP  
Rhoda Grant, MSP

Copy to: Other Members of Inverness Nairn, Badenoch and Strathspey Planning Applications  
and Review Committee Not Addressed Above

Provost J Gray  
Mr R Balfour  
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Mr D Henderson  
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