National Galleries of Scotland Bill Committee

Preliminary Stage Report
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National Galleries of Scotland Bill Committee

To consider matters relating to the National Galleries of Scotland Bill.

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0131 348 6234

Committee Membership

**Convener**
Anne McTaggart
Scottish Labour

**Deputy Convener**
Fiona McLeod
Scottish National Party

Jean Urquhart
Independent
Introduction

1. The National Galleries of Scotland Bill (“the Bill”) was introduced in the Scottish Parliament on 25 June 2015. It is a Private Bill promoted by the Board of Trustees of the National Galleries of Scotland (“the Board/Promoter”) under procedures set out in Chapter 9A of the Parliament’s Standing Orders\(^1\) and the Guidance on Private Bills\(^2\).

2. The Bill is linked to a plan to extend the National Galleries of Scotland (“NGS”) into an area of land (“the relevant land”) which currently forms part of Princes Street Gardens (“the Gardens”). It is aimed at removing certain legal obstacles to this plan (see below).

Background to the Board and National Galleries of Scotland

3. The Board was established by the National Galleries of Scotland Act 1906\(^3\) to manage the National Galleries of Scotland and issues connected with the fine arts. A non-departmental public body, the NGS is funded by the Scottish Government and is managed on its behalf by the Board whose members are appointed by the Cabinet Secretary for Culture, Europe and External Affairs. It has charitable status. The National Heritage (Scotland) Act 1985\(^4\) sets out the functions of the NGS which are to—

- care for, preserve and add to the objects in their collections
- secure that the objects are exhibited to the public
- secure that the objects are available to people seeking to inspect them in connection with study or research, and
- generally promote the public’s enjoyment and understanding of the Fine Arts both by means of the Board’s collections and by such other means as they consider appropriate.

4. In carrying out its functions, the Board can provide education, instruction and advice and carry out research. It is authorised to enter into contracts or other agreements including contracts for the acquisition and disposal of land. In addition, the Board may charge for admission or for other services or goods provided by them as they think necessary for preserving, and increasing the use of their collections.
A brief history of the National Galleries

5. The National Galleries of Scotland comprises three galleries in Edinburgh and two partner galleries in the north and south of Scotland—
   - Scottish National Gallery
   - Scottish National Portrait Gallery
   - Scottish National Gallery of Modern Art
   - Paxton House, Berwickshire
   - Duff House, Banff

6. The Scottish National Gallery (SNG) building was designed by William Henry Playfair and completed and opened to the public in 1859. It is located on the Mound, between East and West Princes Street Gardens and next to the Royal Scottish Academy (RSA) building. In 1889, the Scottish National Portrait Gallery opened to the public and in 1959 the Scottish National Gallery of Modern Art (SNG of MA) was founded and opened to the public in Edinburgh's Royal Botanic Gardens.

7. In 1978, further galleries opened beneath the ground floor of the south end of the National Gallery, to house the Scottish Collection and also provide room for facilities such as a Print Room, Library and Picture Store. In 1984, the SNG of MA moved to the former John Watson's school building on Belford Road. The Dean Gallery opened in 1999 opposite the Gallery of Modern Art and, in 2003 as part of the Playfair project, an underground linking space between the RSA and the SNG was installed and the complex redeveloped. In 2011, the SNG of MA and the Dean Gallery were re-branded as “Modern One” and “Modern Two”.

The Bill – objectives and main provisions

8. The aim behind the Bill is to facilitate the extension of the National Gallery building into an area of land which currently forms part of Princes Street Gardens (“the Gardens”). The extension is required as the Board want to expand and improve the design of the National Gallery of Scotland in order to house the Scottish Art collection in a more appropriate and accessible location. The project, Celebrating Scotland’s Art, plans to expand the Scottish Wing into East Princes Street Gardens to provide an additional 500 square meters of space in which the Scottish art collection will be exhibited. The design team, led by Gareth Hoskins Architects, also plan to include a new landscaped public pathway and terrace at
the Gardens level aimed at improving connectivity between the NGS, the Gardens, Princes Street, the Playfair Steps and the Old Town.

9. The relevant land is a small sloping grass embankment used as an area of landscaping and therefore the reduction of open space in the Gardens will be minimal. The Promoter’s Memorandum argues that this loss of land will be compensated by the landscaping improvements and easier access to an improved cultural facility. It highlights Historic Scotland’s view that the project will provide —

‘a clear and coherent approach to the creation of an enhanced and enlarged Scottish Collection, which itself is likely to provide significant public benefits.’

Legal Obstacles

10. The relevant land, because it forms part of the Gardens, is part of the common good land of the City of Edinburgh Council (“the Council”). The Council cannot dispose of it to a third party without court authorisation due to its status as ‘inalienable’ common good land (in other words common good land which cannot be used for a different purpose or disposed of). In addition, the land is also subject to a statutory restriction in the City of Edinburgh District Council Order Confirmation Act 1991 (“1991 Act”) which prohibits the construction of permanent buildings in any part of the Gardens.

11. The Bill therefore has two connected purposes: to change the status of the common good land so as to enable the Council to dispose of it to the NGS without the need for court approval; and to remove the land from the Gardens thus removing the statutory restriction on the construction of permanent buildings on the land.

Main provisions

12. The Bill has five sections. Section 1 changes the status of the land to ‘alienable’ common good land which means that it can be transferred or sold without court approval. Section 2 removes the land from the Gardens which means that the restrictions on construction cease to apply. Section 3 defines the land in question (approximately 737 square meters) by reference to Ordnance Survey National Grid references. It also defines the Council. Commencement and the short title are provided for in sections 4 and 5 respectively.

Background to the Bill

Common good

13. The common good is a fund of money and assets owned and administered by a local authority in respect of the former burgh within the area of that local authority.
14. The legal framework associated with common good land is a combination of statute and case law and is particularly complex with a number of areas of uncertainty. However, in very simple terms common good land can be thought of as land which, unlike private land, has a public purpose and where title is held by a local authority subject to fiduciary obligations (in other words, to administer the land on behalf of the community).

Inalienable common good land

15. Inalienable common good land is where there is a prohibition or restriction on “alienation”, a term which means some kind of use by a third party which is alternative to the existing use of the land for the purposes of the common good. Whether common good land is alienable or inalienable depends on case law. Disposal of such land is subject to statutory control.

1991 Act

16. Section 22 of the Schedule to the 1991 Act contains the following statutory restriction on the construction of buildings in various Edinburgh parks (including the Gardens):

Subject to the provisions of this Order there shall not be constructed in any of the parks specified in the first column of the following table any permanent buildings other than buildings of the description specified in the second column of that table in relation to such park.

17. In the case of the Gardens, none of the types of buildings listed as exceptions (in the second column) are relevant to the planned Gallery extension.

Playfair project

18. In October 2002, the National Galleries of Scotland Bill was introduced in the Parliament by the Trustees of the National Galleries of Scotland. The aims were similar to this Bill in that the proposed legislation sought to remove a piece of land from the Gardens, thus disapplying the 1991 Act restrictions, in order to facilitate completion of the Playfair project. The Bill was passed and received Royal Assent on 1 May 2003.

Consultation on the Bill

19. The plans for the proposed extension were presented to the Board in June 2014 who agreed to the proposal for the extension. In February 2015, following a number of progress reports, it was agreed that a Private Bill would be introduced to the Parliament which would involve an objection period over summer recess.

20. The Promoter’s Memorandum outlines the steps taken to consult with interested parties on the proposals. These included the Council contacting nine
organisations, two of whom responded positively, and the Board’s ongoing consultation on the project plans.

21. Notice of the intention to introduce the Bill was published in newspapers on 12 June 2015 and displayed in libraries across the country. The Board intends to continue to consult with interested parties and the public as the project progresses.

**Parliamentary procedure**

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

22. The procedure for consideration of a Private Bill is set out under Standing Orders and consists of three stages—

- Preliminary Stage
- Consideration Stage and
- Final Stage.

**Objections, Rule 9A.6**

23. Every Private Bill is subject to a 60-day objection period beginning immediately after introduction. In this case, the objection period ran from 26 June 2015 to 24 August 2015 and no objections were received. The Committee is therefore not required to give consideration to objections.

**Role of the Committee at Preliminary Stage**

24. The Committee was established on 2 September 2015 (under Rule 9A.5) to consider the Bill at Preliminary Stage and at Consideration Stage.21 As no objections were lodged, the Committee’s role at Preliminary Stage is to consider and report on—

- the general principles of the Bill and
- whether the Bill should proceed as a private Bill, including by satisfying itself that primary legislation is required, that the provision made is of a private rather than public nature, and that the pre-introduction requirements have been carried out correctly

25. If the Parliament approves the general principles of the Bill and agrees it should proceed as a private bill, the Bill goes on to Consideration Stage; otherwise it falls.
Consideration by the Committee

26. Following a site visit on 29 September 2015, the Committee issued a call for views which closed on 15 October 2015 with no responses being received. The Committee then heard from the Promoter at a meeting on 8 October 2015 and from the Council on 29 October 2015. Supplementary written evidence was received following both meetings.

27. The Committee would like to thank witnesses who gave oral evidence and provided written evidence, all of which can be viewed on our website.22

Should the Bill proceed as a Private Bill?

28. 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. This involves the Committee satisfying itself first, that the Bill is in accordance with Rule 9A.1.1, second, whether there was any other, non-statutory, alternative solution 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.

29. 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.

30. During oral evidence, Mr McMurray, Senior Associate of CMS Cameron McKenna LPP, agents for the Promotor, outlined the legal obstacles and why a Private Bill is required to allow the project to go ahead. He explained that the piece of land defined in the Bill is inalienable common good land and that it would require court approval before the Council could dispose of it to the NGS. He also explained that
the statutory restrictions in the 1991 Act regarding the construction of buildings could only be overcome by means of legislation.  

31. The Promotor’s Memorandum outlines in some detail the possible alternative approaches to the Private Bill process. In particular it explains that, although it would have been possible to ask the Council to apply to the Court of Session for authorisation to dispose of the common good land to the NGS, a Bill is the only option for removing the statutory restriction in the 1991 Act.

32. The Promotor’s Memorandum, therefore, concludes that the Private Bill process is the most appropriate option.

33. Mark McMurray expanded on this approach during the Committee’s evidence session on 8 October 2015. In particular, he noted that the parliamentary process offers advantages in terms of openness and accessibility explaining that —

> The starting position is that the land is currently regarded as inalienable common good land, which, as you said, under the terms of the 1973 act would require approval from the court before the council could dispose of it to the National Galleries to allow the scheme to proceed. The City of Edinburgh District Council Order Confirmation Act 1991 is another statutory restriction. Because a piece of legislation is required to deal with the hurdle in that act, it was thought that the two processes could be combined into one act so that there was one opportunity and one consistent approach, and members of the public would be allowed to participate. The Parliament obviously offers further advantages of accessibility and openness to members of the public to participate.

### Alternative approaches

**The City of Edinburgh District Council Order Confirmation Act 1991**

34. A Private Bill should not proceed if the result sought would more appropriately be achieved by means of changes to the general law that would give the same powers or benefits to others in a similar position, without the need to single out the promotor.

35. Given this, the Committee considered whether there might be an argument that the 1991 Act could be amended to provide an exception for public museums, galleries etc. and asked both the Promotor and the Council their views on this. Mr McMurray indicated that any such amendment would be complicated, noting that —

> 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.
36. This point was echoed by the Council—

> The legal team understand that this approach was not raised with the Council. However, we believe that this may set a dangerous precedent if we were to allow construction of Museums and Galleries within the Gardens as a whole.

The National Galleries of Scotland Act 2003

37. The Committee also explored why the approach taken in this Bill was not the same as that taken in the National Galleries of Scotland Act 2003 where a court order allowing for the land in question to be disposed of was first sought before a Private Bill was introduced. The Promoter cited some reasons for including the change in common good status in the Bill—

- A single authorisation process provides a more straightforward and streamlined process.
- Having the promotor pursuing both elements in the Bill, as opposed to the Council having to pursue a court order to change the common good status, provides clarity and avoids confusion for those who wish to engage in the process.
- The private bill process is more open, in comparison with a court process (in relation to the status of the land), inclusive and transparent with significant consultation and notification requirements to ensure all interested parties are kept informed.

38. The Council shared its view on whether amending the 2003 Act was an option—

> The 2003 Act was designed to deal with an alternative proposal. To amend that piece of legislation may have been confusing for those who wished to participate in the process. In addition, the 2003 Act did not deal with the issue of common good and separate provisions would have had to be introduced on that issue.

39. The Committee agrees with the arguments put forward by the Promoter that a Private Bill is necessary to remove the relevant land from the Gardens. It is satisfied that the Bill conforms to the requirements of Rule 9A.1.1, the definition of a Private Bill, and should proceed as a Private Bill.

40. The Committee’s view is that the accompanying documents conform to Rule 9A.2.3 and allow proper scrutiny of the Private Bill.
General Principles of the Bill

General benefits of the extension

41. The Promoter’s Memorandum outlines various benefits linked to the extension, the objective being that “Scottish art is proudly presented to the widest possible public in a gallery of world standing with first class facilities and access”.

42. Michael Clarke, Director of the Scottish National Gallery, outlined why it was felt that the extension was necessary, telling us:

… all the space within the current Scottish national gallery building is currently being used for permanent collections or exhibitions, so the proposal is to extend the national gallery building into the relevant land in Princes Street gardens to create approximately 500m2 of new gallery accommodation in which the collection of Scottish art will be exhibited. We will thereby triple the space that is devoted to the Scottish collection and greatly improve the circulation throughout the building.

43. Mr Clarke also outlined other benefits which he believed this development would bring such as improvements to the conflicting external elevation designs, improved landscaping in the gardens and improved disabled access.
44. When asked specifically about the potential financial benefits to the gallery, Mr Clarke explained—

> We see the development as increasing our visitor numbers, which inevitably will mean a greater number of customers in the commercial areas of retail and catering.

45. He pointed out that currently fewer than 20 percent of visitors make it to the area of the gallery where the Scottish collection is housed. He believed that the plans for the extension would allow greater access from that area to other commercial areas of the gallery and would thus ‘improve the financial resilience of the organisation in the coming years.’

**Costs and funding**

46. In April 2015, the Heritage Lottery Fund approved a first round pass for an application for £4.94m to fund the extension and redevelopment project. The Promotor intends to make a second round application in November 2015 and plans to undertake an international fund-raising campaign directed at corporate and individual donors.

47. The Promoter was asked to explain further what the likely cost of the project would be and the associated timescales. Michael Clarke summarised—

> The cost of the project is a little over £15 million. We have a stage 1 heritage lottery pass for a grant of just under £5 million. We have other funding initiatives under way that are drawing in funds from elsewhere, and there will be a public funding campaign as well. If everything goes according to plan, we envisage breaking ground, as it were, in early 2017 and finishing round about the autumn of 2018.

48. Ann Wilson, Project Manager for NGS, told the Committee that the cost of landscaping work to the Gardens would fall to the NGS and not the Council. She went on—

> What we are trying to do on the external elevations through the project will enhance the gardens as well. We see that as a massive benefit to the council because, ultimately, the funding for the work that will be carried out will come from the National Galleries. We see that as a very positive offer to the council in relation to the transfer of the land.

**Impacts of the extension**

49. The Committee heard about potential disruption during the building of the extension such as temporary closure of sections of the Gardens, although Ms Stevenson pointed out—
When we hold festivals and events in the gardens, we have to restrict access to certain parts, and I think that people are used to that. Alternative routes and accesses around the works can and would have to be put in place; indeed, given the building’s location in the city centre, it would be reasonable to expect that to happen.

**Common good land – ensuring best value**

50. The Committee understands that it is important for local authorities to ensure best value when disposing of common good land. When asked about how best value would be achieved in this case Mr McMurray indicated that 43—

> The council will be required to comply with best value and take into account other considerations. There is a wealth of case law about what “best value” means and what the council can take into account in that regard. However, there is certainly no suggestion that there would be a disposal for less than best value.

51. Questions were also put to the Council on the arrangements for the transfer of the relevant common good land and how best value will be ensured. Responding to these questions, Graham Tully, Estates Services Manager for the Council stated 44—

> I agree that there are sensitivities around the gardens and the issue of common good. Clearly, the entire principle of the project is governed by this process and by the planning process, but when it comes to the transfer arrangements the council will appoint external valuers to assess best value. They will look at the fact that what is being transferred is quite a narrow strip that is about 5m wide, which does not have a lot of value on its own. They will also look at the fact that the gardens will benefit from some improvements to access. That basket of benefits will capture best value.

**Co-operation with the Council**

52. The Committee was interested in what the Council’s role would be in the construction process, for example, in providing access through the Gardens, if the extension was to go ahead. Ms Wilson, Project Manager for NGS, emphasised the NGS’s healthy relationship with the Council throughout the process thus far and said that it supported the Bill and had been involved in its promotion. She clarified the NGS’s position by indicating that the Council’s finance and resources committee has approved the transfer of the land should the private bill be passed 45.

53. Ms Wilson highlighted that discussions with the Council were ongoing in relation to the current and longer term use of the Gardens should the extension go ahead. She indicated that this involves numerous departments focusing on matters such
as the shape and form of the building and how visitors move around the gardens and gallery and ‘enhancing the visitor experience’\textsuperscript{46}. She explained\textsuperscript{47}—

There is [also] on-going discussion with the parks department on arrangements for the maintenance of the garden grounds. Clearly, the work that we will be promoting with the project will require a greater interface with the garden grounds. We will be remodelling some of the land and creating better disabled access into the garden space.

Karen Stevenson, senior planner from the Council, confirmed that the NGS and the Council have been working together on the extension proposals and, in particular, the relationship between the galleries and the surrounding area and how access and integration improvements could be made. She told us\textsuperscript{48}—

The original working partnership with the National Galleries started a few years ago, and we have a constant working relationship over the management of the gallery. We have engaged principally through the planning department and the planning function of the council, but the planning department has drawn in other departments within the council such as the parks and finance departments and the property department. … The arrangement is complicated, and it involves a number of people.

Conclusions

55. The Committee is supportive of the aims of the Board to improve access to the Scottish Art collection and agrees that the current exhibition space is not appropriate for such a collection. It believes that the improvements both to the gallery space and the surrounding area will enable Scotland’s art collection to be enjoyed more widely.

56. Given the Bill is necessary if these benefits are to be achieved, the Committee supports the general principles of the Bill.

Recommendation

57. The Committee recommends to the Parliament that the general principles of the National Galleries of Scotland Bill be agreed to and that the Bill should proceed as a private Bill.


3 National Galleries of Scotland Act 1906. c. 50 (Regnal. 6 Edw 7) [Accessed October 2015]
http://www.legislation.gov.uk/ukpga/Edw7/6/50/section/4A

https://www.nationalgalleries.org/aboutus/special-projects/celebrating-scotlands-art-the-scottish-
national-gallery-project [Accessed October 2015]

5 National Galleries Scotland Bill. SP Bill 77. Promoter’s Memorandum, paragraphs 24-25, 29.
http://www.scottish.parliament.uk/S4_Bills/National%20Galleries%20of%20Scotland%20Bill/b77s4-
introd-pm.pdf

6 Under Section 75 (2) of the Local Government (Scotland) Act 1973

7 Section 22 of the Schedule to the City of Edinburgh District Council Order Confirmation Act 1991. c.xix

8 The statutory restriction of the construction of buildings in the Gardens has a number of exceptions
listed in the SPICe briefing paper 15/62 namely: lodges for gardeners and keepers, hothouses and
conservatories, monuments, bandstands, public conveniences, police boxes and buildings for electricity
and gas supply apparatus. 2015. Evans, Angus. National Galleries of Scotland Bill. SPICe Briefing paper
15/62 [Accessed October 2015]

9 In 1975 burghs were abolished and a two-tier system of local government was created and, in 1996,
this system was replaced with a single-tier system of unitary authorities

10 In 1975 burghs were abolished and a two-tier system of local government was created and, in 1996,
this system was replaced with a single-tier system of unitary authorities

11 2010. Harvie-Clark, S. Long Leases (Scotland) Bill: the common good. Briefing for the Scottish
11/jup11-01.pdf [Accessed October 2015] and 2013, Ferguson, A City of Edinburgh Council (Portobello
Park) Bill Written Submission from Andrew C Ferguson for the Portobello Park Bill Committee,
http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/Inquir-
ies/EPPwe16_Andrew_C_Ferguson_WEB.pdf [Accessed November 2015]

12 2013, Ferguson, A City of Edinburgh Council (Portobello Park) Bill Written Submission from Andrew C
Ferguson for the Portobello Park Bill Committee,
http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/Inquir-
ies/EPPwe16_Andrew_C_Ferguson_WEB.pdf [Accessed November 2015]


14 The other areas covered are: the Bruntsfield Links, the Meadows, Leith Links and Calton Hill

15 See column 2 of the table to Section 22 of the 1991 Act

16 National Galleries of Scotland Bill 2002 SP Bill 68.
http://www.scottish.parliament.uk/S1_Bills/National%20Galleries%20of%20Scotland%20Bill/b68s1.pdf
[Accessed October 2015]

17 The Council consulted the following organisations on the proposed disposal of the relevant land:
Edinburgh Old Town Development Trust, Local councillors, The Cockburn Association, Network Rail,
New Town and Broughton Community Council, The City Centre Neighbourhood Partnership, Edinburgh
World Heritage, Edinburgh Old Town Association, Historic Scotland (Historic Environment Scotland from
October 2015). The Council a from Historic Scotland confirming that it had no concerns with the
proposed disposal and one from the Edinburgh Old Town Association confirming that it found the
proposal acceptable.

20 The City of Edinburgh Council as planning authority, Historic Scotland (Historic Environment Scotland),
the Cockburn Association, the Edinburgh World Heritage Trust, the Architectural Heritage Society of
Scotland, Network Rail, the Scottish Government, and the Heritage Lottery Fund.

October 2015]

22 Guidance on Private Bills – Part 5. Paragraph 5.8


Annexe A

Extracts from the minutes of the National Galleries of Scotland Bill Committee

1st Meeting, 2015 (Session 4), Thursday 24 September 2015
National Galleries of Scotland 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 of witnesses on the Bill.

National Galleries of Scotland Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Preliminary Stage, including a provisional timetable and a site visit. The Committee also agreed to publish a call for views on the Bill on its website.

2nd Meeting, 2015 (Session 4), Thursday 8 October 2015
National Galleries of Scotland Bill: The Committee took evidence on the Bill at Preliminary Stage from—

Michael Clarke, Director, Scottish National Gallery;
Ann Wilson, Project Manager, National Galleries of Scotland;
Mark McMurray, Senior Associate, CMS Cameron McKenna LLP.

Review of evidence (in private): The Committee reviewed the evidence heard at the meeting.

The Committee agreed to write to Mark McMurray seeking clarification on issues raised during discussions.

Supplementary Written Evidence
Letter to the Promoter requesting supplementary written evidence (104KB pdf)
Response from Promoter to the request for supplementary evidence (194KB pdf)
3rd Meeting, 2015 (Session 4), Thursday 29 October 2015

National Galleries of Scotland Bill: The Committee took evidence on the Bill at Preliminary Stage from—

Graham Tully, Estates Services Manager, and Karen Stevenson, Senior Planner, City of Edinburgh Council.

Review of evidence (in private): The Committee reviewed the evidence heard at the meeting.

The Committee agreed to write to the City of Edinburgh Council seeking clarification on issues raised during discussions.

Supplementary Written Evidence

Letter to City of Edinburgh Council requesting supplementary written evidence (105KB pdf)

Response from City of Edinburgh Council to the request for supplementary written evidence (104KB pdf)

4th Meeting, 2015 (Session 4), Thursday 12 November 2015

The Committee considered a draft Preliminary Stage Report. Various changes were made, and the Committee agreed the revised draft.