10.00am, Thursday, 31 January 2013

Report on Proposed Private Bill in relation to (1) Proposed Statue of John Rattray on Leith Links and (2) Proposed Changes to the Surplus Fire Fund

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Mark Turley  
Director of Services for Communities  
(regarding the proposed Statue of John Rattray on Leith Links)

Alastair Maclean  
Director of Corporate Governance  
(regarding the proposed changes to the Surplus Fire Fund)

Contact: Ian Buchanan, City Centre and Leith Neighbourhood Manager, Services for Communities (regarding the proposed statue of John Rattray on Leith Links)

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Executive summary

Report on Proposed Private Bill in relation to (1) Proposed Statue of John Rattray on Leith Links and (2) Proposed Changes to the Surplus Fire Fund

Summary

At its meeting of 27 October 2011 the City of Edinburgh Council agreed to pursue the legalities of the erection of a statue of John Rattray, founder of the rules of golf, on Leith Links (“Statue”). In order to permit the erection of the Statue, an amendment is required to the City of Edinburgh District Council Order Confirmation Act 1991 (“1991 Act”). The method of making such an amendment is for the Council to introduce private legislation to the Scottish Parliament (“Private Bill”).

At its meeting of 28 March 2012 the Pensions and Trusts Committee agreed to transfer the Surplus Fire Fund (“SFF”) to the Edinburgh Voluntary Organisation Trust (“EVOT”), subject to certain conditions, and to modification of the purposes of the SFF. EVOT would then hold, administer and apply the assets of SFF. The method of implementing these changes and effecting transfer is for the Council to introduce a Private Bill to the Scottish Parliament to amend the 1991 Act and the Edinburgh Corporation Order Confirmation Act 1927.

Recommendations

It is recommended that Council:

1. notes the contents of this report;
2. notes in particular with regard to the proposed Statue (a) the timing issues set out in paragraphs 2.13 and 2.14 of this report and (b) that there is no legal obligation on the Leith Rules Golf Society to erect the Statue, even if the Private Bill is passed;
3. decides (by decision of the majority of all elected members) to promote legislation by way of a Private Bill to create a narrow exception to the 1991 Act in order to remove the prohibition against statues being built on Leith Links, such exception to be solely for a statue of John Rattray;
4. decides (by decision of the majority of all elected members) to promote legislation to amend the purposes of the SFF as detailed in this report, to restrict the condition that beneficiaries must reside within the city area to purposes (a) and (b) only as set out in paragraph 2.25(2) of this report, and to transfer the assets, rights and liabilities of the SFF to EVOT to be applied
subject to the same purposes and conditions, and then to dissolve the SFF; and

5. should Council decide to promote the legislation in accordance with both paragraphs 3 and 4 above, to do so as one Private Bill dealing with both proposals.

**Measures of success**

The measure of success will be the introduction of the Private Bill to the Scottish Parliament, and acceptance of the proposals by the Scottish Parliament.

In addition, in relation to the proposal regarding the Statue, success will be measured by the passing of the Private Bill in time to enable the erection of the Statue prior to September 2014, when the 2014 Ryder Cup will be held at Gleneagles.

However, it should be noted that:

1. the passage of the Private Bill will be dependent upon the Scottish Parliament;
2. permission to erect the Statue will be subject to a successful planning application; and
3. the erection of the Statue will be subject to the actions of the Leith Rules Golf Society (which will be responsible for its erection).

**Financial impact**

**Costs relating to the erection and maintenance of the Statue**

The costs of creating and erecting the statue are estimated to be £250,000. The costs of erecting the Statue would be met by the Leith Rules Golf Society (the “Society”). The Society intends to raise the funds to erect the Statue by approaching donors who support the proposals. This fundraising has not yet commenced as the Society is unable to secure funding from donors until the 1991 Act is amended. If the fundraising is unsuccessful and the Society is unable to meet these costs, the Statue will not be erected.

The costs of maintaining and repairing the Statue are estimated to be between 10 to 15% of the cost of the construction costs. This sum would be expected to cover the Statue’s maintenance and repair throughout its lifetime. The Society intends to fundraise an extra 10% of the construction costs and to transfer this sum to the Council to enable the Council to maintain and repair the Statue. The Society is unable to guarantee that fundraising of this extra 10% sum will be successful. If such fundraising is unsuccessful, the Statue may not be maintained and repaired.
Costs of the transfer of SFF to EVOT

The direct costs of the transfer of the SFF to EVOT will be borne by the SFF. It is not anticipated that these costs will be significant in comparison to the value of the assets.

Costs of the consultation and parliamentary process

It is estimated that the costs associated with the required consultation and notification regarding the promotion of the Private Bill will be approximately £4,000 plus VAT. In addition, the Council will bear the cost of the Private Bill process, which includes:

1. the instruction of a parliamentary agent (costs depend on how much advice is required in relation to the pre-introduction stage and dealing with any objections – estimated as £10,000 to £15,000 plus VAT);

2. the fee for introducing the Private Bill (currently £5,000);

3. printing and publication of the Private Bill, accompanying documents and Private Bill Committee reports (this depends on how many amendments are made during the parliamentary process, but will be approximately £70);

4. production, printing and publication of the Official Report of meetings of Private Bill Committees (approximately £600);

5. costs of hiring a suitable venue for the Private Bill Committee where the Committee meets outside the Parliament estate (costs depend on (1) the venue chosen and (2) how many meetings are required. The number of meetings required can be influenced by the number of objections received); and

6. broadcasting of Private Bill committee meetings (approximately £200).

In total, the consultation and parliamentary procedure will cost at least £22,670. This does not include the cost of hiring any venues for Committee meetings and any indirect costs in relation to Council staff time on the project.

Equalities impact

There are no equalities issues relating to this report.

Sustainability impact

There is no anticipated impact on sustainability.

Environmental impact

Any environmental impact relating to the proposed erection of the Statue would be considered under the relevant planning application. There is no environmental impact relating to the proposed changes to the SFF.
Consultation and engagement

In accordance with Section 82 of the Local Government (Scotland) Act 1973 (“1973 Act”), in order that the Council may promote private legislation, at least 10 days’ clear notice of the meeting at which such decision will be taken (i.e. the meeting of Council on 31 January 2013) and of its purpose requires to be given by advertisement in one or more newspapers circulating in the area of the Council. This requirement has been met, with the advert appearing in the Evening News on Monday 14 January 2013.

A consultation process on the proposals has taken place, involving a public information evening for each of the two proposals, written consultation with various consultees, notices in libraries and fire stations, on lampposts and in newspapers.

In addition, the owners/occupiers of the properties that may be affected by the erection of the Statue will, should the Council decide to proceed with the proposals, be officially notified by recorded delivery letter of the intention to promote the Private Bill.

Background reading / external references

2. Minute of the meeting of the City of Edinburgh Council dated 27 October 2011;
4. Minute of the meeting of the City of Edinburgh Council’s Pensions & Trusts Committee dated 28 March 2012; and
Report on Proposed Private Bill in relation to (1) Proposed Statue of John Rattray on Leith Links and (2) Proposed Changes to the Surplus Fire Fund

1. Background

1.1 At its meeting of 27 October 2011 the City of Edinburgh Council agreed to pursue the legalities of the erection of a statue of John Rattray, founder of the rules of golf, on Leith Links (“Statue”). In order to permit the erection of the Statue, an amendment is required to the City of Edinburgh District Council Order Confirmation Act 1991 (“1991 Act”). The method of making such amendment is for the Council to introduce private legislation to the Scottish Parliament (“Private Bill”). Any such Private Bill would require to be promoted by the Council.

1.2 At its meeting of 28 March 2012 the Pensions and Trusts Committee agreed to transfer the Surplus Fire Fund (“SFF”) to the Edinburgh Voluntary Organisation Trust (“EVOT”), subject to the inclusion of certain conditions in the relevant deed of appointment, and modification of the purposes of the SFF. EVOT would then administer the SFF. The method of implementing these changes and effecting transfer is for the Council to introduce a Private Bill to the Scottish Parliament to amend the 1991 Act and the Edinburgh Corporation Order Confirmation Act 1927 (“1927 Act”), amend the purposes of the SFF and conditions governing its application, and then transfer its assets to EVOT to be held and applied subject to the same purposes and conditions. The SFF would then be dissolved.

1.3 It is expedient to amend the 1991 Act in relation to the SFF and the erection of the Statue on Leith Links at the same time in one Private Bill, rather than seeking to introduce two separate pieces of legislation.

1.4 Section 82 of the Local Government (Scotland) Act 1973 (the “1973 Act”) states that in order for the Council to, if it so decides, promote private legislation, at least 10 days’ clear notice of the meeting at which such decision will be taken (i.e. the meeting of Council on 31 January 2013) and of its purpose must be given by advertisement in one or more newspapers circulating in the area of the Council. This requirement has been met, with the notice appearing in the Evening News on Monday 14 January 2013.

1.5 In accordance with Section 82 of the 1973 Act, a resolution by the Council to promote private legislation must be passed by a majority of the whole number of the members of the Council.

1.6 The purpose of this report is:
1.6.1 to update the Council on progress made in relation to the decisions of (1) the Council of 27 October 2011 taken in respect of the Statue; and (2) the Pensions and Trusts Committee of 28 March 2012 taken in respect of the SFF (the “SFF Decision”);

1.6.2 to ask the Council to decide whether to proceed with the promotion of a Private Bill to the Scottish Parliament in order to allow a Statue of John Rattray to be erected on Leith Links; and

1.6.3 to ask the Council to decide whether to proceed with the promotion of a Private Bill to the Scottish Parliament in order to implement the SFF Decision.

2. **Main Report**

**Part A – Proposed Statue of John Rattray on Leith Links**

2.1 The Leith Rules Golf Society (the “Society”) initially approached the Council for permission to erect the Statue on Leith Links prior to the British Open Golf Championship which is due to be held at Muirfield in July 2013 (the “2013 Open”). The Society has since accepted that there is insufficient time to implement necessary legislative changes in order to permit the erection of the Statue in time for the 2013 Open. Accordingly, the Society is now seeking to ensure the erection of the Statue prior to the Ryder Cup golf competition which is due to be held at Gleneagles in September 2014 (the “2014 Ryder Cup”).

2.2 As currently drafted, the 1991 Act prevents the erection of any statues on Leith Links.

2.3 On 27 October 2011, Council agreed:

2.3.1 to agree to pursue the legalities of the erection of the Statue on Leith Links;

2.3.2 to agree that this would best be achieved by creating a narrow exception from the restrictions contained in the 1991 Act for the purpose of erecting only the Statue; and

2.3.3 to approach an MSP to promote and champion the measure through a Members Bill, failing which the Council would fund the necessary Private Bill.

2.4 This matter now falls within the remit of the Director of Services for Communities.

2.5 Efforts have been made to secure the promotion of a Members Bill by an MSP, but were unsuccessful. Accordingly, if the Council wishes to assist the Society to erect the Statue, the Council itself would require to promote and fund the necessary Private to amend the 1991 Act.
2.6 Since the decision of the Council on 27 October 2011 the Society has advised the Council that, in order for the Statue to be commissioned in time for the 2013 Open, the Private Bill would have to be passed by 1 March 2013. It is now, in practical terms, not possible for the Private Bill to be passed by 1 March 2013. It is likely that the Private Bill (if approved by the Scottish Parliament) would not be passed until late this year at the earliest.

2.7 Although it is the Society’s stated intention to erect the statue on Leith Links, there is no legal obligation for them to do so. This could mean that the Council incurs the costs of promoting the Private Bill, but that the Statue is not erected. The Council has previously requested that the Society give a formal undertaking to erect the Statue if the Private Bill is passed. The Society has declined to do so.

2.8 The Director of Services for Communities has provided the necessary resource allocation to complete the practicalities of the relevant consultation/notification process in relation to the Statue.

2.9 The Society intends to provide 10% of the construction cost of the Statue to the Council to enable the Council to maintain and repair the Statue. However, the Society is under no obligation to do so. If this 10% sum is not provided to the Council, the Statue may not be maintained or repaired.

Part B – Proposed Transfer of the Surplus Fire Fund to Edinburgh Voluntary Organisation Trust

2.10 On 28 March 2012, the Pensions and Trusts Committee agreed to transfer the Surplus Fire Fund (SFF) to EVOT subject to:

2.10.1 the inclusion of conditions in the deed of appointment as set out in paragraph 3.13 of the report by the Director of Corporate Governance;

2.10.2 the modification of the purposes of the SFF as part of the transfer process as set out in paragraph 3.7 of the Director’s report; and

2.10.3 the transfer being progressed by officers.

2.11 EVOT would then hold, administer and apply the assets of the SFF (which is currently administered by the Council).

2.12 Legal advice was received which indicated that, in order to modify the purposes of the SFF, private legislation would be required. It was therefore decided, in the event that the Council were to decide to promote a Private Bill in relation to the erection of the Statue, that it would be expedient to pursue private legislation in relation to the SFF at the same time.

Part C – General issues relating to the introduction of the Private Bill

2.13 Should the Council decide not to proceed with the promotion of the Private Bill at this meeting, the opportunity to amend the 1991 Act in time to build the Statue for the 2014 Ryder Cup may pass.
2.14 Further, even if the Council decides to promote the Private Bill at this meeting, it cannot be guaranteed that the Private Bill will be passed in time for the 2014 Ryder Cup, if at all.

2.15 In order for Council to promote the Private Bill a majority of all elected members of the Council must be satisfied that it is expedient to do so.

2.16 The Council will have a further opportunity to change its mind about the promotion of the legislation in the period immediately following the Private Bill’s introduction. The decision to promote the Private Bill must be confirmed by another Council meeting no less than fourteen days after the Private Bill has been introduced to the Scottish Parliament.

2.17 In the event that the Council or the Scottish Parliament decides during the parliamentary process that only one of the two proposals should be progressed, it is possible that the Parliament may decide that the remaining proposal should be re-introduced as a new bill on the grounds that a substantial change has been made to the Private Bill as introduced. Accordingly, if one element of the Bill is removed, there is a risk that the remaining element could be significantly delayed by such a change.

2.18 The exact drafting of the bill is subject to input from the Scottish Parliament.

Part D – Consultation on proposals

2.19 The Scottish Parliament requires that the Council carry out a consultation process prior to introduction of a Private Bill. This consultation process is complete and consisted of the following:

2.19.1 Public Information Evenings: A public information evening was held on Wednesday 19 December in the Thomas Morton Hall to consult with the public over the Statue proposals. A public information evening was held on Thursday 20 December in the City Chambers to consult with the public over the SFF proposals;

2.19.2 Letters to consultees: Letters were sent to key consultees for both Leith Links and the Fire Fund. Examples of consultees for Leith Links were Leith Links Community Council, Greener Leith, the Cockburn Association and Historic Scotland and for SFF were Lothian and Borders Fire and Rescue (“LBFR”), the Fire Brigades Union, hospital burns units and the Office of the Scottish Charity Regulator. In addition, a letter about the SFF proposals was sent to every community council in the Council area. The letters contained an explanation of the proposals, invitations to the public information evenings and contact details for giving feedback;

2.19.3 Letter drop to residents: A letter drop was carried out to circa. 400 residents in the Leith Links area giving information about the proposals and seeking feedback;
2.19.4 Library/Fire Station/Lamppost Notices: A notice was put up about the proposals in each library within the Council area. A letter was sent to every fire station within the Lothian and Borders Fire and Rescue area asking them to put up a notice about the SFF proposals. In addition, a notice about the SFF proposals was put up online by LBFR which was available on its intranet for the attention of staff. Notices were also put up on lampposts in the Leith Links area to alert local residents to the Statue proposals; and

2.19.5 Notices in Newspapers: Notices of the intention to introduce a private bill and information about the public information evenings were in the Scotsman and the Evening News on both 11 and 18 December 2012.

2.20 There were 8 formal responses received to the consultation process.

2.21 In relation to the Statue, one response was received from the Leith Trust in favour of the Statue and a response was received from Historic Scotland confirming they had no objection to the Statue. Two objections were received to the erection of the Statue. The objections raised issues including (1) criticisms of the aesthetics of the Statue and 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.

2.22 Of those that were received in relation to the SFF, all 4 were in favour of the proposals in principle. The Fire Brigades Union and Firrhill Community Council suggested a change which has now been incorporated into the proposals. The change is highlighted at paragraph 2.25 of this report.

2.23 Given the low level of response to the consultation process, it is difficult to draw a firm conclusion as to the extent of support or otherwise.

2.24 The general public will have a further opportunity to object to the Private Bill once it has been introduced to the Scottish Parliament.

Part E – Summary of the purposes of the Private Bill

2.25 The Private Bill will have 2 main proposals:

(1) Proposed Statue on Leith Links

To amend section 22 of the Schedule to the 1991 Act so that the erection of a statue of John Rattray would no longer be prohibited. The Bill would refer specifically to that particular statue and so would otherwise leave the existing prohibition on erecting monuments on Leith Links in place. However, while the Bill would remove the current statutory obstacle to the construction of the Statue, it would not itself authorise the Statue’s construction. Planning permission would need to be obtained in the usual way.
(2) Proposed changes to the SFF

To transfer the assets, rights and liabilities of the SFF from the Council to EVOT, and then to dissolve the SFF, after first amending the purposes for which the assets can be applied in order to make those purposes more flexible. The new purposes would be:

(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 who reside within the City of Edinburgh Council area.

It was initially decided by the Pension and Trusts Committee that individuals would only be eligible for grants in relation to purposes (a), (b) and (c) if they resided within the City of Edinburgh Council area. However, the consultation process has highlighted that this is potentially unfair in relation to purpose (c) as someone who lives outwith the City of Edinburgh could carry out meritorious service within the city area and then be excluded from receiving an award or grant. Accordingly, it is proposed that this condition of residency in the City of Edinburgh applies only to purposes (a) and (b), and not to purpose (c).

3. Recommendations

3.1 It is recommended that Council:

3.1.1 notes the contents of this report;

3.1.2 notes in particular with regard to the proposed Statue (a) the timing issues set out in paragraphs 2.13 and 2.14 of this report and (b) that there is no legal obligation on the Leith Rules Golf Society to erect the Statue, even if the Private Bill is passed;

3.1.3 decides (by decision of a majority of all elected members) to promote legislation by way of a Private Bill to create a narrow exception to the
1991 Act in order to remove the prohibition against statues being built on Leith Links, such exception to be solely for a statue of John Rattray;

3.1.4 decides (by decision of a majority of all elected members) to promote legislation, to amend the purposes of the SFF as detailed in this report, to restrict the condition that beneficiaries must reside with the city area to purposes (a) and (b) only as set out in paragraph 2.25(2) of this report, to transfer the assets, rights and liabilities of the SFF to EVOT to be applied subject to the same purposes and conditions, and then to dissolve the SFF; and

3.1.5 should Council decide to promote the legislation in accordance with both paragraphs 3.1.3 and 3.1.4 above, to do so as one Private Bill dealing with both proposals.

Mark Turley
Director of Services of Communities

Alastair Maclean
Director of Corporate Governance

Links

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City of Edinburgh Council – 31 January 2013