



COURT OF SESSION, SCOTLAND

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

PETITION

Of

MORAY COUNCIL,

Constituted in terms of the Local Government etc. (Scotland) Act 1994,

and

having their principal office at Council Office, High Street, Elgin IV30 1BX

PETITIONERS

For

**Authority under Section 75 (2) of the Local Government (Scotland) Act 1973 to dispose of
or appropriate heritable property held as part of the Common Good of the Petitioners**

HUMBLY SHEWETH: -

1. That the Petitioners are Moray Council. They have their principal office at Council Office, High Street, Elgin IV30 1BX. The Petitioners seek an order to

permit the disposal and appropriation of heritable property forming part of the Common Good in terms of section 75(2) of the Local Government (Scotland) Act 1973 ("the Act"). The subjects to which this Petition relate are situated in the area of the former Royal Burgh of Forres. To the knowledge of the Petitioners there are no other proceedings pending before any other Court involving the present cause of action. To the knowledge of the Petitioners no agreement exists between any party prorogating jurisdiction over the subject matter of the present cause to another Court. This Court, accordingly, has jurisdiction.

2. That the Petitioners are the heritable proprietors of the subjects hereinafter described at Statement 10 hereof and known as Roysvale Park, 6 Sanguhar Road, Forres, IV36 1DG ("the Park"). The Park extends to 2.15 hectares or around 21, 500 square metres or thereby. It is shown outlined in a broken green line on the pre-construction plan which is produced and set out in Part 3 of the Schedule annexed hereto ("the Pre-Construction Plan"). The Petitioners acquired right to the Park in terms of Section 15 of the Local Government etc (Scotland) Act 1994 and Article 2 of the Local Authorities (Property Transfer) (Scotland) Order 1995/2499. The Petitioners are the successors to Moray District Council, and, in turn their statutory predecessors, the Royal Burgh of Forres. Moray District Council acquired right by virtue of Article 10 of the Local Authorities (Property Etc) (Scotland) Order 1975/659. The areas of land within the Park which are the subject of this Petition form part of the inalienable Common Good of the Petitioners. The Park is listed in the Public Register of Common Good maintained by the Petitioners in terms of section 102 of the Community Empowerment (Scotland) Act 2015 ("the 2015 Act"). The areas which are the subject of this Petition are the "Construction Area" and the "Drop-Off Area." The Petitioners seek the authority of this Court to permit the temporary disposal

of the Construction Area and the appropriation of the Drop-Off Area. These areas are more particularly described in Statements 8 and 9 of this Petition.

3. That the Petitioners, as education authority under the Education (Scotland) Act 1980, have an urgent requirement to build a new school to replace the existing Forres Academy and to relocate it to a new site. The Academy is situated at Burdsyard Road on land to the south of the Park. To the north of the Park are the playing fields of Applegrove Primary School ("Playing Fields"). The Academy is no longer fit for purpose. In particular, the design is outdated, and the condition of the building has been assessed as life-expired. There is a serious risk of imminent failure. Reinforced Autoclaved Aerated Concrete ("RAAC") has also been identified in the Academy's flat roof structure. Structures containing RAAC can collapse with little warning. The Academy is listed as "Category D," the worst category for the state of a school. The Petitioners secured an offer of project funding for a new school from the Scottish Government under the Learning Estate Investment Programme ("LEIP"). If this Petition is granted, and dependent on the outcome of the hereinafter averred statutory consultation processes, the Petitioners anticipate that construction might begin in June 2026, with the new Forres Academy opening in around October 2028. This Petition is part of a wider public process, including a completed public consultation under section 104 of the 2015 Act ("the Common Good consultation"); ongoing consultation under the Schools (Consultation) (Scotland) Act 2010 ("the 2010 Act"), public consultation, which ended on 4 November 2025, on the application for planning permission for the Petitioners and separate future procedure under section 24(2A) and section 27(2A) of the Town and Country (Planning)(Scotland) Act 1959. The cumulative benefit of those processes will inform the final decision of the Petitioners on whether it is possible and appropriate to proceed with the project.

4. That, against that background and following approval by the Education, Children's and Leisure Services Committee ("the Committee") on 19 September 2023, the Petitioners undertook a process to identify sites for a new school building. A feasibility study was carried out by Hub North Scotland and other professionals. The process considered various new build proposals as well as the possible refurbishment of the current school building. The study concluded that a site which included land at the said Playing Fields and facilitated by land at the Park for the new school building would be the best option. The footprint of the new building and school grounds will be located wholly within the Playing Fields. The design and construction of the preferred site will though require some use to be made of areas of the Park. These areas are the said "Construction Area" and the "Drop-Off Area."
5. That on 27 March 2024, the said Committee following upon a Report to it decided to undertake a public engagement process on possible sites. Two sites were identified. These were Lochyhill, which is privately owned and located on the outskirts of Forres, and the Playing Fields/Roysvale site. Public engagement favoured the Lochyhill site by just 54.7% to 45.3%. The Committee met on 14 May 2024 to consider a report analysing those responses. The Committee decided that, notwithstanding the modest public preference, the Playing Fields/Roysvale site was the preferred option for recommendation to the Petitioners. The Full Council of the Petitioners met on 22 May 2024. They considered a report from the Depute Chief Executive (Education, Communities and Organisational Development) which highlighted factors favouring the chosen site. These included, taking into account the key national and local strategies and policies as defined in National Planning Framework 4, a place based approach, a better central location, which supported the ability of residents to meet their daily needs

with 20 minute journeys from home with a reduction in car-based travel and maximisation of active travel, and associated town centre economic sustainability, greater cost effectiveness as well as the benefit of a 5 -18 years campus given the proximity of Applegrove Primary School. These key criteria favoured the central location of the Applegrove/Roysvale site and afforded it a higher score than the Lochyhill site. The acquisition and development of the Lochyhill site would also be likely to have required around an additional £4,000,000.00 in funding and would extend timescales considerably to allow time for negotiation with landowners and conclusion of the site acquisition before building works could commence. The proximity of the preferred site to the current Academy would also allow the continued use of the swimming and hydrotherapy pools, adjacent to the Academy. The report also noted that the former Academy site would be re-purposed for beneficial community use to accommodate a “Third Generation” or 3G pitch for sports use, car parking and soft landscaping. A copy of relevant Reports to the said Committee and Petitioners and relative minutes and plan showing the Park and existing Academy site are produced. The Petitioners balanced the range of considerations and noting the requirement to replace the school building as soon as practicably possible, decided to prefer the Playing Fields/Roysvale site.

6. That the relocation of the Academy is a relevant proposal under the 2010 Act. On 16 September 2025, the required statutory consultation was approved by the Committee. The consultation commenced on 18 September 2025 and will last until 13 November 2025. As required by the 2010 Act, the Petitioners published a statutory statement as to the educational benefits of that proposal. This is produced. The Petitioners will require to have regard to, and take into account, the outcome of that consultation, along with any considerations relevant under the 2010 Act in deciding on whether to proceed with

relocation. A report on the consultation, including independent feedback from Education Scotland, will be published and presented to the Committee in February 2026, before the Petitioners make any decision on whether to proceed with the proposal. An application for planning consent was made by the Petitioners on 23 September 2025. Matters relevant to planning have now been the subject of separate consultation, and further consideration and determination by the Petitioners under parallel statutory processes will follow. There will also be public notice of any proposed appropriation and disposal of open space and consideration of any objections to that under sections 24(2A) and 27 (2A) respectively of the Town and Country (Planning) (Scotland) Act 1959 (“the 1959 Act”).

7. That the Petitioners acquired title to the Playing Fields as statutory successors to The Joint County Council for Moray and Nairn and The Joint County Council of the Combined County of Moray and Nairn. Reference is made to Disposition by the Provost, Magistrates and Councillors of the Royal Burgh of Forres to the Joint County Council of Moray and Nairn, recorded in the General Register of Sasines for Moray on 27 June 1960 and Disposition by the Provost, Magistrates and Councillors of the Royal Burgh of Forres in favour of The Joint County Council of the Combined County of Moray and Nairn recorded in the General Register of Sasines for Moray on 3 December 1955. The subjects therein conveyed were used for the location and construction of Applegrove Primary School and the Playing Fields for that School by the said disponees in furtherance of the statutory function of the provision of education. The Playing Fields do not form part of the Common Good of the Petitioners. The Playing Fields are shown hatched in blue and bounded in red on the Pre-Construction Plan.

8. That the Petitioners wish to have temporary use of the Construction Area. The Construction Area will extend to 0.7 hectares or 7,025 square metres or thereby. It is the area hatched in orange on the Pre-Construction Plan. This will be used for site setup, as a contractor's compound and for construction traffic parking. This will be for around 32 months. Following completion of the build, the Construction Area will require to be fenced off for a further period of around 12 months to allow grass seeding to establish and restore the Construction Area to its original condition. The contractor will have contractual rights to occupy the Construction Area and will have beneficial occupation of it. This will constitute a temporary disposal. On completion of the works and restoration it will revert to being accessible park land.
9. That part of the Park will also need to be appropriated by the Petitioners. This will become the Drop-Off Area. The Drop-Off Area, if built, will extend to 0.25 hectares or 2445 square metres or thereby. The Drop -Off Area is the area shown as hatched in orange and green and partly coloured green and hatched red and bounded by Sanquhar Road in the Pre-Construction Plan. The Petitioners wish to use part of the Park as a bus drop off area for the new school with associated footpath and cyclepath. Currently the proposed Drop-Off Area consists of a wide paved footpath and grass. The Drop-Off Area will have a maximum width of around 12 metres. This will constitute appropriation from the Park. The post construction Drop-Off Area is shown hatched blue on the post-construction plan which is produced which shows the Park after construction ("the Post-Construction Plan"). The size is slightly larger than the area consulted upon in the Common Good consultation hereinafter referred to at Statement 12 hereof. This was due to the subsequently identified need to widen the bus entrance area to safely accommodate vehicle access and enhance visibility on Burdsyard Road. The additional area will represent a net increase of 13 square metres (around 0.06

percent of the overall common good) in comparison with the area consulted upon. Given the very modest increase, it did not require re-consultation under the Common Good Consultation. The area being used for the relocated bus entrance consists of grass area and does not affect the activities within the Park.

10. That the Park is part of the inalienable Common Good of the Petitioners. Title to the Park was granted by a Feu Charter by Alexander Edward of Sanquhar in favour of The Provost, Magistrates and Town Council of Forres, dated 4 December 1899, and recorded in the General Register of Sasines for the County of Moray on 14 December 1899 and also by Disposition by The Reverend Alexander MacKenzie and Others in favour of The Magistrates and Town Council of the Royal Burgh of Forres, dated 18 November 1891 and recorded in the General Register of Sasines for the County of Moray on 25 November 1891. The 1891 Disposition bore to be granted *“for the behoof of the whole body and community thereof.”* The 1899 Disposition refers to use as a park or pleasure ground. The Park has been in use as a public park for recreation since around 1899. The Petitioners consider the Park to be part of the inalienable Common Good. The Park contains a football pitch. This is hired out for that use. There is a white-lined 300m running track. The Academy uses the Park for physical education. Copies of those Dispositions are produced, are referred to for their terms and are held to be incorporated herein for the sake of brevity.

11. That against this background, the Petitioners seek the authority of this Court to temporarily dispose of the Construction Area. Further, the Petitioners seek the authority of this Court to appropriate the Drop-Off Area.

12. That in compliance with the duty imposed on them by section 104 of the 2015 Act, the Petitioners carried out a public consultation on the Construction and Drop-Off Area proposals. The consultation also highlighted related proposals on drainage and ground improvement works and the provision of a footpath, to facilitate drainage of the new school and improve the drainage and so condition of the Park. The consultation ran from 18 September 2024 to 12 November 2024. Statutory consultees were notified. The consultation was also available on the Petitioners' website. Copies were provided in the library and community centre. Notice was placed on the Petitioners' social media and in newspapers. The consultation document and responses and the consultation analysis report are produced, are referred to for their terms and are incorporated herein for the sake of brevity.

13. That a Special Meeting of the Petitioners was held on 21 January 2025 to consider a report from the Depute Chief Executive (Education, Communities and Organisational Development) on the consultation. That report considered and analysed the consultation responses. The report considered that the temporary loss through the Construction Area would be minimised, with the majority of the Park, including swing park, most footpaths, and the football pitch and running track remaining available. The vast majority of the Park would also be returned to use with enhanced drainage on the restored green space. On the management of alleged risks arising from construction, the report considered that this would be addressed through the design and planning process. Traffic flow would be improved. The Petitioners had regard to the representations made noting that the majority were negative either in relation to the temporary loss of green space and the general site of the new school. The Petitioners considered the negative comments and noted that concerns would be addressed and mitigated as part of the planning process or mitigated due to the temporary nature of the disposal. The community

would also benefit from the additional benefits averred at Statement 5 hereof. Overall, the report concluded that the anticipated benefits of the proposed new Forres Academy for both the school users and the community outweighed any impacts on the Common Good. After due consideration of that report, the Petitioners were unanimous in approving the recommendation in the report to the short-term disposal of the Construction Area and appropriation of the Drop-Off Area. Reference is made to the minute of 21 January 2025 and relative report. These are produced

14. That the Petitioners having determined that they wish to temporarily dispose of and appropriate the said Areas for the purposes hereinbefore averred, and, insofar as the Park forms part of the inalienable Common Good, the Petitioners have the power to do so, in terms of section 75(2) of the Act, with the consent of this Court. A question arises as to whether the subjects ought to be disposed of or alienated for the said purposes.
15. That the proposals are modest and the actual implementation of them will only arise when and if the completed processes under the 2010 Act, planning legislation and 1959 Act, permit the Petitioners, if able and so advised, to proceed with the construction of the new school. The Petitioners have decided that building the new school on land owned by the Petitioners, which is not Common Good, is the preferred option when set against an urgent need to address the risks associated with the Academy.
16. That if the project proceeds, the majority of the Park will be returned to public use with grass pitch and with improved drainage. There will be enhanced drainage which will serve the new school building and also benefit community use of the green spaces within the Park and the whole area around the Park. During construction, a substantial area of the Park will

remain in public and school use, including the football pitch and running track. There are other green spaces in Forres, such as Grant Park which the public will continue to have access to during and after completion of the works. As hereinafter averred at Statement 18, traffic flow will be improved, providing a dedicated bus drop off adjacent to Sanquhar Road. The Drop-Off Area can also be used outside of school hours for parking. The community will enjoy the additional benefits averred at Statement 5 hereof.

17. That the disposal is modest and temporary. The Construction Area was selected because the immediate area of the new school cannot accommodate the necessary provision of welfare, site offices and off-street vehicle parking for the project. Potential alternative accommodation would be too remote for the new school site.
18. That the Drop-Off Area was chosen because it will mean that pupils will not require to cross a road to proceed to the new school. Current provision for the drop off of pupils at the existing school is poor. For example, the current layby on Burdsyard Road cannot always accommodate all buses. Continued use of that site for the new school would mean pupils having to cross Burdsyard Road. All other schools in area of the Petitioners have provision for dropped off pupils to not cross a road. Traffic flow will be improved. There will be sufficient space for buses.
19. That as averred the Petitioners have undertaken consultation with inhabitants of the former Royal Burgh of Forres. The Petitioners have had regard to the interests of the inhabitants of the former Royal Burgh.
20. That the subjects as a whole are considered part of the Common Good of the Petitioners. The proposal is evidently in the interests of the inhabitants of the

former Royal Burgh of Forres. The benefits of the proposed disposal and appropriation clearly outweigh any impact on the subjects in question.

21. That the Petitioners believe and aver that it is for the benefit of the inhabitants of the former Royal Burgh that the said Areas should be disposed of, or appropriated. The Construction Area will be a temporary disposal and is needed to facilitate the construction of the new school, if, in due course the Petitioners implement any proposal after further relevant consultation. The Drop-Off area will benefit pupils and secure safety for them and the wider public. The majority of the Park will be retained as a place of recreation. The wider school project will benefit the school users as well as the local community by providing fit for purpose new facilities and an improved green space for both school and community use. The existing school is no longer fit for purpose and requires urgent replacement. The Petitioners have determined that there is sufficient educational benefit in the proposal to relocate the school to subjects which are not part of the Common Good and to proceed with attendant consultation and consideration of that benefit under the 2010 Act. The new school will be safe. The new school will be modern. It will promote and secure high-quality learning and experiences both inside and outside. Provision will be within a shared campus model. The proposed disposal and appropriation are incidental to, and contingent upon, the outcome of consideration of educational benefit under the 2010 Act. Reference is made to the Educational Benefits Statement which is produced, is referred to for its terms and is held to be incorporated herein for the sake of brevity. The public will secure clear additional benefits in relation to the development of the site of the existing Academy.

22. That a question arises as to the temporary disposal or appropriation of part of the Common Good of the Petitioners within the meaning of section 75(2) of the Act. That section 75 of the Act provides-

“75.— Disposal, etc., of land forming part of the common good.

(1) The provisions of this Part of this Act with respect to the appropriation or disposal of land belonging to a local authority shall apply in the case of land forming part of the common good of an authority with respect to which land no question arises as to the right of the authority to alienate.

(2) Where a local authority desire to appropriate or dispose of land forming part of the common good with respect to which land a question arises as to the right of the authority to alienate, they may apply to the Court of Session or the sheriff to authorise them to appropriate or dispose of the land, and the Court or sheriff may, if they think fit, authorise the authority to appropriate or dispose of the land subject to such conditions, if any, as they may impose, and the authority shall be entitled to appropriate or dispose of the land accordingly.

(3) The Court of Session or sheriff acting under subsection (2) above may impose a condition requiring that the local authority shall provide in substitution for the land proposed to be appropriated or disposed of other land to be used for the same purpose for which the former land was used.”

23. That the Petitioners accordingly respectfully seek authority from the Court to dispose of or appropriate the subjects in the said Areas for the purposes hereinbefore condescended on and on such terms and conditions as to the Court seem proper.

24. That this Petition is brought under Section 75 (2) of the Local Government (Scotland) Act 1973.

MAY IT THEREFORE PLEASE YOUR LORDSHIPS to

Appoint this Petition to be intimated on the Walls in common form, to be served on the persons named and designed in Part 1 of the Schedule annexed hereto in the manner therein specified, and to be advertised once in terms of the Notice set out in Part 2 of the Schedule annexed hereto in the Forres Gazette, Alexander Graham Bell Centre, UHI Moray, Moray Street, Elgin IV30 1JJ, Northern Scot, Alexander Graham Bell Centre, UHI Moray, Moray Street, Elgin IV30 1JJ and The Press & Journal, Stoneyfield Business Park, Inverness IV 2 7PA or in such other newspaper or newspapers as to your Lordships shall seem proper; and to ordain all parties claiming an interest to lodge Answers hereto, if so advised, within twenty one days after such intimation, service and advertisement; and thereafter upon resuming consideration hereof, with or without Answers, and after such inquiry as to your Lordships shall seem proper, to authorise the Petitioners to temporarily dispose of subjects within Roysvale Park, 6 Sanquhar Road, Forres , IV36 IDG extending to an area of respectively 0.7 hectares or 7,025 square metres or thereby and all as shown hatched in orange on the Pre-Construction Plan set out in Part 3 of the Schedule annexed hereto and to authorise the Petitioners to appropriate subjects within the said

Roysvale Park extending to an area of 0.25 hectares or 2,445 square metres or thereby and all as shown hatched partly in orange and green and partly coloured green and hatched red on the Pre-Construction Plan, all in terms of section 75(2) of the Local Government (Scotland) Act 1973 and that for the purpose of the provision of a temporary construction site to facilitate the construction of a proposed new Forres Academy sited on subjects adjacent to the said Park as shown in the plan annexed to this Petition and to provide a bus-drop off area as a facility for the proposed new Forres Academy, and in such other terms as to your Lordships shall seem proper; and to find the Petitioners entitled to the expenses of and incidental to this application and the procedure to follow hereon against any person offering opposition hereto; and to decern; or to do further or otherwise in the premises as to your Lordships shall seem proper.

ACCORDING TO JUSTICE etc

Signed

Signed by:
Scott Blair
1D9F87AE7BD549C...

SCHEDULE

Part 1

Persons on whom service of the Petition in common form is sought:-

1. The Right Honourable Dorothy Bain KC, Her Majesty's Advocate for the public interest, Crown Office, 25 Chambers Street, Edinburgh EH1 1LA.
2. The Scottish Ministers, St Andrews House, Regent Road, Edinburgh EH1 3HG.
3. Forres Community Council, c/o Community Council Liaison Officer, Moray Council, Council Office, Elgin IV30 1BX and by email to info.forrescc@gmail.com.

Part 2

Advertisement: -

“Moray Council – Notice of Application in terms of Section 75 of the Local Government (Scotland) Act 1973

NOTICE is hereby given that:

(1) a Petition under Section 75(2) of the Local Government (Scotland) Act 1973 has been presented to the Court by Moray Council, a local authority constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at Council Office, High Street, Elgin IV30 1BX, seeking authorisation for the disposal of land within Roysvale Park, 6 Sanquhar Road, Forres IV36 1 DG, forming part of the Common Good for the purpose of the provision of a temporary construction site to facilitate the construction of a proposed new Forres Academy sited on subjects adjacent to the said Park and also seeking authorisation for the appropriation of land within the said Roysvale Park, for the purpose of providing a bus drop-off area as a facility for the proposed new Forres Academy. A copy of the Petition and the interlocutor ordering service can be found at: www.moray.gov.uk/moray_standard/page_151256.html

Any person having an interest may lodge Answers to the Petition. Answers must be lodged with the Office of Court, Court of Session, 2 Parliament Square, Edinburgh, EH1 1RQ within 21 days after the date of this Notice.

Cameron Greig

Morton Fraser MacRoberts LLP

9 Haymarket Square

Edinburgh

EH3 8RY

Tel: 0131 247 1000

Part 3

1



- NOTES:
2. SHOULD ANY DISCREPANCIES BE FOUND WITH THIS DRAWING, PLEASE INFORM THIS OFFICE.
3. COPYRIGHT OF THIS DRAWING IS OWNED BY JMA ARCHITECTS.
STRUCTURAL INFORMATION TO BE CONFIRMED BY STRUCTURAL ENGINEER.
- NOTES:
- Extent of development boundary
 - Extent of construction site aduith Common Good Land (16795m² 1.67ha)
 - Extent of Common Good Land (20,725m² 2.07ha)
 - Extent of ancillary rights required for construction works (410m² 0.04ha)
 - Extent of contractors compound/ site within Common Good Land (7025m² 0.70ha)
 - (Extent of contractors compound/ site which will go on to be cycle path/ pavements and bus drop off (2445m² 0.24ha))
 - (Extent of additional area added post-consultation which will go on to be cycle path/ pavements and bus drop off (31m² 0.003ha))
 - Extent of core path (515m² 0.05ha)
 - Extent of swing park (330m² 0.03ha)
 - Extent of area available for use by the public and schools (12445m² 1.29ha)

P03 Hatches and areas generally updated. Purpose updated to 'Preliminary'. Proposed drainage removed. 16.09.25 CD SD

P02 Drawing scale changed. Areas added to key. 31.10.24 CD SD

P01 First Issue 04.09.24 CD SD

Rev. Description Date Drawn By Check By

0m 10 20 30 40 50

Path (m)

Project:
Replacement Forres Academy
Site:
Common Good Land Use - During Construction
Client:
Moray Council
Drawing:
Preliminary
Scale:
1:1000 @ A1
Drawing Number:
FOR-JMA-ZZ-ZZ-D-A-SK0100
Date:
P03

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THE COURT OF SESSION

THE PETITION

Of

MORAY COUNCIL

PETITIONERS

for Authority under Section 75
(2) of the Local Government
(Scotland) Act 1973 to dispose of
or appropriate heritable property
held as part of the Common
Good of the Petitioners

Morton Fraser MacRoberts LLP
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2025