Dear Clare

National Galleries of Scotland Bill ("the Bill")

Thank you for your letter of 12 October on behalf of the National Galleries of Scotland Bill Committee. Also, thank you for passing on the apology on behalf of Fiona McLeod MSP and for clarifying the legislation to which she intended to refer. I know how easy it can be to refer to the wrong piece of legislation, particularly when there are a number of Acts involved, but hopefully this letter will address the remaining legal questions the Committee has in relation to the Bill.

Your letter sets out three points on which the Committee would like further information. I respond to each of these points in turn, summarising the question for ease of reference.

1. *The legal obstacle in the City of Edinburgh District Council Order Confirmation Act 1991 ("the 1991 Act") which the Bill seeks to address is the same legal obstacle which resulted in the National Galleries of Scotland Act 2003 ("the 2003 Act") for the purposes of the previous extension to the Scottish National Gallery. Can you clarify whether the Board of Trustees of the National Galleries of Scotland ("the Trustees") have discussed with the City of Edinburgh Council ("the Council") the merits of amending the 1991 Act so that the prohibition on constructing buildings in Princes Street Gardens ("the Gardens") should include an exception for museums and galleries rather than overcoming the obstacle by removing land from the Gardens?*

The Trustees have not raised with the Council the prospect of amending 1991 Act to include an additional exception to the prohibition on constructing buildings for museums and galleries. As the
Promoter’s Memorandum accompanying the Bill summarises, the restrictions and exceptions in the 1991 Act are only the latest in a series of such provisions which have applied to the Gardens over the years. However, the exceptions have been consistent in preserving the Gardens’ status as an important public park and area of public open space. Amending the 1991 Act to allow the construction of museums and galleries would have the potential to fundamentally change the status of the Gardens. This would have much wider implications, and require the consideration of much wider issues, than the Bill. The Trustees have been keen to ensure that the Bill is proportionate and limited only to what is necessary to achieve the objectives of the Trustees and the Bill.

2. The 2003 Act removed the land required for the previous extension from the Gardens but did not change the common good status of the land to allow disposal to the Trustees, with that element being achieved by court order. Can you explain further why a similar approach was not adopted in this Bill?

Consideration was given to adopting the same approach as the 2003 Act, whereby the common good element was dealt with by way of court order. However, there were a number of reasons why the Trustees decided to include the change in common good status in the Bill. These included the following:

(i) Including both legal obstacles in the Bill would provide a single ‘authorisation’ process which provide a more streamlined and straightforward process for people participating in the process. It was considered to be advantageous to parties with an interest in the proposals to have a single process to which they could contribute.

(ii) Addressing the common good land obstacle by way of court order would require the Council to pursue the court order while the Trustees would promote the Bill. Pursuing both elements in the Bill provides a single promoter, which provides clarity and avoids any confusion as to the correct party with which to engage.

(iii) When compared to the court process, the Private Bill process is considered to be more ‘user-friendly’. The courts can be intimidating for members of the public, and the court requirements and processes can be confusing for those not familiar with them. In contrast, the Parliamentary process is more open, inclusive and transparent. At the same time, there are significant consultation and notification requirements in the Parliamentary process to ensure all interested parties are properly informed.

(iv) The Trustees wished to have greater certainty in respect of project timescales to ensure important milestones can be met. There is greater uncertainty in pursuing court authorisation for disposal of the common good land, particularly when it would be the Council who would have control of the process, albeit there is a good relationship between the Trustees and the Council.

3. It would also be useful if you could explain whether any consideration was given to amending the 2003 Act, rather than drafting the new Bill as a free-standing piece of legislation?

Consideration was given to amending the 2003 Act. However, due to the proposal for the Bill to include the change in the common good status of the relevant land, it was concluded that this was not appropriate. The purpose of the 2003 Act was confined to overcoming the legal obstacle in the 1991
Act, and amending the 2003 Act to also alter the common good status of the relevant land would not be consistent with that purpose.

It was also considered that the 2003 Act was specifically related to the previous extension and it would be clearer for people participating in the Parliamentary process to have a free-standing piece of legislation related to the Trustees’ current proposals.

I hope this response answers the additional questions that the Committee had but please do not hesitate to contact me if further information is required.

Yours sincerely

[Signature]

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