INTRODUCTION

1. This document relates to City of Edinburgh Council (Leith Links and Surplus Fire Fund) Bill (“the Bill”) introduced in the Scottish Parliament on 5 September 2013. It has been prepared by Brodies LLP on behalf of the promoter, the City of Edinburgh Council (“the Council”), to satisfy Rule 9A.2.3(b) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the promoter and have not been endorsed by the Parliament.

2. Explanatory Notes and other accompanying documents published by the Parliament are available separately as SP Bill 37–EN. That document contains details of the accompanying documents published by the promoter, and where those documents may be inspected or purchased.

OBJECTIVES OF THE BILL

Summary

3. The objectives of the Bill are twofold:

(1) 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 (“the Statue”) on Leith Links is no longer prohibited.

(2) To transfer the assets, rights and liabilities of the Surplus Fire Fund, a registered Scottish charity with the charity number SC018967 (the “Fund”), from the City of Edinburgh Council (“the Council”) to the Edinburgh Voluntary Organisation Trust, a registered Scottish charity with the charity number SC031561 (“EVOT”), and then to dissolve the Fund, after first amending the purposes for which the assets can be applied in order to make those purposes more flexible. The new purposes are:

   (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;
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(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 who reside within the City of Edinburgh Council area.

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

Background

Leith Links

5. The first recorded rules of the game of golf were created by the golfers playing at Leith Links in 1744. The Leith Rules Golf Society (the “Society”) wish to commemorate this, and so approached the Council seeking permission to erect a statue on Leith Links of John Rattray, who was the leading golfer at Leith Links at the time. It is proposed that the most appropriate site for the statue would be on Leith Links itself.

6. The land at Leith Links is held on the Council’s Common Good Account and also falls within the scope of section 22 of the Schedule to the 1991 Act, which relates to the control of the use of a number of public open spaces within Edinburgh, including Princes Street Gardens, Calton Hill, Bruntsfield Links, The Meadows and Leith Links.

7. Section 22 currently prohibits the erection of buildings on Leith Links, other than buildings of a few specified categories. Those categories of permitted buildings do not include monuments or statues. Accordingly, in order to permit the erection of the proposed statue of John Rattray, an amendment is required to the 1991 Act.

8. The Bill creates an exemption to the prohibition on building on Leith Links, relating specifically to the proposed statue. It otherwise leaves in place the prohibition on erecting monuments (and other buildings falling outwith the permitted categories). However, while the Bill removes the current legislative obstacle to the construction of the statue, it does not itself authorise the statue’s construction. The Society still had to obtain planning permission in the usual way (as narrated at paragraphs 33 and 34), and must meet the costs of creating and erecting the statue. If the Society’s fundraising is unsuccessful and it is unable to meet the relevant costs, the statue will not be erected. The Society intends to raise an extra sum to transfer to the Council, to enable the Council to maintain and repair the statue. If such fundraising is unsuccessful, the statue may not be maintained or repaired.

The Fund

9. The Fund dates back to a series of fires in Edinburgh High Street in 1824. In its current form, the Fund is constituted under the Edinburgh Corporation Order Confirmation Act 1927 and amended by the Edinburgh Corporation Order Confirmation Act 1967 (the “1967 Act”) and the 1991 Act (with essentially the same purposes appearing in both the 1967 Act and 1991 Act). The Fund is vested in the Council, as sole trustee. For the year ended 31 March 2011, the Fund
had 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.

10. The charitable purposes for which the assets of the Fund may currently be applied are:

- 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

- making awards or grants to persons who have rendered meritorious service in connection with fires within the district.

11. In 2001, the Fire Brigades Union (“FBU”) contacted the Council to express concern that the Fund had become dormant. This led to a reactivation of the Fund and an invitation to the FBU to send a representative to the Council’s Pensions and Trusts Committee whenever Fund business was discussed. The Council believes it is now appropriate to take further steps to revitalise and optimise the application of the charitable assets.

12. On 7 September 2011, the Council’s Pensions and Trusts Committee agreed to invite the trustees of EVOT to make a presentation on their proposals for the future management of the Fund, and how its assets might be put to better use having regard to the spirit of the Fund’s current purposes, changes in society and other circumstances since the Fund was constituted in its present form, and engagement with key stakeholders. EVOT made that presentation on 6 December 2011, after which the Committee invited EVOT to prepare detailed criteria for administering the Fund and present them at a future meeting. EVOT produced an Awards Policy Statement, which was refined in discussion with Council officers and the FBU, and presented to the Committee on 28 March 2012. On that date the Committee approved the proposal to transfer the Fund to EVOT and change its purposes as follows:

- in respect of the relief of dependents, removing the requirement that an injury be serious;
- permitting assistance to be given in cases of damage to household contents and domestic premises (excluding structural damage); and
- permitting the awarding of funds for equipment for hospital burns units provided that the burns units provide care, not necessarily exclusively, for residents of Edinburgh Local Authority area.

13. The full Council agreed on 31 January 2013 to promote the Bill in order to transfer the Fund to EVOT, to be administered subject to those modified purposes and the condition that the assets be held separately from EVOT’s other funds. The Fund itself will then be dissolved following the transfer of the assets to EVOT.
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ALTERNATIVE APPROACHES

Leith Links

14. Section 22 of the Schedule to the 1991 Act means that it is not possible for the statue to be constructed on Leith Links without primary legislation to either amend that section or authorise the construction of the statue.

15. The Council also considered the possibility of amending section 22 of the Schedule to the 1991 Act so as 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” (as has previously been done in relation to the definition of Princes Street Gardens, in respect of the recent extension of the National Gallery). However, the Council decided that the Bill should be limited to creating a narrow exception in respect of the proposed statue of John Rattray, as there is no expectation that there would be demand for any further monuments or statues to be constructed on Leith Links, and maintaining the existing definition of Leith Links ensures that the other building restrictions remain in place in respect of the entire area.

The Fund

16. The alternative to pursuing a Private Bill in respect of the Fund would be for the Council to seek permission from the Office of the Scottish Charity Regulator (“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. However, the Council is of the view that that route is not available in respect of the Fund, as a result of section 42(5) of the 2005 Act, which states that section 39 does not apply to any charity constituted “under any enactment”. 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 1991 Act. Section 42(6) of the 2005 Act provides that section 39 will apply to such a charity if it is an endowment the governing body of which is a charity (“endowment” and “governing body” having the definitions set out in Part 6 of the Education (Scotland) Act 1980). However, although the Fund is an endowment, its governing body is the Council as sole trustee. The Council is not a charity, and so section 42(6) does not apply to the Fund (the Council nevertheless applied to OSCR on 30 May 2013 for consent to the amendment of the Fund’s purposes and the dissolution of the Fund, as required by section 16 of the 2005 Act; OSCR consented to the amendment and dissolution on 27 June 2013).

17. Were OSCR to purport to use its reorganisation powers under section 39 of the 2005 Act, that decision would be open to challenge as ultra vires and so would risk the reorganisation being declared unlawful. Any actions taken by the Council or EVOT in respect of the Fund assets would be unlawful as a result, which could result in either or both bodies incurring potentially significant liabilities.

18. A Private Bill is the only option for changing the Fund’s purposes, transferring its assets to EVOT and then dissolving the Fund that would not raise doubts about the validity of those actions. The Council is therefore of the view that there are no viable alternatives to pursuing this Bill.
CONSULTATION

19. The Council carried out a significant consultation exercise in respect of both elements of the Bill. That process consisted of the following:

Public information evenings

20. A public information evening was held on Wednesday 19 December in the Thomas Morton Hall, Edinburgh to consult with the public over the Leith Links proposals. This meeting was attended by three Council officers, a representative of the Scottish Parliament’s Non-Government Bills Unit, one elected member of the Council, five members of the Leith Rules Golf Society and two members of the public.

21. A second public information evening was held on Thursday 20 December in Edinburgh City Chambers to consult with the public over the Fund proposals. This meeting was attended by three Council officers, two representatives of the Scottish Parliament’s Non-Government Bills Unit, one elected member of the Council, one representative of EVOT, one representative of the Edinburgh Voluntary Organisations Council (EVOT’s parent charity), one representative of the FBU and one member of the public.

Letters to consultees

22. Letters were sent to bodies identified by the Council as key consultees. The letters contained explanations of the proposals, invitations to the public information evenings and contact details for providing feedback on the proposals (to be provided by 7 January 2013).

23. Letters in respect of the Leith Links were sent on 10 December 2012 to the Leith Trust, SEPA, Scottish Natural Heritage, Greener Leith, the Leith F.A.B. Cricket Club, the Cockburn Association and Historic Scotland. These letters were accompanied by a plan and artist’s impression showing the proposed location of the statue and the accompanying landscaping, as well as photos of a scale-model of the proposed statue.

24. Letters in respect of the Fund proposals were sent on 23 November 2012 to Lothian and Borders Fire and Rescue (“LBFR”) headquarters; the Council’s Director of Children and Families and Director of Services for Communities; EVOT; the FBU; the Scottish Federation of Housing Associations; the Sick Kids Hospital, Edinburgh; the Burns Unit of St John’s Hospital, Livingston; Audit Scotland; the Edinburgh Tenants Foundation; Four Square; OSCR; and every community council in the Council area.

Letter drop to Leith Links residents

25. A letter drop was carried out to approximately 400 residents in the Leith Links area on 10 December 2012. The letters provided information about the proposals, sought feedback on the proposals (again, to be provided by 7 January 2013) and invited residents to the public information evening on 19 December 2012. The letters were also accompanied by the plan and artist’s impression showing the proposed location of the statue and the accompanying landscaping, and the photos of a scale-model of the proposed statue.
Notices

26. As recorded in the accompanying Promoter’s Statement, a notice about the proposals has been displayed in each library within the Council area since 6 December 2012. This notice gives information about the Bill and invited interested parties to attend the public information evenings. A notice in the same terms appeared in the Scotsman and Evening News on both 11 and 18 December 2012, as is also recorded in the Promoter’s Statement.

27. A notice containing information about the Fund proposals, a request for feedback (by 7 January 2013) and the details of the public information meeting on 20 December 2012 was sent to every fire station within the Lothian and Borders Fire and Rescue area on 23 November 2012, with a request that it be put on display. Information about the proposals was also displayed on LBFR’s intranet for the attention of staff.

28. 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 (by 7 January 2013) and inviting residents to the public information evening on 19 December 2012. These notices included the plan and artist’s impression showing the proposed location of the statue and the accompanying landscaping, and the photos of a scale-model of the proposed statue.

Responses

29. The Council received 8 formal responses to the consultation process.

30. In relation to Leith Links, responses were received from the Leith Trust, which was in favour of the proposal to erect the statue, and from Historic Scotland, which confirmed it would have no objection to the erection of the proposed statue. Two further responses were received in respect of the proposals, raising concerns about the erection of the statue. These objections raised issues relating to (1) criticisms of the aesthetics of the proposed statue and the proposed surrounding landscaping; (2) concerns about the risk of the statue being damaged or defaced; (3) concerns about the surrounding area already being in poor condition and (4) objections to the use of Council funds on maintaining or repairing the statue. The Council considered these objections but did not think it was necessary to revise the proposals. In any event, objections to the aesthetics of the statue and landscaping were properly matters to be dealt with via the planning permission process outlined below.

31. In relation to the Fund proposals, 4 responses were received all of which supported the proposals in principle. The FBU and Firrhill Community Council suggested a change to the condition that recipients of grants reside in the City of Edinburgh Council area, which originally would have applied to purpose (c) above (“making awards or grants to people who have rendered meritorious services in connection with a fire within the City of Edinburgh Council area”). It was suggested that individuals (including professional firefighters) who provided such service within the Council area should be eligible for an award or grant even ifhey resided outside that area. The Council accepted that suggestion and incorporated it into the proposals, so that the residency condition no longer applies to purpose (c) but only to purposes (a) and (b).
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32. Members of the Council were advised of these consultation results in the report provided to the Council meeting of 31 January 2013, at which the Council resolved to proceed with the promotion of a Private Bill in the Scottish Parliament. The report provided to members can be found at http://www.edinburgh.gov.uk/meetings/meeting/2898/, at item 8.3.

Planning permission

33. The Society’s planning application was submitted to the Council on 11 February 2013, and is available along with the relevant accompanying documents at https://citydev-portal.edinburgh.gov.uk/idoxpa-web/applicationDetails.do?activeTab=summary&keyVal=MI2E59EWLO00. Neighbouring properties within 20 metres of the proposed statue site – in Salamander Place, Links Gardens and Links Place – were notified of the application by way of a neighbour notification posted on 19 February 2013. The application was also advertised in the Edinburgh Evening News on 22 February 2013, with a request for comment within 21 days. On the same day a site notice, also requesting comment within 21 days, was posted on the lamppost nearest to the proposed site. No public responses or representations were received in respect of the application.

34. The Council granted planning permission in respect of the statue 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. The Council’s decision is available at the web address cited at paragraph 33.
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PROMOTER’S MEMORANDUM