NATIONAL GALLERIES SCOTLAND BILL

PROMOTER’S MEMORANDUM

INTRODUCTION

1. This document relates to the National Galleries of Scotland Bill introduced in the Scottish Parliament on 25 June 2015. It has been prepared by CMS Cameron McKenna LLP on behalf of the promoter, the Board of Trustees of the National Galleries of Scotland (“the Board”) 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 77-EN. That document contains details of the accompanying documents published by the promoters, and where those documents may be inspected or purchased.

OBJECTIVES OF THE BILL

Summary

3. The Bill relates to a small piece of land (“the relevant land”) which comprises an area of approximately 737 square metres and currently forms part of Princes Street Gardens (“the Gardens”). The relevant land lies east of, and adjacent to, the Mound and is required by the Board for the extension of the Scottish National Gallery. However, a statutory restriction (more particularly described in paragraphs 9 and 10 below) prohibits construction of buildings on any part of the Gardens. One of the objectives of the Bill is to enable the proposed construction to be carried out on the relevant land by removing that land from the Gardens, thus disapplying that restriction so far as it relates to the relevant land.

4. The relevant land also forms part of the common good of The City of Edinburgh Council (“the Council”). More particularly, the relevant land is common good land with respect to which a question arises as to the right of the Council to alienate for the purposes of Part VI of the Local Government (Scotland) Act 1973 (“the 1973 Act”). Under section 75(2) of the 1973 Act, the Council must apply to the court for authority to dispose of such land. The other objective of the Bill is to change the status of the relevant land to alienable common good land, enabling the Council to dispose of the relevant land under section 74 of the 1973 Act to the Board for the purpose of extending the Scottish National Gallery, as an alternative to court authorisation. The change of status of the relevant land will only apply to the extent that the Council disposes of the relevant land to the Board for the purpose of extending the Scottish National Gallery.
Background

5. The Board was established by the National Galleries of Scotland Act 1906 (“the 1906 Act”) in order to manage the National Galleries of Scotland (“NGS”), comprising the Royal Institution, the National Gallery and the National Portrait Gallery, Edinburgh, and for such other purposes connected with the fine arts in Scotland as may be prescribed. Section 4A of the 1906 Act (as inserted by the National Heritage (Scotland) Act 1985) now provides that the Board’s general functions are to –

(a) care for, preserve and add to the objects in their collections;
(b) secure that the objects are exhibited to the public;
(c) secure that the objects are available to persons seeking to inspect them in connection with study or research; and
(d) 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.

6. The Board is authorised, amongst other matters, to provide education, instruction and advice and carry out research and, with the Scottish Ministers’ consent, to enter into contracts for the acquisition of land.

7. The National Gallery was authorised to be constructed by the National Galleries and Museums (Scotland) Act 1850. Section II authorised the construction of “all such Buildings, Apartments, Appurtenances and Enclosures as shall be necessary for a National Gallery of Art and other purposes connected therewith and with the Promotion of the Fine Arts”.

8. In pursuance of their statutory functions and their policy objectives, the Board proposes to extend and improve the National Gallery with the objective that Scottish art is proudly presented to the widest possible public in a gallery of world standing with first class facilities and access. A key component of the proposals is the expansion of the ‘Scottish Wing’ into the relevant land, creating approximately 500 square metres of new gallery accommodation in which the collection of Scottish art will be exhibited. The intention is also to improve the relationship between the conflicting elevation designs of the existing building. There are also proposals for a new landscaped public pathway and terrace at the Gardens level and a wider public precinct at the higher level. This revised configuration is expected to improve connectivity and amenity between the Gallery Complex, the Gardens, Princes Street, the Playfair Steps and the Edinburgh Old Town.

9. The Gardens are subject to a statutory restriction upon the construction of certain buildings. That restriction is contained in section 22 of the Schedule to the City of Edinburgh District Council Order Confirmation Act 1991 (“the 1991 Act”), the relevant parts of which read as follows –

“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 –
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<tr>
<th>1</th>
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<tbody>
<tr>
<td><strong>Park</strong></td>
<td><strong>Description of Buildings</strong></td>
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<tr>
<td>Princes Street Gardens</td>
<td>Lodges for gardeners and keepers, hothouses and conservatories, monuments, bandstands, public conveniences, police boxes and buildings for housing apparatus for the supply of electricity or gas</td>
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10. The effect of section 22 is to prohibit the construction (whether by the Council or anyone else) of a permanent building in one of the specified parks, other than the buildings described in the second column of the table in relation to that park. Neither section 22 nor any other provision of the 1991 Act contains a definition of Princes Street Gardens, whether by reference to a plan or otherwise.

11. There is a series of statutory provisions dealing with restrictions on, and authorisation for, the erection and construction of buildings in the area which is now the Gardens, with the oldest dating back to 1816. The Edinburgh Improvements Act 1816 authorised, among other things, the erection of a chapel and burial ground at the west end of Princes Street in an area which was occupied by a nursery for trees. The Edinburgh Improvement Act 1827 (section LIII) prohibited the Provost, Magistrates and Council from erecting buildings on an area comprising what is now East Princes Street Gardens without the express sanction of Parliament. Such Parliamentary sanction was obtained to allow the Scott Monument to be constructed (together with a keeper’s house).

12. Further legislation, namely the Edinburgh and Glasgow Railway Act 1844 and The National Gallery and Museums (Scotland) Act 1850, was also enacted to authorise the extension of the Edinburgh and Glasgow Railway from its then termination near the Haymarket to the North Bridge and the erection of buildings on the Mound respectively.

13. A series of legislative provisions, starting with the Edinburgh Corporation Order 1922, restricted the type of buildings that could be built in the Gardens to those of a nature which is consistent with the Gardens’ status as a public park. Examples of the permitted buildings include monuments, band stands, police kiosks and lavatories.

14. The Edinburgh Corporation Order 1958 and the Edinburgh Corporation Order 1967 provided further exceptions to the general prohibition on the erection or construction, for electricity substations and buildings housing apparatus of the gas board respectively.

15. Section 22 of the Schedule to the 1991 Act is the most recent, and current, provision which restricts the type of buildings which can be constructed in the Gardens to those
highlighted at paragraph 9 above. Section 22 was itself disapplied by the National Galleries of Scotland Act 2003 in respect of another small piece of land which was within the Gardens to allow the Board to carry out certain improvements to the National Gallery and adjacent Royal Scottish Academy buildings as part of the project known as the Playfair Project.

16. As the above summary shows, the various statutory restrictions upon building in the Gardens have not been an absolute barrier to construction within the Gardens. The provisions have been amended over the years as occasion has demanded, and in response to changing public needs and expectations, while preserving the Gardens’ position as an important public space.

Need for disapplying section 22 in respect of the relevant land

17. Section 22 of the Schedule to the 1991 Act is a protective provision by which Parliament intended, for the public benefit, to safeguard the Gardens against development. If the transfer of the relevant land from the Council to the Board was to take effect in the absence of the Bill provisions relating to the 1991 Act, the relevant land would still remain part of the Gardens and so would still be subject to the restriction on construction contained in section 22. The Bill is therefore necessary to remove the relevant land from the Gardens and hence to disapply section 22 in respect of that land.

ALTERNATIVE APPROACHES

Statutory Restriction on Construction

18. There are no other means of achieving the objective referred to in paragraph 3 above other than by means of a Bill.

19. Consideration was given to including provision to remove the relevant land from the Gardens only, or to disapply section 22 of the Schedule to the 1991 Act only. However, it was decided that the relevant land should be removed from the Gardens and to make it clear in the Bill that this would have the consequence of disapplying the restriction on construction in section 22 of the Schedule to the 1991 Act.

Common Good

20. The Board considered making a request to the Council to apply to the Court of Session under section 75(2) of the 1973 Act for authorisation to dispose of the relevant land. However, the Board has decided to pursue the Bill as it was considered to provide a number of advantages, particularly where they were required to promote a Private Bill in any case for the reasons stated at paragraph 18.

21. Consideration was given to the Bill simply providing that the Council is entitled to dispose of the relevant land to the Board for the purpose of extending the Scottish National Gallery. However, it was decided that the Bill should instead change the status of the relevant land so that it is deemed to be alienable common good land, enabling the Council to dispose of the land, but subject to the requirements of section 74 of the 1973 Act (e.g. the obligation not to
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dispose of the land for a consideration less than the best that can reasonably be obtained, except in certain specified circumstances).

22. The primary advantage of using the Bill to change the status of the relevant land (rather than a court application to authorise a disposal) is that the Bill will be subject to a single process in which members of the public can participate. It will also provide a single promoter, which avoids any confusion over which parties to engage with that may have been caused by the Board promoting the Bill and the Council separately seeking authorisation for disposal of the relevant land. The Private Bill process is also considered to be a cheaper, and less intimidating, process for members of the public. It is more open, inclusive and transparent. The Private Bill process also contains significant consultation and notification requirements which will ensure that interested parties are properly informed.

23. The Bill also allows consideration of the statutory restriction and common good issues to be progressed together, rather than having to wait for court authorisation for disposal of the relevant land prior to commencing the Private Bill process. This provides the Board with a more cost-effective option which will provide greater certainty in terms of likely timescales.

PROPOSALS FOR THE LAND IF THE BILL IS ENACTED

24. It is acknowledged that there will be a minimal reduction of open space in the Gardens and the loss of four relatively young trees if the Bill is enacted and the Board proceeds with the extension and improvements to the National Gallery. However, the relevant land currently comprises a sloping grass embankment which is used only as an area of landscaping.

25. The loss of this area will be compensated by the landscaping improvements being provided by the Board and also by the improved cultural facility that will be provided for local residents and visitors. The improvements include enhanced access within the National Gallery and also from the Gardens to the National Gallery.

CONSULTATION

26. The Council consulted the following organisations on the proposed disposal of the relevant land, clearly acknowledging that the land formed part of the common good:

- 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).
27. The Council received two responses to this consultation; one 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.

28. The Board has undertaken its own consultation with key interested parties throughout the development of their proposals, namely:

- 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.

29. Historic Scotland responded to the consultation to confirm that from its initial discussions, it considered the scheme to 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”. Its conclusion confirmed that it could foresee no adverse effect on the character or special interest of the listed buildings or garden and designed landscape. Historic Scotland confirmed that it anticipated being able to support the principle of the proposals as part of the formal planning process.

30. The Edinburgh World Heritage Trust also wrote to offer its support for the Board’s first stage application to the Heritage Lottery Fund (discussed below). It expressed their view that the proposals were “important in terms of supporting the telling of the story of Edinburgh, supporting the community’s passion and understanding of the city and the people and events behind the conditions that enabled artistic expression to flourish across the nation”.

31. As planning authority, the Council stated that overall, it is supportive of the ambitions of the project. It also stated that it expected the proposals to receive the support of the Council’s planners, subject to the final designs and detailing.

32. The Board regards the consultation process as an ongoing exercise and fully intends to engage with interested parties throughout the project. The consultation enables them to shape the project, and they fully intend to continue to engage with the public and interested parties throughout the project. In addition to the above consultation, the Board is currently displaying public exhibitions on the project within the National Gallery to obtain direct feedback.

OTHER CONSENTS

33. Planning permission under the Town and Country Planning (Scotland) Act 1997 and listed building consent under the Planning (Listed Buildings and Conservation Areas) (Scotland)
Act 1997 will also be required to carry out the extension and improvements. The Board has been in discussions with the Council, as planning authority, which has confirmed that it is supportive of the proposal in principle, subject to the detail of final designs, as noted above.

FUNDING

34. The Board has made an application to the Heritage Lottery Fund for a grant of £4.94m and were successful in achieving a Round 1 pass in April 2015. They intend to make a Round 2 application in November 2015. At the same time an international fund-raising campaign directed at corporate and individual donors has been undertaken.
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