**NAIRN COMMON GOOD**

* **PROPOSAL TO DISPOSE, BY LEASE, OF 178m² OF LAND AT WEST LINKS INCORPORATING THE EXISTING LEASE FOOTPRINT OF THE LINKS KIOSK (137.5m²) TOGETHER WITH AN ADDITIONAL AREA (40.5****m²) LOCATED ON THE WEST LINKS AT MARINE ROAD, NAIRN.**
* **PROPOSAL TO CHANGE THE USE OF 40.5m² (ADDITIONAL AREA) FROM PUBLIC AMENITY LAND TO LAND LEASED FOR KIOSK SEATING.**

**REPRESENTATIONS AND RESPONSES**

1. **Number of responses received**

The public consultation period ended on 11 March 2022 with a total of 5 responses having been received. Responses were received from both Nairn town Community Councils and local residents. These responses are broken down as follows:

* 3 were fully supportive
* The 2 Community Councils were supportive but also raised comments for response by the Council (see table at 2b below)

1. **Representations, questions and issues distilled from the responses received**
2. **Supportive comments received**

The types of supportive comments received can be summarised in the following examples:-

* The proposed changes will enhance the facilities being offered to the benefit of residents and visitors alike. It will encourage increased footfall attracting visitors.
* The business is an asset to Nairn and should be supported. It is a popular business.
* The premises are well kept and generates little litter despite being a takeaway presumably due to the tenant’s responsible actions. Use of recycled and biodegradable products is noted.
* The Kiosk has brought an empty building back into use becoming popular and successful in a short time and despite the constraints of the pandemic.
* The suggested change of use of the additional area for seating is in keeping with the general use of the surrounding park which has seats and picnic benches.
* It is a local business creating employment. Enabling and encouraging investment will support the improvement of the recreational and environmental facilities in the area. The longer lease will provide the incentive and security for investment.
* A longer lease brings the Kiosk in line with the other comparable businesses on the Links.
* Proposed rent increase is fair and proportionate with additional land.

1. **Objections or issues raised for response**

Both Community Councils raised comments for response whilst still supporting the proposal. Some of these comments are specific to the lease proposal for the Kiosk and will be answered below. Other comments are more general to Common Good as a whole and are being answered within separate correspondence.

The issues raised are summarised in the table below.

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| **Questions/issues/concerns** | **Council’s suggested response** |
| There is a need to safeguard the status of the site as Common Good. The lease should contain a clause safeguarding against the acquisition of additional “occupancy” rights and to ensure it remains under, and reverts to, Common Good ownership. | Such an additional clause is not necessary. Any new or extension to the existing lease will be granted for a stated period of time. The existing lease already contains a “yielding up” clause covering the return of the property to the landlord (Highland Council) upon expiry or sooner termination. Any new lease would also contain such a clause. If dealt with by extension of the existing lease, this provision would continue.  Therefore, the Council’s position as owner is protected. |
| There should be a constraint against sub-letting. The lease is specific to the tenant. | The existing lease already contains a tenant’s obligation clause not to assign or sub-let the premises without the written consent of the landlord, which should not be unreasonably withheld.  To prohibit assignation completely is a highly restrictive and onerous clause and would have a significant detrimental impact on the marketability of the asset for lease and future rent reviews. Highland Council on behalf of the Common Good will have the right to refuse an assignation provided the refusal is reasonable. In considering any request the Council must ensure the proposed assignee is respectable, responsible, of sound financial standing and capable of fulfilling the obligations of tenant. |
| The lease should include a clause ensuring that the premises are only used for the stated purpose and proposed change of use should be subject to public consultation under Community Empowerment Act. | The existing lease contains a very specific use clause which would be carried forward in any extension or included in any new lease. With regard to change of use, a consultation would only take place in the event of a significant change of use which is not in any way incidental to the current use. For instance, a request to use the premises for something other than for the service of food and drinks. A change of use within the category of food provision would not be considered to be a significant change such as would trigger the requirement to consult. |
| There should be a condition that the lease is reviewed every 5 years to ensure the premises are being used appropriately within the terms of the lease and in compliance with Common Good legislation.  This would enable improved management and ensure the rent is keeping pace with inflation. | In general the Council would ensure the tenant was complying with the terms and conditions contained in the lease i.e. use, maintenance etc. but would not formalise this into a regular 5 yearly review process. The lease contains explicit obligations on the tenant and there is also a provision for irritation of the lease for non-compliance that could be considered.  Rent review – the existing rent review provision is for the rent to be reviewed 5 yearly on an upward basis only and to either the open market rent as at the review date or the Retail Price Index, whichever is higher. |