



The Scottish Parliament
Pàrlamaid na h-Alba

City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill

1st Report, 2013 (Session 4)

Preliminary Stage Report

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**City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill
Committee**

Remit and membership

Remit:

To consider matters relating to the City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill.

Membership:

Bruce Crawford
John Lamont (Convener)
Anne McTaggart
Sandra White (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee

Claire Menzies-Smith

Support Manager

Jenny Gourley



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Committee**

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Preliminary Stage Report

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill (“the Bill”) was introduced to the Scottish Parliament on 5 September 2013. It is a Private Bill being promoted by the City of Edinburgh Council (“the promoter”) under procedures set out in Rule 9A of the Parliament’s *Standing Orders*¹ and the *Guidance on Private Bills*.²

OBJECTIVES OF THE BILL

2. The Bill has two distinct purposes: (a) to enable the erection of a statue of John Rattray on Leith Links, and (b) the modernisation, transfer and dissolution of the Surplus Fire Fund (“the Fund”).
3. In the first instance, the Bill seeks to amend section 22 of the Schedule to the City of Edinburgh District Council Order Confirmation Act 1991 (“the 1991 Act”) so that the erection of a statue of John Rattray on Leith Links is no longer prohibited. Section 22 prohibits the construction of buildings on Leith Links other than buildings falling into certain specified categories. Monuments or statues are not permitted categories. The amendment will create an exception in respect of the statue of John Rattray, but otherwise leaves the existing building restrictions in place. Planning permission for the statue was granted on 18 April 2013 on the basis that the proposals comply with the Council’s development plan and the relevant non-statutory guidelines, and would preserve the character and appearance of the conservation area and have no effect on residential amenity.

¹ The Scottish Parliament.

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

² The Scottish Parliament.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/15709.aspx>

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4. Secondly, in relation to the Fund, a registered Scottish charity (SC018967), the Bill seeks to redefine the purposes for which the Fund's assets can be applied, in order to make those purposes more flexible. Thereafter, it seeks to transfer the Fund's property, rights, interests and liabilities from the City of Edinburgh Council to the Edinburgh Voluntary Organisations Trust (EVOT), another registered Scottish charity (SC031561). The Bill will then dissolve the Fund as currently constituted.

Standing Orders, Rule 9A.7: Stages of Private Bills

5. The procedure for a Private Bill introduced in the Parliament is set out in Standing Order Rule 9A.7—
 - (a) consideration of the general principles of the Bill and whether it should proceed as a Private Bill, preliminary consideration of objections and a decision whether to agree to those general principles and whether the Bill should proceed as a private bill (Preliminary Stage);
 - (b) consideration of any remaining objections and any amendments to the Bill (Consideration Stage); and
 - (c) final consideration of the Bill and a decision whether to pass or reject it (Final Stage).

Preliminary Stage: function of the Committee

6. This Committee was established (under Rule 9A.5) to consider the City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill at Preliminary Stage and at Consideration Stage.³
7. Private Bills are subject to a 60 day objection period, which in this case was, 5 September to 4 November 2013. No objections were received. The Committee is therefore not required to give preliminary consideration to objections.

COMMITTEE CONSIDERATION OF THE BILL

8. In order to inform its scrutiny of the Bill's general principles, the Committee, visited the site of the proposed statue on 5 November 2013, held an oral evidence session on 14 November, invited written evidence, and placed a notice on its webpage to inform interested parties on how to provide written submissions.
9. The Committee heard oral evidence from: Ian Buchanan, City Centre and Leith Neighbourhood Manager for the City of Edinburgh Council (representing the Promoter), Charles Livingstone, Associate at Brodies LLP (as the Promoter's agent) and Pat Denzler, Chair of the John Rattray Statue Committee of Leith Rules Golf Society, on the Leith Links section of the Bill. The Committee also invited and received written evidence from

³ Motion S4M-07726, Meeting of the Parliament, 18 September 2013, *Official Report*, column 22641.

Leith Links Community Council and received written evidence from Police Scotland and Dr Michael Gallagher.

10. In relation to the Surplus Fire Fund provisions of the Bill, the Committee invited oral evidence from the Esmond Hamilton, Finance Manager for the Council (representing the Promoter), Charles Livingstone, Associate at Brodies LLP (as the Promoter's agent) and Ella Simpson, Director of Edinburgh Voluntary Organisations Council (EVOC), the umbrella organisation for EVOT, the body to which the Bill transfers the existing fire fund (referred to in the Bill as "the transferee"). The Committee also invited and received written evidence from The Office of the Scottish Charity Regulator (OSCR) and the Fire Brigades Union (FBU).

GENERAL PRINCIPLES

Erection of a statue on Leith Links

Background

11. The Promoter's Memorandum⁴ indicates that the first recorded rules of the game of golf were created by the golfers playing at Leith Links in 1744 and that John Rattray was the leading golfer at Leith Links at that time.

Leith Rules Golf Society and John Rattray

12. The Leith Rules Golf Society ("the Golf Society") was formed in 2002 with the aim of increasing recognition of Leith as the home of the first recorded written rules of golf. Mrs Pat Denzler, Chair of the John Rattray Statue Committee of the Golf Society, explained that the aim of erecting the statue was to have "something iconic to represent Leith". She described Rattray as a "colourful character". John Rattray, a surgeon and member of the Royal Company of Archers, was the first Captain of the Company of Edinburgh Golfers at Leith Links. Rattray and his fellow golfers appealed to the Town Council of Edinburgh for a Silver Club to be awarded annually to the winner of an Open Golf Competition (Rattray won the Competition in 1744 and 1745). The Council agreed to offer such a prize only if rules were set down and signed by John Rattray. These original rules form the basis of the modern game played today and were recorded in the City of Edinburgh archives and also in the minute book of the Honourable Company of Edinburgh Golfers.⁵

13. Rattray went on to serve as Surgeon-General to Bonnie Prince Charlie's forces in the 1745 uprising. He was captured but released through the intervention of his golfing partner Lord Duncan Forbes of Culloden, then

⁴ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter's Memorandum, SP Bill 37-PM, para 5. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

⁵ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 13.

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Lord President of the Court of Session. He won the Open Golf Competition on Leith Links again in 1751.⁶

Section 1: Modification of restriction on buildings in certain parks

14. Section 1 of the Bill is concerned with creating an exception to section 22 of the Schedule to the City of Edinburgh District Council Order Confirmation Act 1991 in respect of the statue of John Rattray, but otherwise leaves the existing building restrictions in place so that no other statues could be erected.

Timescale for erection of the statue and associated costs

15. The Council's report⁷ on the proposed Bill in January 2013 indicated that it hoped to have the Bill passed in time to enable the erection of the statue prior to the Ryder Cup in September 2014.

16. Charles Livingstone, Associate at Brodies LLP and the Promoter's agent, explained that "originally, the main driver for the timing of the bill was the open championship held at Muirfield in 2013, but it was not possible to get everything done in order to hold a consultation and introduce the Bill in time for that. Now the principal driver in the timetable is the Ryder Cup, chiefly for the purposes of profile raising and assisting with fundraising".⁸

17. In relation to fundraising, Pat Denzler said the Golf Society's fundraising efforts were ongoing and that, as of 14 November 2013, around £40,000 of the estimated total cost of £250,000 had already been raised. She confirmed that, should the Golf Society be unable to raise the funds required for the project in time to have it finished for the Ryder Cup in 2014, its intention would be to complete the project as soon as possible thereafter.⁹

18. Pat Denzler also advised that the statue itself would cost £42,000 plus VAT. In addition, the Golf Society would give an amount equivalent to between 10 and 15 per cent of the capital cost of the statue to the promoter for its ongoing maintenance, in keeping with normal practice.¹⁰

19. Leith Rules Golf Society would have to raise the funds required to construct the statue and also sufficient funds to enable the City of Edinburgh Council to maintain and repair the statue in the future. The Committee notes that if sufficient funds are not raised, the statue will

⁶ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 13.

⁷ Item No 8.3 - Report on Proposed Bill in Relation to (1) Proposed Statue of John Rattray on Leith Links and (2) Proposed Changes to the Surplus Fire Fund. available at: http://www.edinburgh.gov.uk/meetings/meeting/2898/city_of_edinburgh_council#minutesDataSearchWidget

⁸ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 16.

⁹ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 17.

¹⁰ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 15.

not be constructed which is consistent with the fact that the Bill does not require the statue to be constructed.

Proposed site of the statue

20. The location for the statue is the site of the former first hole of the old golf course on Leith Links.¹¹

21. Some issues concerning the security of the statue were raised in written evidence from an Architectural Liaison Officer, Police Scotland, who suggested that “consideration should be given to installing public space monitoring CCTV or other measures.”¹² In addition, Dr Michael Gallagher expressed concern that erection of the statute might lead to further securitisation of Leith Links.¹³

22. Pat Denzler of the Golf Society indicated that the design team for the statue, Cairns Intersphere Consulting Ltd were working with the Police on the issue of the seating outlined in the plan drawing. Charles Livingstone said that the concrete information panels illustrated in the original plans would be replaced by “general and temporary notice boards ... there would not be a fixed structure that would offer the kind of potential for people to hide that the police were worried about”.¹⁴ Pat Denzler said the sculptor, David Annand¹⁵, had provided reassurance that the insertion of concrete and steel reinforcing right down to the base of the statue would make theft of the statue a “much more difficult task, because it cannot just be sawn through”. She confirmed that the Golf Society would continue to address those issues.¹⁶

23. Leith Links Community Council highlighted the need for revised access points for events such as the Leith Gala Day and the Mela to ensure the landscaping was not damaged.¹⁷

24. The Committee accepts that the issues of security and the impact of antisocial behaviour are important ones generally, but notes that these were the subject of consideration during the planning application process for the statue, and are not relevant to the remit of the Committee. It is encouraging that both the Leith Rules Golf Society and the Promoter have already taken action to address these issues and the Committee welcomes their commitment to continue to work with Police Scotland in this regard.

¹¹ Relevant planning documents can be found on the City of Edinburgh planning portal:

<https://citydev-portal.edinburgh.gov.uk/idoxpa-web/applicationDetails.do?activeTab=summary&keyVal=MI2E59EWLO000>

¹² Police Scotland, Written Evidence, 6 November 2013.

¹³ Dr Michael Gallagher, Written Evidence, 11 November 2013.

¹⁴ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 27.

¹⁵ Fife Sculptor, David Annand: <http://www.davidannand.com/index.html>

¹⁶ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Cols 25-26.

¹⁷ Leith Links Community Council, Written Evidence, 15 November 2013.

Transfer and dissolution of the Surplus Fire Fund

25. According to the Promoter's Memorandum,¹⁸ the Surplus Fire Fund dates back to a series of fires that occurred in Edinburgh's High Street in 1824. In its current form, the Fund is constituted under the Edinburgh Corporation Order Confirmation Act 1927 ("the 1927 Act") subsequently amended by the Edinburgh Corporation Order Confirmation Act 1967 ("the 1967 Act") and the City of Edinburgh District Council Order Confirmation Act 1991 ("the 1991 Act") (with essentially the same purposes appearing in both the 1967 and 1991 Acts).

26. The Bill seeks to revitalise the Fund by amending the purposes for which the assets of the Fund can be applied before transferring the property, rights, interests and liabilities of the Fund to EVOT, and then dissolving the Fund as currently constituted.

The need for change

27. The Promoter's Memorandum states that "the Council believes it is now appropriate to take further steps to revitalise and optimise the application of charitable assets".¹⁹ Esmond Hamilton, Finance Manager for the Promoter, told the Committee that, prior to 2000, the Fund had gone into a state of dormancy and it was the FBU that stimulated its rejuvenation.²⁰ The FBU had sought legal advice on the status of the Fund and contacted the Council to express its concern that "there was a lack of will to administer the Fund".²¹ At that point, the Council agreed to bring the Fund back into operation and the FBU was invited to send a representative to the Council's Pensions and Trusts Committee when the Fund's business was being discussed. Since then, the FBU had been actively involved in promoting the interests of the Fund. Esmond Hamilton emphasised that the FBU has acted in the public interest rather than acting narrowly in firefighters' interests.²² The FBU stated that its interest in the Fund was altruistic.²³

28. Esmond Hamilton explained that the Council was keen to ensure that its trust funds were used effectively, so it considered ways in which the Fund could be revitalised to ensure that it was relevant for the future.²⁴ The FBU identified EVOT as "sharing the aims and principles that broadly married

¹⁸ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, *Promoter's Memorandum*, SP Bill 37-PM, para 9. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

¹⁹ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, *Promoter's Memorandum*, SP Bill 37-PM, para 11. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

²⁰ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 32.

²¹ Fire Brigades Union, Written Evidence, 21 November 2013

²² Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 32.

²³ Fire Brigades Union, Written Evidence, 21 November 2013

²⁴ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 31.

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up with the aims and principles of the Fund”.²⁵ In 2011 the Council’s Pensions and Trusts Committee invited EVOT to suggest how the Fund’s assets might be put to better use.²⁶ As well as a framework of criteria and procedures, it was agreed that the existence of the Fund would be advertised.²⁷ The full Council agreed on 31 January 2013 to promote a Bill to transfer the Fund to EVOT.²⁸

Edinburgh Voluntary Organisations Trust – “the transferee”

29. Ella Simpson, Director of Edinburgh Voluntary Organisations Council (EVOC), the umbrella organisation for EVOT, said that EVOT was established in 1868 and had history and experience of alleviating hardship in the City of Edinburgh by running various grant programmes and several restricted funds. She also commented that the trustees were active, met regularly and had backgrounds in the legal, financial and investment sectors.²⁹

30. Ella Simpson emphasised that EVOC worked with a large network of organisations that would be able to refer possible beneficiaries of the Fund to it, and believed the transfer would have a “cumulative impact on other charitable organisations and, more importantly, on individuals”.³⁰

Sections 2-5

31. Sections 2 to 5 of the Bill relates to the Surplus Fire Fund: the purposes for which the Fund may be applied; the transfer of property, rights, interests and liabilities; restrictions on the transferee following transfer; dissolution of the Fund; and the repeal of the various Fund-related provisions within the 1927, 1967 and 1991 Order Confirmation Acts.

Section 2: Purposes of the Surplus Fire Fund

32. The Promoter’s Memorandum states that the current charitable purposes of the Fund are—

- (a) the relief of any persons suffering serious injury, or of the dependents of persons who have lost their lives or have suffered serious injury, in or in connection with fires within the district; and

²⁵ Fire Brigades Union, Written Evidence, 21 November 2013

²⁶ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, *Promoter’s Memorandum*, SP Bill 37-PM, para 11.

²⁷ Fire Brigades Union, Written Evidence, 21 November 2013

²⁸ Item No 8.3 - *Report on Proposed Bill in Relation to (1) Proposed Statue of John Rattray on Leith Links and (2) Proposed Changes to the Surplus Fire Fund* available at: http://www.edinburgh.gov.uk/meetings/meeting/2898/city_of_edinburgh_council#minutesDataSearchWidget.

²⁹ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 32.

³⁰ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 32.

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(b) making awards or grants to persons who have rendered meritorious service in connection with fires within the district.³¹

33. The Bill would change the purposes of the Fund to—

“(a) the relief of people injured, or the dependants of people killed or injured, by or in connection with a fire within the City of Edinburgh Council area;

(b) making awards or grants to compensate for damage, other than structural damage, to domestic premises and household contents caused by a fire within the City of Edinburgh Council area;

(c) making awards or grants to people who have rendered meritorious services in connection with a fire within the City of Edinburgh Council area; and

(d) making awards or grants to fund the purchase of equipment for use in hospital burns units that the trustees believe will provide care to patients, a reasonable proportion of whom reside within the City of Edinburgh Council area.

Individuals will only be eligible for grants in relation to purposes (a) and (b) if they reside within the City of Edinburgh Council area.”³²

34. Esmond Hamilton explained that the purposes of the Fund had been re-examined because it had become increasingly difficult in recent years to use the money from the Fund effectively. There were hardly any applications for benefit from private individuals, and, most of the money was being used for awards to the Burns Units at the Royal Hospital for Sick Children in Edinburgh and St John’s Hospital, Livingston.³³

35. The main changes made to the purposes were described by Esmond Hamilton. Originally, any injury had to be considered serious - this restriction is to be removed to enable awards to be made to those with minor or psychological injuries.³⁴

36. The scope of the Fund had been extended to allow for awards to be made in respect of damage to household contents of domestic premises, but not structural damage, Esmond Hamilton advised that the £1.25 million Fund

³¹ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter’s Memorandum, SP Bill 37-PM, para 10. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

³² City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter’s Memorandum, SP Bill 37-PM, para 12. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

³³ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 33.

³⁴ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 33.

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generates a yearly income of roughly £25,000 to £30,000 and that one structural damage claim “could wipe out a whole year’s income”.³⁵

37. The Committee asked why the purposes had been extended given that most home insurance products provide cover for these circumstances. Ella Simpson advised that the Fund is aimed at people who earn the living wage or less, and went on to explain—

“As always when people are in poverty, they stop spending money on the things they might be able to do without—things such as household insurance are seen as fringe benefits they cannot afford.”³⁶

38. Finally the provision of grants to Burns Units, which provide care to those resident in the City of Edinburgh Council area, was expressly provided for in the new purposes.

39. Esmond Hamilton explained that, had there been no possibility of potential claimants from the Edinburgh area, the scope of the Fund could have been widened to encompass the whole of Scotland; however, he believed there would be sufficient claimants in the Edinburgh area.³⁷

40. In relation to the sustainability of the Fund following the widening of the purposes, Ella Simpson assured the Committee that EVOT would manage the Fund by carefully apportioning awards across the year. She also advised that if the Fund could not cover particular applications then, because EVOT ran other funds, “we could use two or three streams of funding to meet the needs of the people who applied”.³⁸

Section 3: Transfer of property, rights, interests and liabilities

41. According to the Promoter’s Memorandum, for the year ended 31 March 2011, the Fund had an investment income of £33.6k and its value at the year end was £1.1m. For the year ended 31 March 2012 its income was £16.9k and its closing value was again £1.1m.³⁹ Esmond Hamilton explained that the genesis of the Fund’s assets was £11,000 collected to assist people who had suffered in a series of fires in Edinburgh in 1824.⁴⁰

42. In terms of liabilities, Charles Livingstone confirmed that—

³⁵ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 33.

³⁶ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 34.

³⁷ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee *Official Report*, 14 November 2013, column 34.

³⁸ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 34.

³⁹ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Policy Memorandum, SP Bill 37-PM, para 9. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

⁴⁰ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 34.

“The Council is not aware of any liabilities, but any organisation may have liabilities that they are not aware of, and any such liabilities will be transferred across”.

43. In practice, that would mean “EVOT would have to defend and deal with anything that came out of a liability of the fund”.⁴¹

44. With regard to property, Charles Livingstone advised that: “EVOT will hold the property and have the ability to pursue any rights that the fund currently has—for example, if the Fund had a claim against someone else”.⁴²

Section 4: Restrictions on the transferee following transfer

45. According to the Explanatory Notes⁴³ sections 4(3) to (5) permit the FBU to nominate up to two individuals to attend any EVOT meetings at which the restricted funds are discussed. Those individuals must receive the same notice of the meeting as EVOT’s trustees and may contribute to any discussions at the meeting relating to the restricted funds. They may also access documents relating to the restricted funds on the same terms as any other EVOT trustee or committee member. However, they are not entitled to vote on any matter. In its written evidence to the Committee, the FBU advised it was satisfied with the formalisation of its current role and that it was “content to ensure that the Fund is true to its principles”.⁴⁴

46. The Committee is supportive of broadening the scope of the purposes of the Surplus Fire Fund to encourage more applications for grants and awards, particularly from individuals. We are reassured that the new Fund will be actively managed by Edinburgh Voluntary Organisations Trust with the continued involvement of the Fire Brigades Union.

Promotion of a Private Bill with two separate purposes

47. The timescale for the Leith Links proposal is discussed at paragraphs 15 and 16. The Committee was interested to know how this timescale fitted with the quite distinct purpose of modernising the Fund. Charles Livingstone explained that the Surplus Fire Fund proposal was introduced after the Leith Links proposal had been set in motion; the Council took the view that it would be a more efficient use of funds and the Scottish Parliament’s time to have both elements in the same Bill. He commented that—

⁴¹ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 37.

⁴² Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 37.

⁴³ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Explanatory Notes, SP Bill 37-EN, para 20. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

⁴⁴ Fire Brigades Union, Written Evidence, 21 November 2013.

“The timing was driven more by the Leith Links element than by the Surplus Fire Fund element. There are no pressing timing considerations in relation to the Fund. The change is viewed as an improvement so, to that extent, the sooner it happens the better, but there are no real deadlines”.⁴⁵

48. It is unusual to have to deal with two unrelated topics within one Bill. The Committee understands the Promoter’s rationale for pursuing a single Bill, in this instance. We do, however, consider it important to highlight for future promoters that this approach will not always be appropriate.

Conclusion on general principles

49. The Committee is supportive of the aim of the City of Edinburgh Council to modify the City of Edinburgh District Council Order Confirmation Act 1991 to create a limited exception for the erection of a statue of John Rattray at Leith Links.

50. The Committee is also supportive of the City of Edinburgh Council to redefine the purposes of the Surplus Fire Fund and for the Fund to be transferred to the Edinburgh Voluntary Organisations Trust to ensure the Fund is proactively managed and effective in making grants and awards.

SHOULD THE BILL PROCEED AS A PRIVATE BILL?

51. In addition to considering the general principles of the Bill, the Committee is required to consider whether it is appropriate that the Bill proceeds as a Private Bill in accordance with Rule 9A.8.3 of *Standing Orders*. This involves the Committee satisfying itself first, that the Bill is in accordance with Rule 9A.1.1, secondly, that there was no other, non-statutory, way to achieve the promoter’s aims and, finally, that the accompanying documents conform to Rule 9A.2.3 in order to allow proper scrutiny of the Bill.

Does the Bill meet the definition of a Private Bill?

52. A private bill is a bill introduced for the purpose of obtaining for an individual person, body corporate or unincorporated association of persons particular powers or benefits in excess of or in conflict with the general law, and includes a bill relating to the estate, property, status or style, or otherwise relating to the personal affairs, of the promoter.⁴⁶

Leith Links

53. The Golf Society seeks to erect a statue on common good land held by the Promoter. The Promoter is a body corporate. The use of Leith Links is

⁴⁵ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Cols 31-32.

⁴⁶ *Standing Orders*, Rule 9A.1.1. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

also controlled by a private Act which includes a prohibition on erecting any buildings (including statues). The Golf Society and the Promoter do not wish to remove this prohibition altogether, but only to make a specific exception to it. It is clear, therefore, that only a private bill can enable this aim to be achieved.

Surplus Fire Fund

54. With regard to the modernisation of the Fund, the Promoter is a body corporate and the Fund's trustee. The Fund is constituted under private legislation which provides it with a status in law that is different from that of other charities. Amendments to these existing statutes therefore consist of conferring powers or benefits in excess of or in conflict with the general law. Again, only a private bill is capable of making the specific changes required.

55. Since the changes required are particular to the Promoter's circumstances, the Committee believes a public bill would not have been appropriate. The Committee is therefore satisfied that the Bill conforms to the requirements of Rule 9A.1.1, the definition of a Private Bill.

Were alternative routes available?

Leith Links

56. The Promoter's Memorandum⁴⁷ states that primary legislation is needed either to amend section 22 of the 1991 Act or to authorise the construction of the statue.

57. Alternative legal approaches were considered to enable the statue to be erected on Leith Links and these were—

- to amend the 1991 Act to allow the construction of monuments on Leith Links generally; or
- to exclude the area of land at which the statue is to be sited from the definition of "Leith Links" (the approach taken for Princes Street Gardens and the extension to the National Gallery).

58. Charles Livingstone explained that there was a legal restriction on constructing certain buildings, including monuments such as the statue, on Leith Links. The Promoter chose to bring forward legislation to create an amendment to allow construction of this particular statue only. While it would have been possible to add monuments to the list of permitted categories of building for Leith Links, the Promoter decided against this option because it did not want to add a general exception - the discussion

⁴⁷ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Policy Memorandum, SP Bill 37-PM, paras 4 and 5. Available at:
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

was about this particular statue, rather than statues and monuments in general.⁴⁸

59. Charles Livingstone also explained that it may have been possible to exclude the area of land at which the statue is to be sited from the definition of “Leith Links”, The Promoter took the view that this approach would not be appropriate because a statue is being proposed for an area of Leith Links but the area itself would remain parkland. Additionally, the Promoter did not wish to potentially open up an area of Leith Links to any development.⁴⁹

60. The Committee suggested that an even more restrictive approach might have been to specify the exact location of the statue within the Bill. Charles Livingstone was unsure why the Promoter had taken the approach it had but explained that the planning permission had been granted only for the particular site.⁵⁰

Surplus Fire Fund

61. The Promoter’s Memorandum⁵¹ explains that, in theory, a potential alternative to pursuing a Private Bill in respect of the Fund would be for the Council to seek permission from OSCR, under section 39 of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”), to modify the Fund’s purposes and transfer its assets to EVOT (i.e. by means of a so-called “reorganisation scheme”).

62. However, the Promoter is of the view that that route is not available in respect of the Fund, due to section 42(5) of the 2005 Act, which states that section 39 does not apply to any charity constituted “under any enactment”. The Council advises in the Memorandum that “the Fund is such a charity, having been vested in the Council by the 1927 Act and its current purposes being set out in that Act read together with the 1967 Act and the 1991 Act”.⁵² The Memorandum recognises that section 42(6) of the 2005 Act creates an exception to section 42(5) which allows a charity constituted under an enactment to make a section 39 application to OSCR if it is an endowment the governing body of which is a charity.

⁴⁸ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 18.

⁴⁹ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Cols 18-19

⁵⁰ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 19

⁵¹ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter’s Memorandum, SP Bill 37-PM, para 16. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

⁵² City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter’s Memorandum, SP Bill 37-PM, para 16. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

63. In written evidence, OSCR acknowledged that—

“The drafting of section 42 of the 2005 Act is ambiguous and its interpretation is difficult (indeed, we have recommended to Ministers that it should be amended). However, in our correspondence with the Promoter on this matter, we stated our view that the governing body of a charity must itself be a charity and it is that body which is entered in the Scottish Charity Register. We explained that we would regard the fund itself as “the endowment” (as referred to in subsection (6) of section 42); but that “the governing body” is the charity.”⁵³

64. OSCR explained that its view was “consistent with the wider requirements of charity law”, further highlighting that “a charity” is defined in section 106 as “a body entered in the Register” and where there is legal separation between the governing body and the property it administers, it would be the governing body which is entered in the Scottish Charity Register.⁵⁴

65. The Promoter’s legal advice on the need for a private bill, from Mr Alan Eccles, Partner at Maclay Murray & Spens LLP, disagreed with OSCR’s interpretation of a “governing body” as applied to the Fund. Section 42(7) of the 2005 Act defines “governing body” in terms of Part 6 of the Education (Scotland) Act 1980 (“the 1980 Act”). Mr Eccles’ view was that the 1980 Act clearly defines “governing body” as “the trustee etc., a group distinct from the charity itself”. However, Alan Eccles did appreciate OSCR’s view that the 2005 reorganisation provisions are “ambiguous and its interpretation is difficult”. The legal advice further explained that the reorganisation provisions under the 1980 Act would not be available because it concerned “situations around impossibility and a lack of beneficiaries” rather than changes to improve a charity which is within the remit of the 2005 Act.⁵⁵

66. Mr Eccles advised the Promoter—

“If there is ambiguity in the interpretation and application of section 42, it is important to the Council as charity trustee that it adopts a course of action which enables it, with confidence, to ensure the desired alterations to the Fund and its transfer to EVOT (to assist with the Fund’s future management and development) are not subject to a latent challenge on the basis of the ambiguity in section 42.”⁵⁶

⁵³ Office of the Scottish Charity Regulator, Written Evidence, 19 November 2013.

⁵⁴ Office of the Scottish Charity Regulator, Written Evidence, 19 November 2013.

⁵⁵ City of Edinburgh Council, Written Evidence, 22 November 2013.

⁵⁶ City of Edinburgh Council, Written Evidence, 22 November 2013.

67. Despite its view on section 42 of the 2005 Act, OSCR confirmed that—

“Should the charity trustees seek to make the desired changes by means of a private Bill on the basis of an alternative interpretation, then we would have no objection to this approach”.⁵⁷

68. The Promoter’s legal advice was that it was necessary to seek OSCR’s consent under section 16 of the 2005 Act in addition to the Private Bill, in relation to the change of purposes of the Fund and the dissolution of the Fund.

69. In relation to section 16 consent, OSCR advised that—

“in this case we do not believe that it was the Council which applied to OSCR for consent, but the charity, of which the Council act as trustees *ex officii*”. Nevertheless OSCR consented, subject to the Bill becoming law.⁵⁸

70. Although there initially appeared to be another route open to the Promoter to reorganise the Fund, this did not provide a sufficient level of certainty that the reorganisation would not be open to legal challenge. The evidence rehearsed in the preceding paragraphs therefore confirms that there is not a suitable non-statutory remedy available to the Promoter. Again, this conforms to the requirements of Rule 9A.1.1.

71. The Committee agrees there is no alternative remedy or process that would achieve both of the aims of the Bill and a statutory solution is therefore required.

Adequacy of accompanying documents

72. The Committee is required to consider the Bill’s accompanying documents (the Promoter’s Memorandum, The Promoter’s Statement and the Explanatory Notes) and to decide whether they conform to Rule 9A.2.3 and are adequate to allow proper scrutiny of the Bill (Rule 9A.8.3).

Consultation process

73. The Guidance on Private Bills states that: “the Private Bill Committee will wish to satisfy itself that the promoter undertook a consultation process that was open, accessible, helpful, clearly timetabled and, where possible, adopted and demonstrated innovative and best practice”.⁵⁹

74. In particular, the Committee considered—

- the means by which consultees were selected,
- the manner in which they were approached,

⁵⁷ Office of the Scottish Charity Regulator, Written Evidence, 19 November 2013.

⁵⁸ Office of the Scottish Charity Regulator, Written Evidence, 19 November 2013.

⁵⁹ Guidance on Private Bills, Part Two: Preparation for Introduction, para 2.24. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25455.aspx>

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- when the Promoter consulted,
- what it consulted on and with whom,
- the number of responses received and what, if any, changes to the proposal were made as a result.

75. The Promoter's Memorandum explains that the consultation process for the Leith Links proposal consisted of holding a public information evening, writing to particular bodies and writing to approximately 400 local residents⁶⁰ The Promoter's Memorandum also states that the Council consulted on the Surplus Fire Fund proposal by holding a public information evening and writing to particular bodies⁶¹ deemed to have an interest in the changes proposed to the Fund.

76. The properties were identified using the Council's Geographic Information System, in coordination with the Council's Corporate Address Gazetteer data, to identify those properties abutting Leith Links or adjacent to the boundary of Leith Links. Notices were also posted on lampposts in the Leith Links area on or around 12 December 2012, alerting local residents to the proposals in respect of the Links, requesting feedback and inviting residents to the public information evening on 19 December 2012.

77. The Committee asked the Promoter about the timing of the consultation periods for both aspects of the Bill. In particular, the consultation period on the Leith Links statue ran over the Christmas holiday period (10 December 2012 to 7 January 2013) and the Committee enquired whether the Promoter had considered extending the consultation to compensate for the holiday period.

78. Charles Livingstone agreed that the timing might not have been ideal but was driven by the perceived need at the time to be ready to present the consultation findings at the scheduled meeting of the full Council on 31 January 2013. If the meeting had been missed due to an extended consultation deadline, it would have added another month to the timetable, which would have caused problems with the Golf Society's fundraising on the back of the Ryder Cup 2014. However, Charles Livingstone believed with hindsight that—

“there would have been time to extend the consultation period, because after the Council's vote on 31 January it took quite a lot of time to go through the process of identifying the properties that should receive the notification letters. That was not expected; we expected to be able to do that much more quickly than we did. If we had known that the

⁶⁰ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter's Memorandum, SP Bill 37-PM, paras 20, 22 & 23, and 25. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

⁶¹ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter's Memorandum, SP Bill 37-PM, paras 21 and 22 & 24. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

notification letters would not go out until they did, the consultation process could have been a lot longer. In an ideal world, that would have been preferable, but there were timing considerations for that.”⁶²

Notification of affected persons

79. The Committee is satisfied that the requirements regarding notification of affected persons were met in respect of provisions relating to the statute. The process undertaken by the Promoter to identify the persons affected was very thorough.

80. Charles Livingstone confirmed to the Committee that there would be no effect on property arising from the provisions relating to the Surplus Fire Fund, so no notification letters were required to be sent.⁶³

Consent from organisations affected

81. Under Standing Order Rule 9A.2.3(d)(iii) and the Determination of the Presiding Officer where a Bill contains powers upon, or modify the constitution of any body corporate or unincorporated association of persons named in the Bill but not being the promoter, the Promoter’s statement must contain details of the—

- notification of the Bill by the promoter to the members of that body or unincorporated association;
- consent obtained by the promoter from those members to the conferral of powers or modification of constitution

82. The Promoter’s Statement⁶⁴ advises that “the Bill does not contain any provisions conferring powers upon ... any other body corporate or unincorporated association named in the Bill but not being the promoters”.

83. Section 3(1) transfers all property, rights, interests and liabilities of the Fund to EVOT (EVOT will now be entitled to make awards or grants).

84. Section 4 relates to the FBU’s attendance at EVOT meetings where the Fund’s business is to be discussed (an explanation of section 4 is set out at paragraph 45). The Committee also notes that section 6 (Interpretation) of the Bill defines the Fire Brigades Union by reference to it being an unincorporated association.

85. Charles Livingstone was of the view that the Bill did not confer powers on EVOT as “it will not give it the ability to do anything that it cannot already

⁶² Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 21.

⁶³ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 35.

⁶⁴ City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill, Promoter’s Statement (printed with the Explanatory Notes), SP Bill 37-EN, para 13. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/66736.aspx>

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do” explaining that was how he would interpret conferring of powers.⁶⁵ In relation to section 4 and the nomination of FBU members to attend EVOT meetings, Mr Livingstone took a similar view, saying “this is not an innovation; it is a continuation of the existing process that is used with the council”.⁶⁶

86. In relation to EVOT, the Committee understands that the section 3 provision deals with the transfer of property, rights and liabilities rather than conferral of powers. It is content with the Promoter’s explanation that the Bill does not confer powers on EVOT.

87. However, the Committee believes the position as to whether the Bill confers power on the FBU is less clear. Esmond Hamilton informed the Committee that the FBU was “invited” to send a representative to the Council’s Pensions and Trusts Committee when the Fund’s business was being discussed.⁶⁷ This informal arrangement in relation to Fund was confirmed by the FBU, who stated that: “the FBU has never had any official standing either by election or statutory entitlement”.⁶⁸

88. Whilst section 4(3) might be regarded simply as a limitation on the number of persons who can be nominated for attendance at EVOT meetings relative to the restricted funds, the Committee is more persuaded by the view that section 4(3) confers a power on the FBU. The Committee is mindful that section 4(6) goes on to refer to the “power” in section 4(3), and that FBU attendance at Council meetings relative to the Fund appears to have been on the basis of invitation rather than a right of attendance.

89. The Committee considers there is an inconsistency between the Promoter’s Statement at paragraph 13, *Notification and Consent from Body Affected*, and the express provisions at section 4 in the Bill relative to the Fire Brigades Union (FBU). The Committee is satisfied that the omission has not prevented the Committee from scrutinising the Bill properly. However, given the inconsistency, we request the Promoter writes to the FBU to formally seek consent to the conferral of powers and notify the Committee in writing of the outcome prior to the Parliamentary debate on the Bill at Preliminary Stage.

90. In all other respects the Committee agrees that the accompanying documents conform to Rule 9A.2.3 and are adequate to allow proper scrutiny of the Bill.

⁶⁵ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 37.

⁶⁶ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 37.

⁶⁷ Scottish Parliament City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee, *Official Report*, 14 November 2013, Col 32.

⁶⁸ Fire Brigades Union, Written Evidence, 21 November 2013

Conclusion on whether Bill should proceed

91. The Committee agrees that a Private Bill is necessary to enable a statue of John Rattray to be erected on Leith Links, and to modernise the Surplus Fire Fund by amending its purposes, transferring the Fund and dissolving the currently constituted Fund.

RECOMMENDATION

92. The Committee recommends to the Parliament that the general principles of the Bill be agreed to and that the Bill should proceed as a Private Bill.

ANNEXE A – EXTRACTS FROM THE MINUTES OF THE CITY OF EDINBURGH COUNCIL (LEITH LINKS AND SURPLUS FIRE FUND) BILL COMMITTEE

1st Meeting, 2013 (Session 4), Thursday 31 October 2013

Declarations: Members of the Committee were invited to declare any relevant interests. Members had no relevant interests to declare. Each member made a declaration of impartiality under Standing Orders Rule 9A.5.4A.

Choice of Convener: The Committee chose John Lamont as Convener.

Choice of Deputy Convener: The Committee chose Sandra White as Deputy Convener.

Decision on taking business in private: The Committee agreed to take item 6 in private.

City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill - witness expenses: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses for witnesses during the scrutiny of the Bill.

City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill: The Committee agreed its future work programme. It agreed to invite representatives of the City of Edinburgh Council, Leith Rules Golf Society and EVOC to give oral evidence and to invite the Fire Brigades Union, OSCR and Leith Links Community Council to submit written evidence. It also agreed to issue a general call for evidence

2nd Meeting, 2013 (Session 4), Thursday 14 November 2013

Decision on taking business in private: The Committee agreed to take item 3 in private. It also agreed to consider a draft Preliminary Stage Report in private at future meetings.

City of Edinburgh (Leith Links and Surplus Fire Fund) Bill: The Committee took evidence on the Bill at Preliminary Stage from—

Ian Buchanan, City Centre and Leith Neighbourhood Manager, City of Edinburgh Council; Charles Livingstone, Associate, Brodies LLP, and Mrs Pat Denzler, Chair, John Rattray Statue Committee, Leith Rules Golf Society.

Esmond Hamilton, Finance Manager, City of Edinburgh Council; Charles Livingstone, Associate, Brodies LLP, and Mrs Ella Simpson, Director, Edinburgh Voluntary Organisations Council.

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City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill: The Committee considered the evidence taken and discussed next steps in its scrutiny of the Bill at Preliminary Stage. The Committee agreed to write to the City of Edinburgh Council about the Surplus Fire Fund provisions in the Bill.

3rd Meeting, 2013 (Session 4), Thursday 12 December 2013

City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill: The Committee considered a draft Preliminary Stage report. The Committee discussed and agreed minor changes and agreed that the report be published on Monday 16 December 2013.

ANNEXE B: ORAL AND WRITTEN EVIDENCE

Please note that all oral evidence and associated written evidence is published electronically only, and can be accessed via the City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill Committee's webpages at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/67594.aspx>

Oral Evidence

2nd Meeting, 2013 (Session 4), Thursday 14 November 2013

Ian Buchanan, City Centre and Leith Neighbourhood Manager, City of Edinburgh Council; Charles Livingstone, Associate, Brodies LLP, and Mrs Pat Denzler, Chair, John Rattray Statue Committee, Leith Rules Golf Society.

Esmond Hamilton, Finance Manager, City of Edinburgh Council; Charles Livingstone, Associate, Brodies LLP, and Mrs Ella Simpson, Director, Edinburgh Voluntary Organisations Council.

Written Evidence

Memorandum by City of Edinburgh Council
Memorandum by Fire Brigades Union
Memorandum by Police Scotland
Memorandum by the Office of the Scottish Charity Regulator
Memorandum by Leith Links Community Council
Memorandum by Dr Michael Gallagher

The written submissions are available on the following webpage:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/69044.aspx>

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